

**DEPARTMENT OF HEALTH SERVICES (F-17-0907)**

Title 9, Chapter 6, Article 7, Required Immunizations for Child Care or School Entry



**GOVERNOR'S REGULATORY REVIEW COUNCIL  
ANALYSIS OF FIVE-YEAR REVIEW REPORT**

**MEETING DATE:** October 3, 2017

**AGENDA ITEM:** E-1

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**TO:** Members of the Governor's Regulatory Review Council ("Council")  
**FROM:** Alissa Mack, Legal Intern  
**DATE :** September 19, 2017  
**SUBJECT: DEPARTMENT OF HEALTH SERVICES (F-17-0907)**  
Title 9, Chapter 6, Article 7, Required Immunizations for Child Care or School Entry

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**COMMENTS ON THE FIVE-YEAR-REVIEW REPORT**

The Arizona Department of Health Services (Department) is reviewing ten rules in A.A.C. Title 9, Chapter 6, Article 7 regarding immunization requirements for the Department. These rules pertain to required immunizations for child care or school entry, responsibilities of individuals and local health agencies for administering vaccines, standards for documentary proof of immunity, responsibilities of schools and child care, exemptions from immunizations, reporting requirements, and release of immunization information. The Department states that because of the obsolete requirements contained in the rules, the rules do not impose the least burden on the regulated community or adequately protect public health. The Department plans to request an exemption from the rulemaking moratorium to address these concerns.

**Proposed Action**

The Department plans to submit a Notice of Final Rulemaking by December 31, 2018 for each of the Article 7 rules.

**Substantive or Procedural Concerns**

None.

**Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:**

**1. Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

Yes. The Department has certified that it is in compliance with A.R.S. § 41-1091.

**2. Has the agency analyzed the rules' effectiveness in achieving their objectives?**

Yes. The Department finds that the rules are mostly effective in achieving their objectives, with the following exceptions:

- R9-6-701: The Department finds that the definition of “local health agency” is not fully appropriate. Additionally, subsection (55) cites the outdated April 1, 2000 edition of 21 CFR 600.3(h) for the definition of “biological product.”
- R9-6-702: The Department finds that subsections (B), (C), and (D) are obsolete because there are several forms of vaccines against a specific disease or set of diseases, and having one vaccine in short supply may not require suspending compliance. Additionally, subsection (E) does not give the Department the flexibility to decide when to suspend the requirement for compliance.
- R9-6-703: The Department finds that subsection (C)(2) might not accommodate electronic health records as well as it could.
- R9-6-704: The Department finds that the lack of distinction between proof of immunization and proof of immunity in the title of the Section and subsection (A) hinder the effectiveness of the rules. Additionally, the separate requirements for immunizations received before 2003 reduce the rule’s effectiveness in achieving its objective.
- R9-6-705: The Department finds that the current structure of the rule does not have similar topics grouped together and consolidated when appropriate.
- R9-6-706: The Department finds that subsections (B) and (C) are obsolete because vaccines are now available for pertussis, and methods to establish proof of a child’s immunity are already included in R9-6-704(A).
- R9-6-707: The Department finds the following exceptions:
  - Subsection (B) is redundant because the information that could be obtained by its process could also be obtained under R9-6-102.
  - Subsections (D) and (E) as currently separately written, require a child care administrator to submit two separate reports during the same time-frame containing the same information.
  - The rule might not be effective in subsection (D)(9)(c) because the rule does not regulate childcare group homes.
  - There is no clear forwarding requirement for the local health department to forward to the Department information received in the report in subsection (E).
- Table 1: The Department finds that this table is not effective because immunization requirements are not consistent with current recommendations of the Center for Disease Control (CDC) and its Advisory Committee for Immunization Practices (ACIP) which may be confusing to the reader.
- Table 2: The Department finds that this table is not effective because immunization requirements are not consistent with current recommendations of the CDC and ACIP which may be confusing to the reader.
- R9-6-708: The Department finds that subsections (1) and (5) overlap due to the definition of “local health agency.”

**3. Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

No. The Department has not received any written criticisms during the last five years pertaining to these rules.

**4. Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Department cites to both general and specific statutory authority. In particular, the Department cites to A.R.S. § 36-136(H)(1) which requires it to “define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases.” The Department also cites to A.R.S. § 36-672 which requires it to adopt specific rules for immunizations for school attendance, A.R.S. § 15-872 regarding documentary proof of immunization, and A.R.S. § 15-873 which authorizes exemptions from school immunization requirements.

**5. Has the agency analyzed the rules’ consistency with other rules and statutes?**

Yes. The Department indicates that its rules are consistent with other rules and statutes, with the following exceptions:

- R9-6-701: The Department finds that subsection (32) is not consistent with A.R.S. § 15-873 because the definition of “medical exemption” does not include a determination by a registered nurse practitioner.
- R9-6-705:
  - Subsections (E)(3) and (F)(1) are inconsistent with A.R.S. § 15-872. Subsection (E)(3) does not include registered nurse practitioners as individuals who may provide written proof of immunization. Subsection (F)(1) does not include registered nurse practitioners as individuals who may review a child’s immunization history and provide immunizations as needed.
  - Subsection (E)(3) might also be inconsistent with A.R.S. § 32-1974 depending on how the term obtaining “written proof of immunization” is interpreted. The statute allows a pharmacist to administer “booster doses for the primary adolescent series” and “immunizations or vaccines . . . to a person who is at least thirteen years of age.”

**6. Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department enforces the rules as written and is not aware of any problems with the enforcement of the rules, with the following exceptions:

- R9-6-701: The rule is inconsistent with the rule, but is enforced consistent with A.R.S. § 15-873 which allows a medical exemption to also be determined by a nurse practitioner.
- R9-6-705: The rule is enforced inconsistent with the rule, but consistent with A.R.S. § 15-872 which includes a nurse practitioner as a person who may provide written proof of

immunization, may review a child's immunization history, and may provide immunizations as needed.

**7. Has the agency analyzed whether the rules are clear, concise, and understandable?**

Yes. The rules are generally clear, concise, and understandable. The Department, however, is proposing amendments to clarify terminology, remove redundant language, and update the rules to further enhance the clarity and conciseness of these rules. The Department finds that the following rules are not clear, concise, and/or understandable:

- R9-6-701: The Department finds that this rule is not concise because certain definitions are only used once throughout the Article when they could be defined in the location in which they are used.
- R9-6-702: The Department finds that subsections (B), (C), and (D) are obsolete and reduce clarity as previously mentioned. Additionally, subsection (E) does not give the Department the flexibility to decide when to suspend the requirement for compliance.
- R9-6-703: The Department finds that the term “local health agency” is not appropriate since requirements in the rule would not apply to an entity in another state. Additionally, it finds that the term “severe reaction” could potentially be defined or described and the term “immunized child” might not be used consistently in subsections (D) and (E).
- R9-6-704: The Department finds that the phrase “establish proof” might cause confusion in subsection (A) because it is not clearly described. Additionally, subsections (A)(5) and (6) do not clearly state that the signed and dated electronic version of the child's immunization is in fact a print-out of the electronic version.
- R9-6-705: The Department finds that this rule is not clear, concise, or understandable because:
  - “Cares” is grammatically inconsistent with “Schools” in the title.
  - There is either no distinction, or one term is not used consistently with the following terms:
    - § The term “immunization record” in subsection (A), and any distinctions among the terms “requirements for immunization” in subsections (B) and (C), and “immunization requirement in this Article” in subsection (D).
    - § “Proof of immunity” in subsections (D)(1) and (G)(1) and (2), “proof” in subsections (E)(2)(a) and (b), and “written proof of immunization” in subsection (E)(3).
  - “Standards of documentary proof” in subsections (F)(2) and (3) are not clear.
  - The term “local health agency” is used inappropriately
  - The rule is somewhat unclear as to what a child is to obtain from a physician or local health agency under subsection (E)(3).
- R9-6-706: The Department finds this rule to be mostly clear, concise, and understandable, but the phrase “parent or guardian” is not sufficient, inconsistent wording is used in subsections (E)(5) through (7) and (F)(5) through (7), and subsection (G)(3) is not clear regarding the amount of time a child's responsible person should be notified.
- R9-6-707: The Department finds that this rule is not clear, concise, or understandable:
  - The phrase “documentary proof of immunization status” in subsection (A)(8) is not as clear as it could be because it lacks a definition.

- There is not a clear time-frame for a local health department to submit the report required in subsections (C) and (G).
- The term “local health agency” is inappropriately used.
- Subsection (H) is unnecessary since the requirement in A.R.S. § 36-135 for reporting applies to vaccines administered to all children, not just those in school or child care.
- Table 1: The Table has too many explanations and is not easily understandable.
- Table 2: The Table has too many explanations and is not easily understandable.
- R9-6-708: The Department finds that the lack of a definition for “health related services” reduces clarity.

**8. Has the agency analyzed whether:**

**a. The rules are more stringent than corresponding federal law?**

The Department indicates that the rules are not more stringent than federal law.

**b. There is statutory authority to exceed the requirements of federal law?**

Not applicable.

**9. For rules adopted after July 29, 2010, has the agency analyzed whether:**

The rules were adopted prior to July 29, 2010.

**a. The rules require issuance of a regulatory permit, license or agency authorization?**

Not applicable.

**b. It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?**

Not applicable.

**10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?**

Yes. The Department indicates that it adhered to its proposed course of action in its previous five-year-review report which stated that the Department does not plan to amend the rules unless a threat to public health or safety arose requiring such amendments. Since no threat arose in the past five years, the Department has adhered to its 2012 report.

**11. Has the agency included a proposed course of action?**

Yes. The Department plans to submit a Notice of Final Rulemaking to the Council by December 31, 2018. The proposed changes include:

- R9-6-701: The Department plans to:
  - Change “local health agency” to “local health department” in subsection (30).
  - Update the definition of “biological product” in subsection (55) to include the April 1, 2016 21 CFR 600.3h definition.
  - Amend the definition of “medical exemption” in subsection (32) to include a registered nurse practitioner.
  - Include definitions of terms that are only used once in the section in which the term is located, rather than in the definition section.
- R9-6-702: The Department plans to remove subsections (B), (C), and (D) as obsolete and amend subsection (E) to give the Department more flexibility in deciding when to suspend the requirement for compliance. Additionally, the Department plans to amend subsection (E)(2) to state that immunization requirement compliance would be suspended only for the applicable vaccine in short or limited supply.
- R9-6-703: Despite the potential issues described, the Department has decided that no rule changes are necessary in this section because the rule currently imposes the least burden and costs.
- R9-6-704: The Department plans to:
  - Amend the title of the Section and subsection (A) to reflect the distinction between “immunity” and “immunization.”
  - Remove separate requirements for immunizations received before 2003.
  - More clearly describe “establish proof.”
  - Clearly state that a signed and dated print-out of an electronic version of the child’s immunization record is required.
- R9-6-705: The Department plans to:
  - Restructure the section to group similar topics and consolidating the requirements in subsection (E) into the requirements in subsections (B) and (C).
  - Add “registered nurse practitioner” as one of the persons who may provide written proof of immunizations and one who may review a child’s immunization history and provide immunizations as needed.
  - Make technical changes to wording to ensure consistency.
- R9-6-706: The Department plans to:
  - Remove subsections (B) and (C) to improve effectiveness because they are no longer relevant.
  - Replace the phrase “parent or guardian” with “responsible person.”
  - Add a time requirement for “responsible person” notification.
  - Make other technical changes to wording to ensure consistency.
- R9-6-707: The Department plans to:
  - Remove and consolidate sections to reduce redundancy and burden in the rules.
  - Change citations to statute to reflect a more correct statutory authority
  - Add a requirement for a local health department to forward to the Department the information received in the report in subsection (E).

- Clearly define terms such as “documentary proof of immunization status” and more clearly identify time-frames to submit reports.
- The Department also plans to remove subsection (H).
- Table 1: The Department plans to make the immunization requirements consistent with the current recommendations of the CDC and ACIP to reduce confusion to the reader.
- Table 2: The Department plans to make the immunization requirements consistent with the current recommendations of the CDC and ACIP to reduce confusion to the reader.
- R9-6-708: The Department has decided not amend this rule as they have concluded it imposes the least burden and costs to persons regulated by the rule.

### **Conclusion**

This report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends approval.



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

**MEETING DATE:** October 3, 2017

**AGENDA ITEM:** E-1

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

**FROM:** GRRC Economic Team

**DATE :** September 19, 2017

**SUBJECT: DEPARTMENT OF HEALTH SERVICES (F-17-0907)**  
Title 9, Chapter 6, Article 7, Required Immunizations for Child Care or School Entry

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I have reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with ARS § 41-1056 and make the following comments.

**1. Economic Impact Comparison**

The economic, small business, and consumer impact statement (EIS) from the most recent Department rulemaking completed in 2008 was reviewed for Article 7. The rules reviewed address requirements related to immunizations for child care attendance and school entry, including exemptions from the immunization requirements. Key stakeholders are children enrolled in school or child care, parents of a child enrolled in school or child care, vaccine manufacturers, the public and the Department.

During the 2016-2017 school year, 3.9% of children in child care had a religious exemption and 0.5% had a medical exemption. For children in Kindergarten, 4.9% of the children had a personal exemption and 0.3% had a medical exemption. For children in Sixth Grade, 5.1% of the children had a personal exemption and 0.5% had a medical exemption.

The Department concludes that the economic impact has generally been as predicted in the prior EIS for the rules in the Article cited above.

**2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?**

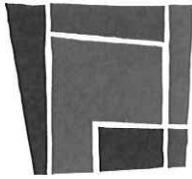
Because of obsolete requirements contained in the rules, the rules do not impose the least burden on the regulated community or adequately protect public health. The Department plans to request an exception from the rulemaking moratorium to address concerns and to make other necessary changes. The Department plans to amend the rules by December 31, 2018.

**3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?**

No analysis was submitted to the Department by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

**4. Conclusion**

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

July 20, 2017

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

RE: Report for A.A.C. Title 9, Chapter 6, Article 7 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 7 is due to the Council no later than September 30, 2017. The Arizona Department of Health Services (Department) has reviewed 9 A.A.C. 6, Article 7 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 plans to amend the rule in 9 A.A.C. 6, Article 7 by December 31, 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

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*Health and Wellness for all Arizonans*



# ARIZONA DEPARTMENT OF HEALTH SERVICES

**FIVE-YEAR-REVIEW REPORT**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 6. DEPARTMENT OF HEALTH SERVICES**

**COMMUNICABLE DISEASES AND INFESTATIONS**

**ARTICLE 7. REQUIRED IMMUNIZATIONS FOR CHILD CARE OR**

**SCHOOL ENTRY**

**JULY 2017**

**FIVE-YEAR-REVIEW REPORT**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 6. DEPARTMENT OF HEALTH SERVICES**

**COMMUNICABLE DISEASES AND INFESTATIONS**

**ARTICLE 7. REQUIRED IMMUNIZATIONS FOR CHILD CARE OR SCHOOL ENTRY**

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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.” A.R.S. § 36-672 requires the Department to adopt rules requiring specific immunizations for school attendance, identifying which health agencies and health care providers may sign a laboratory evidence of immunity, specifying the required doses and optimum ages for vaccine administration, and developing standards for documentary proof. A.R.S. § 15-872 also requires the development by rule of standards for documentary proof and the suspension of a student without documentary proof of immunization or exemption from immunization. A.R.S. § 15-873 authorizes exemptions from school immunization requirements for personal beliefs or medical reasons, and A.R.S. § 36-883(C) authorizes exemptions from child care immunization requirements for religious beliefs. A.R.S. § 36-674 requires any individual administering a vaccine to provide documentary proof of the immunization. A.R.S. 36-135 establishes the child immunization reporting system “to collect, store, analyze, release and report immunization data,” and A.R.S. § 15-874 specifies the requirements for a child’s school immunization record.

The Department has adopted in Arizona Administrative Code (A.A.C.) Title 9, Chapter 6, Article 7 rules to implement the abovementioned statutes. The rules were extensively revised in 2002; six of the rules were further amended in 2005 and again in 2008. After an analysis of the rules in Article 7, the Department has determined that all but two of the rules in 9 A.A.C. 6, Article 7 are effective or mostly effective and all but three are clear, concise, and understandable or mostly clear, concise, and understandable. The Department has received no written criticisms of the rules. However, because of obsolete requirements contained in the rules, the rules do not impose the least burden on the regulated community or adequately protect public health. Therefore, the Department plans to request an exception from the rulemaking moratorium to address concerns described in this report and to make other necessary changes. The Department plans to amend 9 A.A.C. 6, Article 7, submitting a Notice of Final Rulemaking to the Governor’s Regulatory Review Council (Council) by December 31, 2018.

## INFORMATION THAT IS IDENTICAL FOR ALL OF THE RULES

### 1. **Authorization of the rule by existing statute**

The general statutory authority for the rules in 9 A.A.C. 6, Article 7 are A.R.S. §§ 36-132(A)(1), 36-136(A)(7) and 36-136(F).

The specific statutory authority for the rules in 9 A.A.C. 6, Article 7 are A.R.S. §§ 36-136(H)(1) and 36-672.

### 2. **The purpose of the rule**

The purpose of the rules in 9 A.A.C. 6, Article 7 is to establish immunization requirements for school or child care attendance.

### 4. **Analysis of consistency with state and federal statutes and rules**

Except as described for R9-6-701 and R9-6-705, the rules in 9 A.A.C. 6, Article 7 are consistent with state statutes and rules. Federal laws do not apply to the rules in 9 A.A.C. 6, Article 7, but the immunization requirements in Tables 1 and 2 are inconsistent with current immunization recommendations for children issued by the Centers for Disease Control and Prevention (CDC) and its Advisory Committee for Immunization Practices (ACIP).

### 5. **Status of enforcement of the rule**

Except as described for R9-6-701 and R9-6-705, the rules in 9 A.A.C. 6, Article 7 are enforced as written by the Department.

### 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**

The rules in 9 A.A.C. 6, Article 7 establish requirements related to immunization requirements for child care attendance and school entry, including exemptions from the immunization requirements. During the 2016-2017 school year, 3.9% of children in child care had a religious exemption and 0.5% had a medical exemption. For children in Kindergarten, 4.9% of the children had a personal exemption and 0.3% had a medical exemption. For children in Sixth Grade, 5.1% of the children had a personal exemption and 0.5% had a medical exemption.

The rules in 9 A.A.C. 6, Article 7 were extensively revised by final rulemaking published in the *Arizona Administrative Register* (A.A.R.) at 8 A.A.R. 4274, effective September 16, 2002, to establish a definitions Section in the Article, allow the Department to temporarily suspend the requirement for a vaccine in short supply and to discontinue the requirement for a disease declared eradicated, authorize the release of immunization information to additional persons, and update the format and style of the rules. An economic, small business, and consumer impact statement (EIS)

was submitted to GRRC as part of the Notice of Final Rulemaking package. The EIS designated annual cost/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 EIS stated that the Department would incur moderate costs for promulgating and enforcing the rules, but that no other persons directly affected by the rulemaking would incur additional costs. The Department anticipated that schools and child care providers would benefit from the Department's ability to temporarily suspend or discontinue an immunization requirement, and that persons newly authorized to access immunization records and the general public would benefit from increased access to immunization records and the more clear, concise, and understandable rules. The Department believes that the costs and benefits identified in the 2002 EIS are generally consistent with the actual costs and benefits of the rules.

Six of the rules, R9-6-701, R9-6-702, R9-6-704, R9-6-706, Table 1, and Table 2, were further revised by final rulemaking published in the *Arizona Administrative Register* (A.A.R.) at 11 A.A.R. 2283, effective June 7, 2005, to add the varicella (chickenpox) vaccine; make changes to the rules relating to the addition of varicella; add physicians, physicians' designees, practical nurses, and registered nurses to the list of individuals who may sign an electronic version of a child's immunization record; and change the proof of immunization requirements to be consistent with the practice of relating proof to the date an immunization was given, rather than to the age of the child. The EIS for the rulemaking package again designated annual cost/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 EIS stated that local county health departments were already giving the varicella vaccine to children and would incur no-to-minimal costs and that the Arizona Department of Education could incur minimal-to-moderate costs for school nurses spending additional time monitoring for and reporting compliance with the new requirement and possibly giving additional doses of vaccine. The Department anticipated that the federal Vaccines for Children (VFC) program and the "317" federal funding program would incur moderate-to-substantial costs for providing funding for doses of varicella vaccine and that the Department would incur substantial costs for purchasing varicella vaccine for the VFC program in Arizona. The Department anticipated that small businesses, such as private health care providers, could incur a minimal-to-moderate cost for additional supplies and staff time to immunize an increased number of children entering school or child care. AHCCCS-contracted health plans were expected to incur a minimal-to-moderate cost to pay the contracted physicians to immunize AHCCCS-covered children, and the contracted physicians would benefit from AHCCCS reimbursement based on the number of immunizations provided. The Department anticipated that Arizona children would receive the

greatest benefit from the rulemaking, since the children would be protected from getting varicella. Arizona schools were expected to receive a benefit from more students attending classes, rather than being home sick with chickenpox. The parents of Arizona children were expected to benefit from fewer workdays lost caring for sick children, which was also expected to benefit the employers of these parents. The general public was expected to benefit due to the decrease in the number of chickenpox cases and the risk of exposure, as well as from a decreased risk of outbreaks. The Department believes that the costs and benefits identified in the 2005 EIS are generally consistent with the actual costs and benefits of the rules, except that the Department no longer has state funds with which to purchase vaccines. Therefore, varicella vaccine is now purchased with federal funds, increasing the cost to the VFC program and decreasing the Department's costs to minimal.

Six of the rules, R9-6-701, R9-6-702, R9-6-706, R9-6-707, Table 1, and Table 2, were again revised by final rulemaking published in the *Arizona Administrative Register (A.A.R.)* at 13 A.A.R. 4106, effective January 5, 2008. In this rulemaking, the Department added the meningococcal vaccine to the list of required immunizations, using a graduated requirement process to minimize economic effects, and made changes to the rules relating to the addition of this vaccine. The Department also lowered the age for receiving the Hepatitis A vaccine, consistent with changes to the approved age of administration; amended requirements for tetanus, diphtheria, and pertussis immunizations; and amended electronic reporting requirements to reflect changes in technology. As part of this rulemaking the Department renumbered the rules in 9 A.A.C. 6, Article 6 to 9 A.A.C. 6, Article 12, and moved requirements for the reporting of post-exposure prophylaxis for rabies from R9-6-707(I) into 9 A.A.C. 6, Article 6. The EIS for the rulemaking package designated annual cost/revenue changes as minimal when less than \$100,000, moderate when \$100,000 to \$999,999, substantial when \$1,000,000 or more in additional costs or revenues, and significant when a cost or benefit was meaningful or important but not readily subject to quantification. The EIS stated that local county health departments would incur minimal-to-moderate costs due to staff time to administer additional immunizations and report compliance with immunization requirements. The EIS also stated that the Arizona Department of Education and AHCCCS would incur minimal costs due to the rulemaking, and that AHCCCS would receive a moderate-to-substantial benefit from reduced medical expenses to treat affected children. Small businesses, such as private health care providers, could incur a minimal-to-moderate cost for additional supplies and staff time to immunize children. AHCCCS-contracted health plans were expected to incur a minimal-to-moderate cost to pay the contracted physicians to immunize AHCCCS-covered children and to receive a minimal benefit, while vaccine manufacturers would receive a moderate-to-substantial benefit. Private insurance/health plans were anticipated to incur a moderate-to substantial cost for vaccines and no-

to-moderate administration-fee costs. The Department again anticipated that Arizona children would receive the greatest benefit from the rulemaking. Arizona schools were also expected to receive a benefit from more students attending classes, rather than being home sick. The parents of Arizona children were expected to benefit from fewer workdays lost caring for sick children, which was also expected to benefit the employers of these parents, and from knowing that their children are protected from a potentially deadly disease. The general public was expected to benefit due to the decrease in the number of disease cases and the risk of exposure, as well as from a decreased risk of outbreaks. The Department believes that the costs and benefits identified in this EIS are generally consistent with the actual costs and benefits of the rules.

**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**

In the 2012 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 7 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.

**12. Analysis of stringency compared to federal laws**

Under federal law, states establish by law immunization requirements for school children. Therefore, federal laws do not apply to the rules in 9 A.A.C. 6, Article 7.

**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 regulatory permit, license, or agency authorization.

**14. Proposed course of action**

Because of obsolete requirements contained in the rules, the rules do not impose the least burden on the regulated community or adequately protect public health. Therefore, the Department plans to request an exception from the rulemaking moratorium to address concerns described in this report and to make other necessary changes. The Department plans to amend 9 A.A.C. 6, Article 7, submitting a Notice of Final Rulemaking to the Governor's Regulatory Review Council (Council) by December 31, 2018.

## INFORMATION FOR INDIVIDUAL RULES

### R9-6-701. 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 mostly effective in achieving its objective but could be more effective. Subsection (30) could be more effective if the defined term were “local health department,” since most of the uses of the term “local health agency” in the rules refer to local health departments in Arizona, and the rules specify when a similar governmental agency in another state is included. Subsection (55) cites the definition of “biological product” in the April 1, 2000 edition of 21 CFR 600.3h, rather than the current April 1, 2016 edition.

#### 4. Analysis of consistency with state and federal statutes and rules

Subsection (32) is not consistent with A.R.S. § 15-873, as amended by Laws 2007, Ch. 97, § 14 because the definition of “medical exemption” does not include a determination by a registered nurse practitioner.

#### 5. Status of enforcement of the rule

The rule is enforced consistent with A.R.S. § 15-873.

#### 6. Analysis of clarity, conciseness, and understandability

The rule is mostly clear and understandable, but the rule is not concise. Many of the definitions in the rule are used in the Article only once, such as “communicable period” used only in R9-6-707(B)(2), or are only used in a Table, such as DTaP or DTP. The rule would be more concise and the rules in the Article would be more understandable if these terms were described or defined in the location in which they are used, rather than in this Section.

#### 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 does not impose the least burden and costs to persons regulated by the rule, because of the items identified in paragraphs 3, 4, and 6.

### R9-6-702. Required Immunizations for Child Care or School Entry

#### 1. Authorization of the rule by existing statutes

The rule has A.R.S. §§ 15-873 and 36-883 as additional specific authority.

**2. Objective**

The objective of the rule is to specify the immunizations that are required for child care or school entry.

**3. Analysis of effectiveness in achieving the objective**

The rule is mostly effective in achieving its objective but could be more effective if subsections (B), (C), and (D) were removed as obsolete. Since there may be several multivalent vaccines or vaccine formulations against a specific disease or set of diseases, such as the MMR or DTaP vaccine, as defined in R9-6-701, having one vaccine in short supply may not require compliance to be suspended. Other vaccines for the disease or set of diseases could be used, including injecting a separate vaccine for each disease in the set rather than a combination vaccine. Therefore, subsection (E) should be amended to give the Department more flexibility in deciding when to suspend the requirement for compliance.

**6. Analysis of clarity, conciseness, and understandability**

The rule is mostly clear, concise, and understandable but could be clearer if obsolete subsections were removed. Subsection (E)(2) of the rule would also be clearer if the rule stated that compliance with immunization requirements would be suspended only for the applicable vaccine in short or limited supply.

**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 does not impose the least burden and costs to persons regulated by the rule, because of the items identified in paragraphs 3 and 6.

**R9-6-703. Responsibilities of Individuals and Local Health Agencies for Administering Vaccines**

**2. Objective**

The objective of the rule is to specify the responsibilities of individuals and local health agencies for administering vaccines.

**3. Analysis of effectiveness in achieving the objective**

The rule is effective in achieving its objective but could be more effective if subsection (C)(2) were revised to better accommodate electronic health records.

**6. Analysis of clarity, conciseness, and understandability**

The rule is mostly clear, concise, and understandable but could be clearer if the term “local health

department” were used instead of “local health agency” since the requirements in the rule would not apply to an entity in another state. The term “severe reaction” could also be defined or described, and the term “immunized child” could be used in subsection (D) to be consistent with its use in subsection (E).

**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**

Despite the clarifications described in paragraphs 3 and 6 that could be made, 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.

**R9-6-704. Standards for Documentary Proof of Immunity**

**1. Authorization of the rule by existing statute**

The rule has A.R.S. §§ 15-872, 15-874, and 36-135 as additional specific authority.

**2. Objective**

The objective of the rule is to establish the standards for documentary proof of immunization or immunity to a disease listed in R9-6-702.

**3. Analysis of effectiveness in achieving the objective**

The rule is mostly effective in achieving its objective. Since proof of immunization is not the same as proof of immunity, the rule would be more effective if the title of the Section and subsection (A) were amended to make a distinction between the two. Separate requirements for immunizations received before 2003 could also be removed.

**6. Analysis of clarity, conciseness, and understandability**

The rule is mostly clear, concise, and understandable but could be clearer if the phrase “establish proof” in subsection (A) were more clearly described. Subsections (A)(5) and (6) could also more clearly state that it is a print-out of an electronic version of the child’s immunization record that is signed and dated.

**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 does not impose the least burden and costs to persons regulated by the rule, because of the items identified in paragraphs 3 and 6.

**R9-6-705. Responsibilities of Schools and Child Care**

**1. Authorization of the rule by existing statute**

The rule has A.R.S. §§ 15-872, 15-873, 15-874, and 36-883 as additional specific authority.

**2. Objective**

The objective of the rule is to specify the responsibilities for a child care administrator or a school administrator related to immunizations.

**3. Analysis of effectiveness in achieving the objective**

The rule is mostly effective in achieving its objective but could be improved by restructuring the Section to group similar topics. For example, subsection (D) could be moved before subsection (B) so subsections addressing situations where a child is not in compliance with immunization requirements are together. The rule could also be improved by consolidating the requirements in subsection (E) into the requirements in subsections (B) and (C).

**4. Analysis of consistency with state and federal statutes and rules**

Subsections (E)(3) and (F)(1) are not consistent with A.R.S. § 15-872, as amended by Laws 2007, Ch. 97, § 13. Subsection (E)(3) does not include a registered nurse practitioner as one of the persons who may provide written proof of immunization. Subsection (F)(1) does not include a registered nurse practitioner as one of the persons who may review a child's immunization history and provide immunizations as needed. Depending on what is meant by obtaining "written proof of immunization" in subsection (E)(3), the rule may also be inconsistent with A.R.S. § 32-1974, which allows a pharmacist to administer "booster doses for the primary adolescent series" and "immunizations or vaccines . . . to a person who is at least thirteen years of age."

**5. Status of enforcement of the rule**

The rule is enforced consistent with A.R.S. § 15-872.

**6. Analysis of clarity, conciseness, and understandability**

The rule is not clear, concise, and understandable. The title could use the word "Cares" to be consistent with the use of the word "Schools." The term "immunization record" in subsection (A) and the distinctions, if any, among the terms "requirements for immunization" in subsections (B) and (C) and "immunization requirement in this Article" in subsection (D); "proof of immunity" in subsections (D)(1) and (G)(1) and (2), "proof" in subsections (E)(2)(a) and (b), and "written proof of immunization" in subsection (E)(3); and "standards of documentary proof" in subsections (F)(2) and (3) could be clearer. If there are no distinctions, one term should be used consistently. The rule also

uses the term “local health agency” when only a local health department is meant. It also could be clearer what a child is to obtain from a physician or local health agency under subsection (E)(3), an immunization and the accompanying documentation of the immunization, which would constitute written proof of immunization, or another document that would constitute written proof of immunization prepared from medical records, ASIIS, as defined in R9-6-701, or another source, without an immunization beforehand.

**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 does not impose the least burden and costs to persons regulated by the rule, because of the items identified in paragraphs 3, 4, and 6.

**R9-6-706. Exemptions from Immunizations**

**1. Authorization of the rule by existing statute**

The rule has A.R.S. §§ 15-872, 15-873, 15-874, and 36-883 as additional specific authority.

**2. Objective**

The objective of the rule is to establish exemptions from immunizations.

**3. Analysis of effectiveness in achieving the objective**

The rule is mostly effective in achieving its objective but could be improved by removing subsections (B) and (C). Subsection (B) was originally included because no pertussis vaccine was approved for use in this age group, but a vaccine is now available against pertussis that is approved for use in children 7 through 10 years of age. Subsection (C) is now obsolete because the date in subsection (C)(1) has past and “laboratory evidence of immunity” is included in R9-6-704(A) as a method to “establish proof of a child’s immunity.”

**6. Analysis of clarity, conciseness, and understandability**

The rule is mostly clear, concise, and understandable but could be clearer if the phrase “parent or guardian” in subsections (E)(4) and (7) were replaced with the defined term “responsible person.” The clarity of the rule could also be improved if the wording in subsections (E)(5) through (7) and (F)(5) through (7) were made consistent with each other. Subsection (G)(3) could also state how much ahead of time a child’s responsible person should be notified. Punctuation errors could also be corrected.

**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 does not impose the least burden and costs to persons regulated by the rule, because of the items identified in paragraphs 3 and 6.

**R9-6-707. Reporting Requirements**

**1. Authorization of the rule by existing statute**

The rule has A.R.S. §§ 15-873, 15-874, 36-135, and 36-883 as additional specific authority.

**2. Objective**

The objective of the rule is to specify the requirements for reporting immunization information to the Department or a local health agency.

**3. Analysis of effectiveness in achieving the objective**

The rule is mostly effective in achieving its objective but could be improved by removing subsection (B). Since this rule was last amended, the Department has adopted R9-6-102, which requires the release of information requested by the Department or a local health department to detect, prevent, or control a communicable disease. The information required under subsection (B) could be obtained under R9-6-102. The rule could also be more effective if subsections (D) and (E) were combined so a child care administrator was not required to submit two separate reports during the same time-frame containing much of the same information. In addition, the rule could be improved by citing A.R.S. § 36-883 in subsection (D)(9)(c), since the rules in 9 A.A.C. 5 do not regulate child care group homes, and including a requirement for a local health department to forward to the Department the information received in the report in subsection (E).

**6. Analysis of clarity, conciseness, and understandability**

The rule is mostly clear, concise, and understandable but could be clearer if the term “documentary proof of immunization status” in subsection (A)(8) were defined or described. The rule could also be clearer if the intent of subsections (D)(4) and (6) were better described and if the time-frame for a local health department to submit the report required in subsection (C) were specified in subsection (G). The rule also uses the term “local health agency” when only a local health department is meant. Subsection (H) could also be removed since the requirement for reporting is in A.R.S. § 36-135 and applies to vaccines administered to all children, not just those in school or child care.

**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 does not impose the least burden and costs to persons regulated by the rule, because of the items identified in paragraphs 3 and 6.

**Table 1. Immunization Requirements for Child Care or School Entry**

**2. Objective**

The objective of the rule is to specify the immunization requirements and schedule for child care or school entry.

**3. Analysis of effectiveness in achieving the objective**

The rule is not effective in achieving its objective, because some immunization requirements are not consistent with current recommendations of the CDC and ACIP, which are followed by health care providers, and the presentation of the information may be confusing to the reader.

**6. Analysis of clarity, conciseness, and understandability**

The rule is not clear, concise, and understandable. The Table needs to be restructured to show requirements by disease and in a more graphical format with fewer explanations.

**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 does not impose the least burden and costs to persons regulated by the rule, because of the items identified in paragraphs 3 and 6.

**Table 2. Catch-up Immunization Schedule for Child Care or School Entry**

**2. Objective of the rule and analysis of effectiveness in achieving the objective**

The objective of the rule is to specify the immunization requirements and schedule that are required for child care or school entry for a child who has not received immunizations according to the requirements in Table 1.

**3. Analysis of effectiveness in achieving the objective**

The rule is not effective in achieving its objective, because some immunization requirements are not consistent with current recommendations of the CDC and ACIP and the presentation of the information may be confusing to the reader.

**6. Analysis of clarity, conciseness, and understandability**

The rule is not clear, concise, and understandable. The Table needs to be restructured to show requirements by disease and in a more graphical format with fewer explanations.

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 does not impose the least burden and costs to persons regulated by the rule, because of the items identified in paragraphs 3 and 6.

**R9-6-708. Release of Immunization Information**

1. **Authorization of the rule by existing statute**

The rule has A.R.S. §§ 15-874 and 36-135 as additional specific authority.

2. **Objective of the rule**

The objective of the rule is to specify the persons to whom the Department may release immunization information.

3. **Analysis of effectiveness in achieving the objective**

The rule is mostly effective in achieving its objective but could be improved by revising subsections (1) and (5), which overlap due to the definition of “local health agency.”

6. **Analysis of clarity, conciseness, and understandability**

The rule is mostly clear, concise, and understandable but could be clearer if the term “health related services” were defined.

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**

Despite the clarifications described in paragraphs 3 and 6 that could be made, 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.

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**ARTICLE 7. REQUIRED IMMUNIZATIONS FOR CHILD CARE OR SCHOOL ENTRY**

**R9-6-701. Definitions**

In this Article, unless otherwise specified:

1. “Administration of vaccine” means the inoculation of a child with an immunizing agent by an individual authorized by federal or state law.
2. “AHCCCS” means the Arizona Health Care Cost Containment System.
3. “ASIIS” means the Arizona State Immunization Information System, an immunization reporting system that collects, stores, analyzes, releases, and reports immunization data.
4. “Case” has the same meaning as in R9-6-101.
5. “Catch-up immunization schedule” means the times established in Table 2 for the immunization of a child who has not completed the vaccine series required in Table 1 before entry into a child care or school.
6. “CDC” means the Centers for Disease Control and Prevention.
7. “Charter school” has the same meaning as in A.R.S. § 15-101.
8. “Child” means:
  - a. An individual 18 years of age or less, or
  - b. An individual more than 18 years of age attending school.
9. “Child care” means:
  - a. A child care facility as defined in A.R.S. § 36-881; or
  - b. A child care group home as defined in A.R.S. § 36-897.
10. “Child care administrator” means an individual, or the individual’s designee, having daily control and supervision of a child care.
11. “Communicable period” means the time during which an individual is capable of infecting another individual with a communicable disease.
12. “Contact person” means an individual who, on behalf of a school or child care and upon request of the Department, provides information to the Department.
13. “Day” means a calendar day, and excludes the:
  - a. Day of the act, or event, from which a designated period of time begins to run, and
  - b. Last day of the period if a Saturday, Sunday, or official state holiday.
14. “DTaP” means diphtheria, tetanus, and acellular pertussis vaccine.
15. “DTP” means diphtheria, tetanus, and pertussis vaccine.
16. “Enroll” means to accept into a school by the school or into a child care by the child care.
17. “Entry” means the first day of attendance at a child care or at a specific grade level in a school.
18. “Head Start program” means a federally funded program administered under 42 U.S.C. 9831 to 42 U.S.C. 9852.
19. “Hep A” means hepatitis A vaccine.
20. “Hep B” means hepatitis B vaccine.
21. “Hib” means *Haemophilus influenzae* type b vaccine.
22. “Immunization” has the same meaning as in A.R.S. § 36-671.
23. “Immunization registry” means a storage of immunization data for vaccines.
24. “Immunization registry administrator” means an individual, or the individual’s designee, having daily control and supervision of an immunization registry.
25. “Imported” means entered through a fully automated process without electronic manipulation of the data.
26. “IRMS number” means a numeric identifier the Department issues to a person whose information is stored in ASIIS.
27. “KidsCare” means a federally funded program administered by AHCCCS under A.R.S. § 36-2982.
28. “Kindergarten” means the grade level in a school that precedes first grade.
29. “Laboratory evidence of immunity” has the same meaning as in A.R.S. § 36-671.
30. “Local health agency” has the same meaning as “health agency” in A.R.S. § 36-671.
31. “Local health officer” means an individual or the individual’s designee having daily control and supervision of a local health agency.
32. “Medical exemption” means to excuse a child from immunization against a specified disease if the required immunization may be detrimental to the child’s health, as determined by a physician.
33. “Medical services” has the same meaning as in A.R.S. § 36-401.
34. “MMR” means measles, mumps, and rubella vaccine.
35. “MV” means meningococcal vaccine.
36. “Outbreak” means an unexpected increase in the incidence of a disease as determined by the Department or local health agency.
37. “Physician” has the same meaning as in A.R.S. § 15-871.
38. “Polio” means poliomyelitis vaccine.
39. “Practical nurse” has the same meaning as in A.R.S. § 32-1601.
40. “Private school” has the same meaning as in A.R.S. § 15-101.
41. “Provider” means an individual who administers a vaccine, or an entity that is responsible for administering a vaccine.
42. “Public school” has the same meaning as “school” in A.R.S. § 15-101.
43. “Registered nurse” has the same meaning as in A.R.S. § 32-1601.
44. “Registered nurse practitioner” has the same meaning as in A.R.S. § 32-1601.

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45. "Responsible person" has the same meaning as "parent" in R9-5-101.
46. "Route of administration" means a method of inoculation with a vaccine.
47. "School" has the same meaning as in A.R.S. § 36-671.
48. "School administrator" has the same meaning as in A.R.S. § 36-671.
49. "Suspect case" has the same meaning as in R9-6-101.
50. "Td" means tetanus and diphtheria vaccine.
51. "Tdap" means tetanus, diphtheria, and acellular pertussis vaccine.
52. "Temporary" means lasting for a limited time.
53. "Underinsured" means having medical insurance that does not cover all or part of the cost of a vaccination.
54. "Uninsured" means not having medical insurance.
55. "Vaccine" has the same meaning as "biological product" defined in 21 CFR 600.3h (April 1, 2000).
56. "VAR" means varicella vaccine.
57. "VFC" means Vaccines for Children, a federal program administered by the Department.
58. "VFC PIN number" means a numeric identifier that the VFC issues to a person participating in the VFC.
59. "WIC" means Women, Infants, and Children, a federal program administered by the Department.
60. "WIC administrator" means an individual, or the individual's designee, having daily control and supervision of a WIC.

**Historical Note**

Former Section R9-6-115, Paragraph (47), renumbered and amended as R9-6-701 effective January 28, 1987 (Supp. 87-1). Amended effective September 14, 1990 (Supp. 90-3). Former Section R9-6-701 renumbered to Section R9-6-328, new Section R9-6-701 renumbered from R9-6-501 and amended effective October 19, 1993 (Supp. 93-4). Amended effective April 4, 1997 (Supp. 97-2). Amended by final rulemaking at 5 A.A.R. 496, effective January 19, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1310, effective March 17, 2000 (Supp. 00-1). Former Section R9-6-701 renumbered to R9-6-702; new Section R9-6-701 made by final rulemaking at 8 A.A.R. 4274, effective September 16, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 2283, effective June 7, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 4106, effective January 5, 2008 (Supp. 07-4).

**R9-6-702. Required Immunizations for Child Care or School Entry**

- A.** Except as provided in R9-6-706, the school administrator or child care administrator shall:
1. Ensure that a child attending a school or child care has been immunized for each of the following diseases according to Table 1 or Table 2:
    - a. Diphtheria;
    - b. Tetanus;
    - c. Hepatitis A, for a child 1 through 5 years of age in child care in Maricopa County;
    - d. Hepatitis B;
    - e. Pertussis;
    - f. Poliomyelitis;
    - g. Measles (rubeola);
    - h. Mumps;
    - i. Rubella (German Measles);
    - j. *Haemophilus influenzae* type b;
    - k. Varicella; and
    - l. Meningococcal; and
  2. If a child does not have proof of immunization according to Table 1 or Table 2, exclude the child from:
    - a. School entry; or
    - b. Child care, unless the child is immunized against the diseases listed in subsection (A)(1) within 15 days following entry.
- B.** Unless exempt according to R9-6-706, a child who has not received VAR according to Table 1 or Table 2 shall:
1. Receive VAR according to the following:
    - a. By September 1, 2005 for a child who is entering kindergarten, first grade, or seventh grade;
    - b. By September 1, 2006 for a child who is entering kindergarten through second grade, seventh grade, or eighth grade;
    - c. By September 1, 2007 for a child who is entering kindergarten through third grade, or seventh grade through ninth grade;
    - d. By September 1, 2008 for a child who is entering kindergarten through fourth grade, or seventh grade through tenth grade;
    - e. By September 1, 2009 for a child who is entering kindergarten through fifth grade, or seventh grade through 11th grade; and
    - f. By September 1, 2010 for a child who is entering kindergarten through 12th grade; and
  2. Be excluded from school entry by a school administrator until the child meets the requirements in Table 2.
- C.** Unless exempt according to R9-6-706, a child, 11 years of age or older, who has not received MV according to Table 1 or Table 2 shall:
1. Receive MV according to the following:
    - a. By September 1, 2008 for a child entering sixth grade;
    - b. By September 1, 2009 for a child entering sixth and seventh grade;
    - c. By September 1, 2010 for a child entering sixth through eighth grade;
    - d. By September 1, 2011 for a child entering sixth through ninth grade;
    - e. By September 1, 2012 for a child entering sixth through 10th grade;

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- f. By September 1, 2013 for a child entering sixth through 11th grade; and
- g. By September 1, 2014 for a child entering sixth through 12th grade; and
2. Be excluded from school entry by a school administrator until the child meets the requirements in this Section.
- D. Unless exempt according to R9-6-706, a child, 11 years of age or older, who has not received Tdap according to Table 1 or Table 2 shall:
  1. Receive the Tdap according to the following:
    - a. By September 1, 2008 for a child entering sixth grade;
    - b. By September 1, 2009 for a child entering sixth and seventh grade;
    - c. By September 1, 2010 for a child entering sixth through eighth grade;
    - d. By September 1, 2011 for a child entering sixth through ninth grade;
    - e. By September 1, 2012 for a child entering sixth through 10th grade;
    - f. By September 1, 2013 for a child entering sixth through 11th grade; and
    - g. By September 1, 2014 for a child entering sixth through 12th grade; and
  2. Be excluded from school entry by a school administrator until the child meets the requirements in this Section.
- E. If the Department receives written notification from the CDC that there is a shortage of a vaccine for a disease listed in subsection (A)(1), or that the CDC is limiting the amount of a vaccine for a disease listed in subsection (A)(1), the Department shall:
  1. Provide written notification to each school and child care in this state of the shortage or limitation of the vaccine;
  2. Suspend compliance with subsections (A), (B), (C), and (D); and
  3. Upon receiving written notification from the CDC that the vaccine is available, notify each school and child care in this state:
    - a. That the vaccine is available, and
    - b. Of the time by which an individual is required to comply with subsections (A), (B), (C), and (D).
- F. The Department shall notify each school and child care in this state that the Department no longer requires compliance with subsections (A), (B), (C), and (D) for a disease listed in subsection (A)(1) if:
  1. The disease is declared eradicated by:
    - a. The World Health Organization, and
    - b. The Advisory Committee on Immunization Practices; and
  2. The Department no longer recommends immunization against the disease.

**Historical Note**

Former Section R9-6-115, Paragraph (1), renumbered and amended as R9-6-702 effective January 28, 1987 (Supp. 87-1). Former Section R9-6-702 renumbered to Section R9-6-302, new Section R9-6-702 renumbered from R9-6-502 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-702 renumbered to R9-6-703; new Section R9-6-702 renumbered from R9-6-701 and amended by final rulemaking at 8 A.A.R. 4274, effective September 16, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 2283, effective June 7, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 4106, effective January 5, 2008 (Supp. 07-4).

**R9-6-703. Responsibilities of Individuals and Local Health Agencies for Administering Vaccines**

- A. Upon request of a responsible person, a local health agency shall provide for the immunization of a child against any disease listed in R9-6-702(A)(1).
- B. An individual administering a vaccine shall ensure that the dosage and route of administration of each vaccine are provided according to the manufacturer's recommendations.
- C. Before administering a vaccine to a child, the individual administering the vaccine shall:
  1. Provide the responsible person with the following written information:
    - a. A description of the disease,
    - b. A description of the vaccine,
    - c. A statement of the risks of the disease and the risks and benefits of immunization, and
    - d. Contraindications for administering the vaccine; and
  2. Obtain a statement signed by the responsible person confirming that the responsible person:
    - a. Was provided the written information described in subsection (C)(1),
    - b. Was provided an opportunity to read the written information,
    - c. Was provided an opportunity to ask questions, and
    - d. Requests that the designated vaccine be administered to the child.
- D. Following the administration of a vaccine, the individual administering the vaccine shall provide written information to the responsible person or, if a child is immunized at school, to the child to give to the responsible person, that includes:
  1. The vaccine administered,
  2. The reactions to the vaccine that might be expected, and
  3. The course of action if a severe reaction occurs.
- E. An individual administering a vaccine shall provide a written record as set forth in R9-6-704 to the immunized child or to the responsible person.

**Historical Note**

Former Section R9-6-115, Paragraph (2), renumbered and amended as R9-6-703 effective January 28, 1987 (Supp. 87-1). Former Section R9-6-703 renumbered to Section R9-6-303, new Section R9-6-703 renumbered from R9-6-503 and amended effective

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October 19, 1993 (Supp. 93-4). Former Section R9-6-703 renumbered to R9-6-704; new Section R9-6-703 renumbered from R9-6-702 and amended by final rulemaking at 8 A.A.R. 4274, effective September 16, 2002 (Supp. 02-3).

**R9-6-704. Standards for Documentary Proof of Immunity**

- A. An individual may establish proof of a child's immunity to a disease listed in R9-6-702(A)(1) by one of the following:
1. An immunization record that contains:
    - a. The child's name;
    - b. The child's date of birth;
    - c. The type of vaccine administered;
    - d. The month and year of each immunization, other than MMR, for a child who received an immunization before January 1, 2003;
    - e. The month, day, and year of MMR immunization for a child who received an immunization before January 1, 2003;
    - f. The month, day, and year of each immunization for a child who received an immunization on or after January 1, 2003; and
    - g. The name of the individual administering the vaccine or the name of the entity that the individual administering the vaccine represents;
  2. Laboratory evidence of immunity;
  3. An Arizona school immunization record that includes:
    - a. The child's name;
    - b. The child's date of birth;
    - c. The grade of the child on the date of enrollment;
    - d. Whether the child is male or female;
    - e. The type of vaccine administered;
    - f. The month and year of each immunization, other than MMR, for a child who received an immunization before January 1, 2003;
    - g. The month, day, and year of MMR immunization for a child who received an immunization before January 1, 2003; and
    - h. The month, day, and year of each immunization for a child who received an immunization on or after January 1, 2003;
  4. A school immunization record from another state;
  5. An electronic version of the child's immunization record containing the information in subsection (A)(1)(a) through (f) generated by an immunization registry, and signed and dated by any of the following:
    - a. A local health officer,
    - b. A school administrator,
    - c. A child care administrator,
    - d. A WIC administrator,
    - e. An immunization registry administrator or immunization registry administrator's designee; or
    - f. A physician, physician's designee, practical nurse, or registered nurse;
  6. An electronic version of the child's immunization record generated by a school, signed and dated by the school administrator or the school administrator's designee, and containing the information in subsection (A)(1)(a) through (f); or
  7. A statement of immunity as described in subsection (B).
- B. A physician, the physician's designee, practical nurse, or registered nurse may sign a statement of immunity stating that a child is immune to a disease, but shall not sign a statement of immunity to measles or rubella without obtaining serologic evidence of immunity.

**Historical Note**

Adopted effective January 28, 1987 (Supp. 87-1). Former Section R9-6-704 renumbered to Section R9-6-304, new Section R9-6-704 renumbered from R9-6-504 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-704 renumbered to R9-6-705; new Section R9-6-704 renumbered from R9-6-703 and amended by final rulemaking at 8 A.A.R. 4274, effective September 16, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 2283, effective June 7, 2005 (Supp. 05-2).

**R9-6-705. Responsibilities of Schools and Child Care**

- A. Except as provided in R9-6-706, a school administrator or a child care administrator shall ensure that an immunization record for each child attending a school or child care is maintained at the school or child care and contains the applicable documentary proof of immunity listed in R9-6-704.
- B. If a child does not meet the requirements for immunization according to Table 1 or Table 2 or requirements for exemption from immunization according to R9-6-706, a school administrator shall:
1. Not allow the child to enter the school, or
  2. If the child is already attending the school, remove the child from school as authorized by A.R.S. § 15-872.
- C. If a child does not meet the requirements for immunization according to Table 1 or Table 2 or requirements for exemption from immunization according to R9-6-706, a child care administrator shall notify the responsible person in writing at the time of entry that:
1. The child may attend the child care for not more than 15 days from the date of the notification; and
  2. If the child is not immunized by the 15th day following notification, the child is not permitted to attend the child care.
- D. A school administrator or child care administrator shall determine that a child is in compliance with an immunization requirement in this Article for a specific disease if:
1. The child's immunization record contains proof of immunity required in R9-6-704, and the child has received the required immunizations according to Table 1 or Table 2; or

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2. A responsible person has submitted to the school or child care documentation of an exemption from immunization according to R9-6-706.
- E.** At the time of enrollment, if a child's immunization record is not available, does not contain proof of immunity required in R9-6-704, or does not contain proof of an exemption according to R9-6-706, a school administrator or school administrator's designee, or a child care administrator shall notify the responsible person:
1. That the child is not in compliance with immunization requirements;
  2. In writing, that:
    - a. For the child enrolling in a school, all immunizations are required to be completed according to Table 1 or Table 2 and proof provided to the school before entry; or
    - b. For the child enrolling in a child care, all immunizations required in Table 1 or Table 2 are required to be completed and proof provided to the child care within 15 days of the notification; and
  3. In writing, that the responsible person is required to send the child to a physician or local health agency to obtain written proof of immunization before entry.
- F.** If a school administrator or a child care administrator questions the accuracy of a child's immunization record and is unable to verify the accuracy of the immunization record, the school administrator or the child care administrator shall notify, in writing, the responsible person:
1. That the responsible person is required to send the child to a physician or local health agency to review the child's immunization history and provide immunizations as needed;
  2. For a child attending a school, that the child is not allowed to return to school until the child's immunization record meets the standards of documentary proof in R9-6-704 and is presented to the school; and
  3. For a child attending a child care, that beginning 15 days following the notification, the child is not allowed to attend the child care, unless the child's immunization record meets the standards of documentary proof in R9-6-704 and is presented to the child care.
- G.** A school administrator or child care administrator shall maintain a list that contains the name of each child who:
1. Is exempt from providing proof of immunity according to R9-6-706, or
  2. Has not provided proof of immunity in compliance with R9-6-704.
- H.** A school administrator or child care administrator shall not allow a child who lacks proof of immunity against a disease listed in R9-6-702(A) to attend the school or child care during an outbreak of the disease for which the child lacks proof of immunity. The Department or local health agency shall determine the start and termination of an outbreak.

**Historical Note**

Adopted effective January 28, 1987 (Supp. 87-1). Former Section R9-6-705 renumbered to Section R9-6-305, new Section R9-6-705 renumbered from R9-6-505 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-705 renumbered to R9-6-706; new Section R9-6-705 renumbered from R9-6-704 and amended by final rulemaking at 8 A.A.R. 4274, effective September 16, 2002 (Supp. 02-3).

**R9-6-706. Exemptions from Immunizations**

- A.** A child who has reached a fifth birthday is exempt from the Hib immunization requirement.
- B.** A child who is 7 through 10 years of age is exempt from the pertussis immunization requirement.
- C.** A child:
1. Until September 1, 2011, is exempt from the VAR immunization requirement if the child's responsible person states, verbally or in writing, that the child has had varicella; and
  - d
  2. After September 1, 2011, is not exempt from the VAR immunization requirement unless the child provides laboratory evidence of immunity to varicella.
- D.** A child who submits laboratory evidence of immunity to a disease to a school or child care is not required to be immunized against that disease as a condition for school or child care entry.
- E.** For a child attending a school, a parent or guardian shall submit to the school a written statement of exemption from immunization for personal beliefs as required in A.R.S. § 15-873(A)(1) or written certification of medical exemption as required in A.R.S. § 15-873(A)(2) on a form provided by the Department that contains:
1. The child's name;
  2. The child's date of birth;
  3. The type of exemption requested;
  4. The immunizations from which the parent or guardian is requesting an exemption;
  5. Whether the medical exemption is permanent or temporary, if applicable;
  6. The date the medical exemption terminates, if applicable;
  7. The parent or guardian's signature and the date signed; and
  8. The physician's or registered nurse practitioner's signature and the date signed, if applicable.
- F.** For a child attending a child care, a responsible person shall submit to the child care a written statement of exemption from immunization on a form provided by the Department that includes:
1. The child's name,
  2. The child's date of birth,
  3. The type of exemption,

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4. The immunizations from which the responsible person is requesting an exemption,
  5. If a medical exemption, whether the medical exemption is permanent or temporary,
  6. If temporary, the date the medical exemption terminates, if applicable,
  7. The responsible person's signature and the date signed, and
  8. The physician's or registered nurse practitioner's signature and the date signed, if applicable.
- G.** A child care administrator or school administrator shall:
1. Record an exemption on a child's immunization record,
  2. Allow a child with a temporary medical exemption to attend a child care or school until the date the temporary exemption terminates, and
  3. Notify a child's responsible person in writing of the date the child is required to complete all immunizations before the temporary medical exemption terminates

**Historical Note**

Former Section R9-6-115, Paragraph (3), renumbered and amended as R9-6-706 effective January 28, 1987 (Supp. 87-1). Former Section R9-6-706 renumbered to Section R9-6-306, new Section R9-6-706 renumbered from R9-6-506 and amended effective October 19, 1993 (Supp. 93-4). Amended effective April 4, 1997 (Supp. 97-2). Former Section R9-6-706 renumbered to R9-6-707; new Section R9-6-706 renumbered from R9-6-705 and amended by final rulemaking at 8 A.A.R. 4274, effective September 16, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 2283, effective June 7, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 4106, effective January 5, 2008 (Supp. 07-4).

**Table 1. Renumbered**

**Historical Note**

Adopted effective January 20, 1992 (Supp. 92-1). Article 7, Table 1 renumbered from Article 5, Table 1 and amended effective October 19, 1993 (Supp. 93-4). Amended effective April 4, 1997 (Supp. 97-2). Amended by final rulemaking at 5 A.A.R. 496, effective January 19, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1310, effective March 17, 2000 (Supp. 00-1). Table 1 renumbered to follow R9-6-707 by final rulemaking at 8 A.A.R. 4274, effective September 16, 2002 (Supp. 02-3).

**Table 2. Renumbered**

**Historical Note**

Adopted effective January 20, 1992 (Supp. 92-1). Article 7, Table 2 renumbered from Article 5, Table 2 and amended effective October 19, 1993 (Supp. 93-4). Amended effective April 4, 1997 (Supp. 97-2). Amended by final rulemaking at 5 A.A.R. 496, effective January 19, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1310, effective March 17, 2000 (Supp. 00-1). Table 2 renumbered to follow R9-6-707 by final rulemaking at 8 A.A.R. 4274, effective September 16, 2002 (Supp. 02-3).

**R9-6-707. Reporting Requirements**

- A.** By November 15 of each year, a school administrator shall submit a report to the Department or local health agency on a form provided by the Department that contains:
1. The name and address of the school;
  2. An identification of whether it is a public school, private school, or charter school;
  3. The name, telephone number, and fax number of a contact person;
  4. The name and district number of the school district, if applicable;
  5. The county the school is located in;
  6. Each grade taught at the school;
  7. The number of children enrolled at the school in designated grades as of the date of the report;
  8. The number of children with documentary proof of immunization status, including the number of children who are in each of the following categories:
    - a. Have received each immunization required for their age,
    - b. Have a medical exemption,
    - c. Are exempt for personal beliefs according to A.R.S. § 15-873, and
    - d. Have submitted laboratory evidence of immunity as defined in A.R.S. § 36-671, and
  9. The number of doses received per child of each vaccine required in Table 1.
- B.** If requested by the Department or local health agency, a school administrator or child care administrator shall provide the following outbreak, case, or suspect case information:
1. Immunization information in R9-6-704;
  2. Attendance information specifying each date each child was present at the school or child care during the communicable period; and
  3. Any other information relating to the outbreak, case, or suspect case that is requested by the Department or local health agency.
- C.** A school administrator that has an individual authorized by law to administer vaccines and receives vaccines provided by the Department shall:
1. Prepare a report on a form provided by the Department each calendar month that contains:
    - a. A VFC PIN number;
    - b. The provider name or business name, address, telephone number, and fax number;

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- c. The beginning date and end date of the report;
  - d. The number of children immunized during the preceding calendar month;
  - e. The age and date of birth of each child immunized during the preceding calendar month;
  - f. Whether each child immunized during the preceding calendar month is:
    - i. Covered by KidsCare;
    - ii. Covered by AHCCCS;
    - iii. Uninsured;
    - iv. A Native American or an Alaskan native;
    - v. Underinsured; and
    - vi. Non-VFC eligible, if applicable;
  - g. The number of doses of each vaccine administered during the preceding calendar month; and
  - h. The manufacturer, manufacturer's lot number, and expiration date of each vaccine listed in Table 1 that was administered during the preceding calendar month; and
2. Send the report required in subsection (C)(1) by the fifth day of the following month to:
    - a. The local health agency, if the vaccine was provided by the local health agency; or
    - b. The Department, if the vaccine was provided by the Department.
- D.** By November 15 of each year, a child care administrator shall submit to the Department or local health agency a report on a form provided by the Department that contains:
1. The name, mailing address, and telephone number of the child care;
  2. The date of the report;
  3. The name of a contact person;
  4. The Department license or certificate number of the child care, if applicable;
  5. The name of the child care administrator;
  6. Whether the children are in child care;
  7. Whether the children in child care are in a Head Start program;
  8. The number of children attending the child care who were less than 5 years of age as of October 1; and
  9. The number of children less than five years of age as of October 1 for whom the child care has immunization records on file specifying the number of children who are in each of the following categories:
    - a. Have received each immunization required for their age;
    - b. Have medical exemptions;
    - c. Are exempt for religious beliefs according to the rules in 9 A.A.C. 5 regulating child care facilities or child care group homes; and
    - d. Have submitted laboratory evidence of immunity.
- E.** In addition to the report required in subsection (D), by November 15 of each year, a child care administrator shall submit to the Department or local health agency a report on a form provided by the Department that contains:
1. The information in subsection (D)(1) through (D)(4),
  2. The information in subsection (D)(6), and
  3. For each child less than 5 years of age as of October 1:
    - a. The birth date of the child;
    - b. How many doses of each vaccine listed in Table 1 the child has received;
    - c. For each vaccine listed in Table 1 except MMR, the month, day, and year of the most recent immunization;
    - d. For MMR, the month, day, and year of each immunization; and
    - e. Whether each child has a medical or religious exemption.
- F.** By March 30 of each year, a local health officer shall forward to the Department the information contained in the reports received by the local health agency according to subsections (A) and (D).
- G.** A local health officer who receives and distributes vaccine provided by the Department shall submit to the Department the report required in subsection (C) every calendar month.
- H.** As required by A.R.S. § 36-135, a health care professional shall submit for each vaccine administered to a child the information required in A.R.S. § 36-135(B), the IRMS number, and the VPC PIN number, if applicable, to the Department as follows:
1. If reporting by mail or fax, the health care professional shall use a form provided by the Department.
  2. If reporting by telephone, the health care professional shall call a telephone number provided by the Department for this purpose between 8:00 a.m. and 5:00 p.m., Monday through Friday, except state holidays.
  3. If reporting electronically, the health care professional shall:
    - a. Connect to the ASIIS web page through a secure Internet connection and enter the information; or
    - b. Ensure that the information is submitted in a format that can be imported into ASIIS and:
      - i. Provide a compact disk or digital video disk that contains the information to the Department; or
      - ii. Transfer the information to the Department through a secure file transfer protocol.

**Historical Note**

Former Section R9-6-115, Paragraph (5), renumbered and amended as R9-6-707 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-307 effective October 19, 1993 (Supp. 93-4). Adopted effective April 4, 1997 (Supp. 97-4). Former Section R9-6-707 renumbered to R9-6-708; new Section R9-6-707 renumbered from R9-6-706 and amended by final rulemaking at

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8 A.A.R. 4274, effective September 16, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4106, effective January 5, 2008 (Supp. 07-4).

**Table 1. Immunization Requirements for Child Care or School Entry**

<b>Age at Entry into a Child Care or School</b>	<b>Number of Doses of Vaccine Required</b>	<b>Special Notes and Exceptions</b>
<2 months	1 Hep B	(See Note 1)
2 through 3 months	1 DTP or DTaP 1 Polio 1 Hib 1 Hep B	(See Note 1)
4 through 5 months	2 DTP or DTaP 2 Polio 2 Hib 2 Hep B	(See Note 1)
6 through 11 months	3 DTP or DTaP 2 Polio 3 Hib  2 Hep B	(Hib exception - See Note 2 for a child 7 months through 59 months of age.) (See Note 1)
12 through 14 months	3 DTP or DTaP 3 Polio 1-4 Hib 1 MMR 3 Hep B 1 Varicella	(See Note 2) (See Note 3) (See Note 1) (See Note 6)
15 through 59 months	4 DTP or DTaP 3 Polio 1-4 Hib 1-2 MMR 3 Hep B 1 Varicella	(See Note 2) (See Note 3) (See Note 1) (See Note 8)
1 through 5 years (Only required for Maricopa County child care)	2 Hep A	(See Note 4)



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<p>11 years or older</p>	<p>4 Tetanus-diphtheria containing vaccines including 1 Tdap.</p> <p>1 Tdap, in addition to the 4 Tetanus-diphtheria containing vaccines, if 5 years have passed since the date of a child's last dose of tetanus-diphtheria containing vaccine and the child has not received Tdap.</p> <p>1 Tetanus-diphtheria containing vaccine, if 10 years or more have passed since the date of the child's last dose of Tdap or tetanus-diphtheria containing vaccine.</p> <p>4 Polio</p> <p>2 MMR</p> <p>3 Hep B</p> <p>1-2 Varicella</p>	<p>(See Note 6) Exception – A 4th dose is not required if the 1st dose of diphtheria-tetanus containing vaccine was received after 12 months of age.</p> <p>Exception – A 4th dose is not required if the 3rd dose of polio was received after the 4th birthday. (See Note 7)</p> <p>(See Note 3)</p> <p>A child entering school shall receive the Hep B series according to Note 1.</p> <p>(See Note 8)</p>
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1. A child shall receive the 1st dose of Hep B no later than 15 days following child care entry. A child shall receive the 2nd dose of Hep B 4 weeks or more after the date of the 1st dose. A child who is 6 months of age or older shall receive the 3rd dose 2-5 months after the date of the 2nd dose and 4 months or more after the date of the 1st dose. For a child 11-15 years of age who receives the optional Merck Recombivax HB Adult Formulation vaccine, only 2 doses are required 4 or more months apart.
2. The recommended schedule for 4 dose Hib vaccine is 2, 4, and 6 months of age with a booster dose at 12-15 months of age. The optimal schedule for 3 dose Hib vaccine is 2 and 4 months of age with a booster dose at 12-15 months of age. There shall be a minimum interval of 4 weeks between each of the first 3 doses. A child shall receive a booster dose no earlier than 12 months of age and no earlier than 8 weeks after the previous dose. A child who starts the Hib series after 7 months of age may be required to complete a full 3 or 4 dose series. A child who starts Hib at 15 months of age or older shall receive 1 dose at 15-59 months of age.
3. A child who is 12 months of age or older, shall receive measles, mumps, and rubella vaccines as individual antigens or as a combined MMR vaccine. A child shall receive the 1st dose of MMR before school entry, or no later than 15 days following child care entry. A child who is 4 years of age or older and who is entering school shall receive a 2nd dose of MMR 1 month or more after the date of the 1st dose.
4. A child who is 1 through 5 years of age shall receive the 1st dose of hepatitis A vaccine no later than 15 days following child care entry in Maricopa County. A child shall receive a 2nd dose 6 months following the date of the 1st dose.
5. A child shall receive MV according to R9-6-702(C) no later than 15 days following school entry.
6. A child shall receive a dose of Tdap before the 2 doses of tetanus-diphtheria containing vaccine.
7. Polio vaccine is not required for individuals 18 years of age or older.
8. A child shall receive VAR according to R9-6-702(B) no later than 15 days following child care or school entry. A child who receives VAR at 12 months through 12 years of age shall receive one dose. A child who receives the 1st dose of VAR at 13 years of age or older shall receive the 2nd dose if 4 weeks or more have passed since the date of the 1st dose.

**Historical Note**

Table 1 renumbered from placement after R9-6-706 and amended by final rulemaking at 8 A.A.R. 4274, effective September 16, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 2283, effective June 7, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 4106, effective January 5, 2008 (Supp. 07-4).

**Table 2. Catch-up Immunization Schedule for Child Care or School Entry**

Vaccine	Dose	Time Intervals, Special Notes, and Exceptions
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<p><b>1. Diphtheria, Tetanus, and Pertussis</b>  a. For a Child Younger Than 7 Years of Age:  DTP or any combination of DTP or DTaP</p>	1st	A child shall receive the 1st dose before school entry, or no later than 15 days following child care entry.
	2nd	If 4 weeks or more have passed since the date of the 1st dose, a child shall receive the 2nd dose before school entry, or no later than 15 days following child care entry.
	3rd	If 4 weeks or more have passed since the date of the 2nd dose, a child shall receive the 3rd dose before continued attendance at school, or no later than 15 days following continued attendance at child care.
	4th	If 6 months or more have passed since the date of the 3rd dose, a child shall receive the 4th dose before continued attendance at school, or no later than 15 days following continued attendance at child care.
	5th or more	A child shall receive a 5th dose before continued attendance at school, or no later than 15 days following child care entry. Exception - A 5th dose is not required if the child received the 4th dose after the child's 4th birthday.
<p>b. For a Child 7 through 10 Years of Age:  Tetanus-diphtheria containing vaccines (no pertussis)</p>	1st	A child shall receive a 1st dose before school entry.
	2nd	If 4 weeks or more have passed since the date of the 1st dose, a child shall receive the 2nd dose before school entry.
	3rd	If 6 months or more have passed since the date of the 2nd dose, a child shall receive the 3rd dose before school entry.
	4th	A 4th dose is not required if the 1st dose of diphtheria-tetanus containing vaccine was received after 12 months of age.
<p>c. For a Child 11 Years of Age and Older:  Tetanus-diphtheria containing vaccines including 1 Tdap</p>	1st	(See Note 2 below) A child shall receive a 1st dose before school entry.
	2nd	If 4 weeks or more have passed since the date of the 1st dose, a child shall receive the 2nd dose before school entry.

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	3rd	If 6 months or more have passed since the date of the 2nd dose, a child shall receive the 3rd dose before school entry.
	4th	Exception – A 4th dose is not required if the 1st dose of diphtheria-tetanus containing vaccine was received after 12 months of age.
<b>2. Polio</b>	1st	(See Note 3 below.) A child shall receive the 1st dose before school entry, or no later than 15 days following child care entry.
	2nd	If 4 weeks or more have passed since the date of the 1st dose, a child shall receive the 2nd dose before school entry, or no later than 15 days following child care entry.
	3rd	If 4 weeks or more have passed since the date of the 2nd dose, the child shall receive the 3rd dose before school entry, or no later than 15 days following child care entry.
	4th	If 8 weeks or more have passed since the date of the 3rd dose, the child shall receive the 4th dose before school entry. Exception - A 4th dose is not required if the 3rd dose was received after the 4th birthday.
<b>3. MMR – Measles, Mumps, Rubella</b>	1st	A child who is 12 months of age or older shall receive the 1st dose before school entry, or no later than 15 days following child care entry.
	2nd	If 1 month or more has passed since the date of the 1st dose, a child who is 4 years of age or older, entering kindergarten through 12th grade, shall receive the 2nd dose before school entry.
<b>4. Hib - <i>Haemophilus influenzae</i> type b</b> (Not required for individuals aged 5 years of age and older.)	1st through 4th	A child who is younger than 5 years of age shall receive a dose no later than 15 days following child care entry. (See Note 4 below.)
<b>5. Hep B – Hepatitis B</b>	1st	A child shall receive the 1st dose before school entry, or no later than 15 days following child care entry.
	2nd	If 4 weeks or more have passed since the date of the 1st dose, a child shall receive the 2nd dose before school entry, or no later than 15 days following child care entry.

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	3rd	If 2 months or more have passed since the date of the 2nd dose, and 4 months or more have passed since the date of the 1st dose and the child is at least 6 months of age, a child shall receive the 3rd dose before school entry, or no later than 15 days following child care entry. Exception - A child who is 11 through 15 years of age who is receiving the Merck Recombivax HB Adult Formulation vaccine is not required to receive a 3rd dose.
<b>6. Hep A – Hepatitis A</b> Only required for Maricopa County child care	1st	A child who is 1 through 5 years of age shall receive the 1st dose no later than 15 days following child care entry.
	2nd	If 6 months or more have passed since the date of the 1st dose, a child shall receive the 2nd dose no later than 15 days following child care entry.
<b>7. Varicella</b>	1st	(See Note 5 below.) A child who is 12 months of age through 12 years shall receive one dose before school entry, or no later than 15 days following child care entry.
	2nd	If one month or more has passed since the date of the first dose, a child who is 13 years of age or older shall receive a second dose.
<b>8. Meningococcal</b>	1st	(See Note 1 below) A child who is 11 years old shall receive one dose of MV before school entry.

1. A child shall receive MV according to R9-6-702(C) no later than 15 days following school entry.
2. A child shall receive a dose of Tdap before the 2 doses of tetanus-diphtheria containing vaccine.
3. Polio vaccine is not required for individuals 18 years of age or older.
4. A child who begins the Hib series at 7 months of age or older shall receive Hib according to the following schedule:

Current Age (months)	Prior Immunization History	Recommended Regimen
7-11	1 dose	1 dose at 7-11 months of age and a booster at least 2 months later at 12-15 months of age
7-11	2 doses	1 dose at 7-11 months of age and a booster at least 2 months later at 12-15 months of age
12-14	1 dose before 12 months	2 doses administered at least 2 months apart
12-14	2 doses before 12 months	1 dose
15-59	Any incomplete schedule	1 dose

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5. A child shall receive VAR according to R9-6-702(B) no later than 15 days following child care entry.

**Historical Note**

Table 2 renumbered from placement after R9-6-706 and amended by final rulemaking at 8 A.A.R. 4274, effective September 16, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 2283, effective June 7, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 4106, effective January 5, 2008 (Supp. 07-4).

**R9-6-708. Release of Immunization Information**

In addition to the persons who have access to immunization information according to A.R.S. § 36-135(D) and consistent with the limitations in A.R.S. § 36-135(E) and (H), the Department may release immunization information to:

1. An authorized representative of a state or local health agency for the control, investigation, analysis, or follow-up of disease;
2. A child care administrator, to determine the immunization status of a child in the child care;
3. An authorized representative of WIC, to determine the immunization status of children enrolled in WIC;
4. An individual or organization authorized by the Department, to conduct medical research to evaluate medical services and health related services, health quality, immunizations data quality, and efficacy; or
5. An authorized representative of an out-of-state agency, including a state health department, local health agency, school, child care, health care provider, or a state agency that has legal custody of a child.

**Historical Note**

Adopted effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-309 effective October 19, 1993 (Supp. 93-4). New Section R9-6-708 renumbered from R9-6-707 and amended by final rulemaking at 8 A.A.R. 4274, effective September 16, 2002 (Supp. 02-3).

# **ATTACHMENT B**

## **Statutory Authority for the Rules in 9 A.A.C. 6, Article 7**

### **15-872. Proof of immunization; noncompliance; notice to parents; civil immunity**

A. The director of the department of health services, in consultation with the superintendent of public instruction, shall develop by rule standards for documentary proof.

B. A pupil shall not be allowed to attend school without submitting documentary proof to the school administrator unless the pupil is exempted from immunization pursuant to section 15-873.

C. Each public school shall make full disclosure of the requirements and exemptions as prescribed in this section and section 15-873.

D. On enrollment, the school administrator shall suspend that pupil if the administrator does not have documentary proof and the pupil is not exempted from immunization pursuant to section 15-873.

E. Notwithstanding subsections B and D of this section, a pupil may be admitted to or allowed to attend a school if the pupil has received at least one dose of each of the required immunizations prescribed pursuant to section 36-672 and has established a schedule for the completion of required immunizations. The parent, guardian or person in loco parentis of a pupil shall present to the school administrator documentary proof of the immunizations received and a schedule prepared by the pupil's physician or registered nurse practitioner or a health agency for completion of additional required immunizations.

F. The school administrator shall review the school immunization record for each pupil admitted or allowed to continue attendance pursuant to subsection E of this section at least twice each school year until the pupil receives all of the required immunizations and shall suspend a pupil as prescribed in subsection G of this section who fails to comply with the immunization schedule. Immunizations received by a pupil shall be entered in the pupil's school immunization record.

G. Unless proof of an exemption from immunization pursuant to section 15-873 is provided, a pupil who is admitted or allowed to continue to attend and who fails to comply with the immunization schedule within the time intervals specified by the schedule shall be suspended from school attendance until documentary proof of the administration of another dose of each appropriate immunizing agent is provided to the school administrator.

H. The provisions of subsections B, D and E of this section do not apply to homeless pupils until the fifth calendar day after enrollment.

I. A school and its employees are immune from civil liability for decisions concerning the admission, readmission and suspension of a pupil that are based on a good faith implementation of the requirements of this article.

### **15-873. Exemptions; nonattendance during outbreak**

A. Documentary proof is not required for a pupil to be admitted to school if one of the following occurs:

1. The parent or guardian of the pupil submits a signed statement to the school administrator stating that the parent or guardian has received information about immunizations provided by the

department of health services and understands the risks and benefits of immunizations and the potential risks of nonimmunization and that due to personal beliefs, the parent or guardian does not consent to the immunization of the pupil.

2. The school administrator receives written certification that is signed by the parent or guardian and by a physician or a registered nurse practitioner, that states that one or more of the required immunizations may be detrimental to the pupil's health and that indicates the specific nature and probable duration of the medical condition or circumstance that precludes immunization.

B. An exemption pursuant to subsection A, paragraph 2 is only valid during the duration of the circumstance or condition that precludes immunization.

C. Pupils who lack documentary proof of immunization shall not attend school during outbreak periods of communicable immunization-preventable diseases as determined by the department of health services or local health department. The department of health services or local health department shall transmit notice of this determination to the school administrator responsible for the exclusion of the pupils.

#### **15-874. Records; reporting requirements**

A. Each pupil's immunizations shall be recorded on the school immunization record. The school immunization record shall be a standardized form developed by the department of health services in conjunction with the department of education and provided by the department of health services and shall be a part of the mandatory permanent student record. The records are open to inspection by the department of health services and the local health department.

B. Each immunization record shall contain at least the following information:

1. The pupil's name and birth date.

2. The date of the pupil's admission to the school.

3. The type of immunizing agents administered to the pupil.

4. The date each dose of immunizing agent is administered to the pupil.

5. The established schedule for completion of immunizations if the pupil is admitted to or allowed to continue to attend a school pursuant to section 15-872, subsection E.

6. Laboratory evidence of immunity if this evidence is presented as part of a pupil's documentary proof.

7. If an exemption from immunization as provided in section 15-873 is submitted to the school administrator, the date the exemption is submitted and the reason for the exemption.

8. Additional information prescribed by the director of the department of health services by rule.

C. A school shall transfer an immunization record with the mandatory permanent student record and provide at no charge, on request, a copy of the immunization record to the parent or guardian of the pupil.

D. By November 30 of each school year, each school district and private school shall complete and file a report with the local health department and the department of health services, using forms provided by the department of health services. The report shall state the number of pupils attending who have completed required immunizations or who have submitted laboratory evidence of immunity, the number of pupils attending with uncompleted required immunizations and the number of pupils attending with an exemption from immunization pursuant to section 15-873.

**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 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.
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.

**36-135. Child immunization reporting system; requirements; access; confidentiality; immunity; violation; classification; definitions**

A. The child immunization reporting system is established in the department to collect, store, analyze, release and report immunization data.

B. A health care professional who is licensed under title 32 to provide immunizations, except as provided in subsection I of this section, shall report the following information:

1. The health care professional's name, business address and business telephone number.
2. The child's name, address, social security number if known and not confidential, gender, date of birth and mother's maiden name.
3. The type of vaccine administered and the date it is administered.

C. The health care professional may submit this information to the department on a weekly or monthly basis by telephone, facsimile, mail, computer or any other method prescribed by the department.

D. Except as provided in subsection I of this section, the department shall release identifying information only to the person, the person's health care decision maker, parent or guardian, a health care provider, an entity regulated under title 20, the Arizona health care cost containment system and its providers as defined in chapter 29 of this title, a school official who is authorized by law to receive and record immunization records or a person or entity that provides services to a health care provider and with whom the health care provider has a business associate agreement that requires the person or entity to protect the confidentiality of the information, as required by the health insurance portability and accountability act privacy standards, 45 Code of Federal Regulations part 164, subpart E. The department may also release identifying information to an entity designated by the person or the person's health care decision maker, parent or guardian. The department, by rule, may release immunization information to persons for a specified purpose. The department may release nonidentifying summary statistics.

E. Identifying information in the system is confidential. A person who is authorized to receive confidential information under subsection D of this section or pursuant to rules adopted by the department shall disclose this information only as permitted by this section or rules adopted by the department.

F. A health care provider that provides information in good faith pursuant to this section is not subject to civil or criminal liability.

G. A health care provider that does not comply with the requirements of this section violates a law applicable to the practice of medicine and commits an act of unprofessional conduct or a violation of chapter 4 of this title.

H. Any agency or person receiving confidential information from the system who subsequently discloses that information to any other person other than as permitted by this section is guilty of a class 3 misdemeanor.

I. At the request of the person, or if the person is a child the child's parent or guardian, the department of health services shall provide a form to be signed that allows confidential immunization information to be withheld from all persons including persons authorized to receive confidential information pursuant to subsection D of this section. If the request is delivered to the health care professional before the immunization, the health care professional shall not forward the information required under subsection B of this section to the department.

J. For the purposes of this section, "health care decision maker" and "health care provider" have the same meanings prescribed in section 12-2291.

**36-136. Powers and duties of director; compensation of personnel; rules**

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 the state.

6. Exercise general supervision over all matters relating to sanitation and health throughout the state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of the 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 the 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 the state, the director may inspect any person or property in transportation through the 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 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.

D. 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.

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.

E. The compensation of all personnel shall be as determined pursuant to section 38-611.

F. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

G. Notwithstanding subsection H, 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.

H. 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. 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.

I. 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.

J. 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.

K. 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.

L. 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.

M. Until the department adopts exemptions by rule as required by subsection H, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection H 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.

N. Until the department adopts exemptions by rule as required by subsection H, 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 H of this section.

### **36-672. Immunizations; department rules**

A. Consistent with section 15-873, the director shall adopt rules prescribing required immunizations for school attendance, the approved means of immunization and indicated reinforcing immunizations for diseases, and identifying types of health agencies and health care providers which may sign a laboratory evidence of immunity. The rules shall include the required doses, recommended optimum ages for administration of the immunizations, persons who are authorized representatives to sign on behalf of a health agency and other provisions necessary to implement this article.

B. The director, in consultation with the superintendent of public instruction, shall develop by rule standards for documentary proof.

C. Immunization against the human papillomavirus is not required for school attendance.

### **36-673. Duties of local health departments; immunization; reimbursement; training; informed consent**

A. A local health department in cooperation with each school within the county shall provide for the required immunization of pupils attending school.

B. A local health department shall provide immunizations required for school attendance at no cost to the pupil or pupil's parent, guardian or person in loco parentis. In order to receive reimbursement for the cost of the immunization from the pupil's or parent's private health insurance coverage, the local health department may enter into a contract governing the terms of reimbursement and claims with the corresponding private health care insurer. The local health department may enter into a contract with a private health care insurer on its own, in conjunction with other local health departments or through a qualified intermediary. If the local health department chooses not to contract with a private health care insurer, or does not respond to the request to contract from a private health care insurer within ninety days of the request, the insurer is not required to reimburse the local health department for the immunization. If a private health care insurer declines or does not respond to a request to contract with a local health department, with a coalition of other local health departments or through a qualified intermediary within ninety days of the request to contract, the private health care insurer must reimburse the local health department at the rate paid to an in-network provider.

C. A local health department, on request by a school nurse and approval by the school administrator, shall train and authorize the school nurse to administer required immunizations.

D. A pupil shall not be immunized without the informed consent of the parent, guardian or person in loco parentis of the pupil. A pupil who is at least eighteen years of age or is emancipated may consent to immunization.

**36-674. Providing proof of immunization**

A physician, local health department or school nurse administering an immunization shall furnish documentary proof of immunization to the person immunized or, if that person is a child, to the child's parent or guardian or the person in loco parentis of the child.

**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.

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.
6. Licensed child care facility representatives.
7. The department of child safety.

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.

**DEPARTMENT OF HEALTH SERVICES (F-17-0908)**  
Title 9, Chapter 10, Article 2, Hospitals



**GOVERNOR'S REGULATORY REVIEW COUNCIL  
ANALYSIS OF FIVE-YEAR REVIEW REPORT**

**MEETING DATE: October 3, 2017**

**AGENDA ITEM: E-2**

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**TO:** Members of the Governor's Regulatory Review Council  
**FROM:** Daniel Herder, Legal Intern  
**DATE :** September 19, 2017  
**SUBJECT: DEPARTMENT OF HEALTH SERVICES (F-17-0908)**  
Title 9, Chapter 10, Article 2, Hospitals

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The purpose of the Department of Health Services (Department) is "to protect the physical and mental health of the people of [Arizona] 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. The Department indicates that the rules are intended to protect public health by providing "minimum standards and requirements for the construction, modification, and licensure of health care institutions...." A.R.S. § 36-405(A).

This five-year-review report covers 35 rules in A.A.C. Title 9, Chapter 10, Article 2 that relate to licensing hospitals. The rules have been heavily revised several times through exempt rulemaking, and became effective in their current form on July 1, 2014.

**Proposed Action**

To address issues identified in the report, the Department indicates that it plans to amend the rules by July 2019.

**Substantive or Procedural Concerns**

None.

**Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:**

**1. Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

Yes. The Department has certified its compliance with A.R.S. § 41-1091.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

Yes. The Department indicates that the rules are effective in achieving their respective objectives.

3. **Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

Yes. The Department indicates that three rules have received written criticism during the last five years. In response to two of them, both about patient designated caregivers and the result of stakeholder discussions between the Arizona Hospital and Healthcare Association, the Health Systems Alliance of Arizona, and AARP, the Department believes the suggested changes would impose a burden on a hospital without a corresponding benefit to a patient. The third criticism, by an Arizona emergency room doctor, sought clarification of the term "seclusion room", and while the usage is consistent with the defined term used throughout the Chapter, the Department plans to clarify this during the upcoming proposed rulemaking.

4. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Department cites to both general and specific authority for the rules. The general statutory authority comes from A.R.S. § 36-136(F), that "[t]he director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health." Additionally, the Department cites A.R.S. § 36-132(A)(1), (A)(17) as general authority. The specific statutory authority for the rules is in A.R.S. § 36-405, "[t]he 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."

5. **Has the agency analyzed the rules' consistency with statutes and other rules?**

Yes. The Department indicates that the rules are consistent with state and federal statutes and rules, except for Section 201, according to Laws 2017, Ch.122, which became effective August 9, 2017. A.R.S. § 36-425 no longer calls for initial and renewal permits to be issued. Issued permits no longer expire, and this change will be reflected in the proposed upcoming rulemaking. Due to resource constraints, the Department indicates that the changes will likely not be made before July 2019.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department indicates that the rules are enforced as written.

7. **Has the agency analyzed whether the rules are clear, concise, and understandable?**

Yes. The rules are generally clear, concise, and understandable, although some rules contain minor punctuation, grammatical, or typographical errors.

8. **Has the agency analyzed whether:**

a. **The rules more stringent than corresponding federal law?**

No. The Department indicates that the rules are not more stringent than federal law, citing to 42 CFR 482.2 - 482.57.

b. **If so, is there statutory authority to exceed the requirements of federal law?**

Not applicable.

9. **For rules adopted after July 29, 2010:**

a. **Do the rules require issuance of a regulatory permit, license or agency authorization?**

Yes. The rules require the issuance of a specific agency authorization.

b. **If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?**

Yes. In accordance with A.R.S. § 41-1037(A)(2), the Department has statutory authority to issue an alternative type of license under A.R.S. § 36-405. Therefore, a general permit is not issued.

10. **Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?**

The rules were substantially amended in 2013 and again in 2014. According to the Department, this is the first five-year-review of the new rules.

**Conclusion**

As noted above, the Department intends to amend the rules by July 2019. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301, and this analyst recommends that the report be approved.



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

**MEETING DATE:** October 3, 2017

**AGENDA ITEM:** E-2

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

**FROM:** GRRC Economic Team

**DATE :** September 19, 2017

**SUBJECT: DEPARTMENT OF HEALTH SERVICES**  
Title 9, Chapter 10, Article 2, Hospitals

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I have reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

**1. Economic Impact Comparison**

The economic, small business, and consumer impact comparison included in the most recent five-year review submittal from the Department was reviewed for Article 2. The Article 2 rules reviewed establish requirements for hospital licensure.

Key stakeholders include the Department, Arizona hospitals, physicians and other health care providers, patients and the general public. The new rules allowed the governing authority of a hospital 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.

Presently, there are 115 licensed hospitals in Arizona, of which 100 are accredited. The rules in 9 A.A.C. 10, Article 2 were substantially amended in 2013 and again in 2014. The Department believes the benefit of the 2014 rulemaking outweighs the costs.

**2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?**

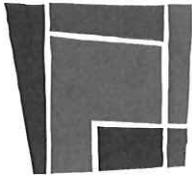
The Department has determined that the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

**3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?**

No analysis was submitted to the Department by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

**4. Conclusion**

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

July 20, 2017

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

RE: Report for A.A.C. Title 9, Chapter 10, Article 2 Health Care Institutions: Licensing - Hospitals

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 2 is due to the Council no later than October 31, 2017. The Arizona Department of Health Services (Department) has reviewed 9 A.A.C. 10, Article 2 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 plans to amend the rules in 9 A.A.C. 10, Article 2 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 'R. 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 10. DEPARTMENT OF HEALTH SERVICES**

**HEALTH CARE INSTITUTIONS: LICENSING**

**ARTICLE 2. HOSPITALS**

**JULY 2017**

**FIVE-YEAR-REVIEW REPORT**  
**TITLE 9. HEALTH SERVICES**  
**CHAPTER 10. DEPARTMENT OF HEALTH SERVICES**  
**HEALTH CARE INSTITUTIONS: LICENSING**  
**ARTICLE 2. HOSPITALS**

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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 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 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.

Three subclasses were established under the hospital class: general hospital, rural general hospital, and special hospital. Specific rules for the general hospital subclass were contained in Arizona Administrative Code (A.A.C.) Title 9, Chapter 10, Article 2, effective February 23, 1979; rules for the rural general hospital subclass were contained in 9 A.A.C. 10, Article 3, effective February 4, 1981; and rules for the special hospital subclass were contained in 9 A.A.C. 10, Article 4, effective January 28, 1980. The hospital rules were subsequently repealed in their entirety and replaced with new requirements for hospitals with specific requirements for each subclass in 9 A.A.C. 10, Article 2, effective October 1, 2002. One rule was revised by exempt rulemaking in 2012 to comply with Laws 2011, Ch. 43, and the rules in 9 A.A.C. 10, Article 2 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 six of the rules were further revised and a new Section added in another exempt rulemaking of 9 A.A.C. 10 conducted under Laws 2011, Chapter 96, effective July 1, 2014.

After an analysis of the rules in 9 A.A.C. 10, Article 2, 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 two written criticisms of the rules in the past five years. The Department plans to amend the rules in 9 A.A.C. 10, Article 2 as necessary to comply with 2017 statutory changes 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 OF THE RULES**

**1. Authorization of the rule by existing statute**

The general statutory authority for the rules in 9 A.A.C. 10, Article 2 are A.R.S. §§ 36-132(A)(1), 36-132(A)(17), and 36-136(F).

The specific statutory authority for the rules in 9 A.A.C. 10, Article 2 is A.R.S. § 36-405.

**2. The purpose of the rule**

The purpose of the rules in 9 A.A.C. 10, Article 2 is to establish requirements for hospital licensure.

**3. Analysis of effectiveness in achieving the objective**

The rules in 9 A.A.C. 10, Article 2 are effective in achieving their respective objectives.

**4. Analysis of consistency with state and federal statutes and rules**

Except as described in R9-10-201, the rules in 9 A.A.C. 10, Article 2 are consistent with state and federal statutes and rules. However, as described under Information for Individual rules, R9-10-202 will be inconsistent with state statutes when Laws 2017, Ch. 122 becomes effective.

**5. Status of enforcement of the rule**

The rules in 9 A.A.C. 10, Article 2 are enforced as written by the Department.

**6. Analysis of clarity, conciseness, and understandability**

The rules in 9 A.A.C. 10, Article 2 are clear, concise, and understandable, although some rules contain minor punctuation, grammatical, or typographical errors.

**7. Summary of the written criticisms of the rule received within the last five years**

Except as described for R9-10-208, R9-10-209, and R9-10-217, 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 115 licensed hospitals in Arizona, of which 100 are accredited. The hospital industry currently utilizes several accreditation bodies. The 100 hospitals are accredited as follows: 78 hospitals are only accredited by Joint Commission on Accreditation of Healthcare Organizations (JCAHO); 15 hospitals are only accredited by Det Norske Veritas Healthcare Inc.; 2 hospitals are only accredited by the American Osteopathic Association; 2 hospitals are only accredited by the Center for Improvement in Healthcare Quality 2 hospitals are accredited by Det Norske Veritas Healthcare Inc. and JCAHO; and 1 hospital is accredited by the American Osteopathic Association and JCAHO. The rules in 9 A.A.C. 10, Article 2 were revised in their entirety as part of an exempt rulemaking of 9 A.A.C. 10 in 2013 to comply with Laws 2011, Ch. 96. All but six of the rules were further revised and a new Section added in another exempt rulemaking of 9 A.A.C. 10 conducted under Laws 2011, Chapter 96, effective July 1, 2014. Stakeholders for

these rulemakings include the Department, Arizona hospitals, physicians and other health care providers, patients, 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 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 patient 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 hospitals, physicians, and other health care providers may also have received a significant benefit from the clarity of the new requirements.

The new rules allowed the governing authority of a hospital 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 hospital by providing more flexibility in the appointment of an administrator and allowing a better understanding of requirements. A hospital 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. Patients may have received a significant benefit from a hospital being required to ensure compliance with the rules.

The rulemaking clarified requirements for providing intensive care services, including the removal of the prohibition of a rural general hospital to provide intensive care services. The new rules also allowed hospitals to provide pediatric services, outside of an organized pediatric service,

and provided requirements for these pediatric services. These requirements included that a hospital may only admit a pediatric inpatient if the hospital has the staff, equipment, and supplies available to meet the needs of the pediatric patient based on the pediatric patient's medical condition and the hospital's scope of services. The new rules also added that a multi-organized service unit may be designated for providing medical and nursing services to both adult and pediatric patients and specified requirements for multi-organized service units and for the use of pediatric beds for non-pediatric patients. The Department believes that these changes may have provided up to a substantial benefit to a hospital by increasing the available patient population without as many concomitant costs. Patients in more rural areas and the general public may also have received a significant benefit from these changes by being able to be treated closer to home.

Rules related to behavioral health services provided by a hospital were also revised as part of the rulemaking. Definitions adopted as part of a 2012 rulemaking to implement Laws 2011, Ch. 43 were removed because they were included in R9-10-101. Other requirements related to patient rights, behavioral health technicians, and clinical oversight, which had been added in 2012, were also moved to make them applicable to more than just the hospital class of health care institution. Requirements related to restraint and seclusion were also revised, and requirements related to behavioral health observation/stabilization services were added. The Department believes that these changes may have provided a hospital up to a substantial benefit from being able to provide behavioral health observation/stabilization services and from revision of requirements for restraint and seclusion and a significant benefit from improving clarity and making requirements more consistent across the Chapter. Patients receiving behavioral health services and the general public may also have received a significant benefit from these changes.

Requirements related to infection control, environmental standards, and physical plant standards were revised in the 2013 rulemaking. A requirement was added for an infection control program to have policies and procedures on the use of personal protective equipment, and requirements related to tuberculosis screening were made more flexible. The new rules clarified that equipment may be cleaned and disinfected according to manufacturer's instructions, rather than only according to policies and procedures and required a pest control program to be implemented and documented, rather than "used." The new rules also removed redundant requirements related to the submission of architectural plans and specifications for construction, modification, or change in licensed capacity or inpatient beds and revised requirements related to fire inspections. The Department believes that these changes may have provided a significant benefit to a hospital from the increased flexibility in tuberculosis screening, removal of redundant requirements, and clarity of the rules. A hospital without policies and procedures on the use of personal protective equipment or

disinfection of equipment or without documentation of pest control may have incurred minimal-to moderate costs to comply with the new rules. Patients of a hospital and the general public may have received a significant benefit from these changes, which may have made the hospital a safer place to be. The Department believes the benefit of the 2013 rulemaking outweighs the costs.

As part of the 2014 exempt rulemaking, definitions were revised to improve clarity. A requirement for submission of a copy of an accreditation report as part of a renewal application was also removed, since the requirement was included in Article 1, and requirements for single group licenses were clarified. Also clarified were requirements related to the frequency of review of acuity plans and the length of retention of quality management reports, as well as requirements related to personnel and medical staff, admissions, and transport. Changes were also made to clarify requirements related to nursing services, surgical services, pharmaceutical services, clinical laboratory services and pathology services, radiology services and diagnostic imaging services, intensive care services, respiratory care services, perinatal services, pediatric services, psychiatric services, behavioral health observation/stabilization services, infection control, dietary services, disaster management, and physical plant standards. The Department believes that these changes may have provided a significant benefit to a hospital. Patient rights related to seclusion were also clarified, as were requirements related to medical records, including information related to a patient's personal representative. The Department believes that these changes may have provided a significant benefit to a patient.

Administrative requirements for hospitals were also revised as part of the rulemaking. The rulemaking added a requirement for policies and procedures to cover prescribing a controlled substance to minimize substance abuse by a patient and expanded the scope of policies and procedures covering restraints to include restraints necessary to prevent imminent harm to self or others, including how personnel members will respond to a patient's sudden, intense, or out-of-control behavior. Also added was a requirement for policies and procedures for communicating with a midwife when the midwife's client begins labor and ends labor, consistent with revised rules in 9 A.A.C. 16, Article 1. The Department believes that a hospital may have incurred a minimal-to-moderate cost due to these rule changes.

The new rules clarified requirements related to emergency services, adding requirements for a room used for seclusion. The rulemaking also clarified tuberculosis control measures for an individual providing environmental services; clarified requirements for an individual required to be licensed under A.R.S. Title 32, Chapter 33, Article 5; and removed from the Section on psychiatric services a requirement related to psychotropic drugs while adding a requirement related to opioid treatment services. As part of the rulemaking, a new Section was added containing requirements for

administrative separation. The Department believes that these rule changes may have caused a hospital to incur minimal-to-moderate costs, depending on the services provided by the hospital. A hospital established under A.R.S. § 36-202 may have received up to a substantial benefit from the addition of administrative separation. Physicians and other health care providers, patients, and the general public may have also received a significant benefit from these rule changes. 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 2 were substantially amended 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 2 are not more stringent than related 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. Proposed course of action**

The Department plans to amend the rules in 9 A.A.C. 10, Article 2 as necessary to comply with 2017 statutory changes and to address other items mentioned in this report, and to submit a Notice of Final Rulemaking to the Governor's Regulatory Review Council (Council) by July 2019.

## INFORMATION FOR INDIVIDUAL RULES

### **R9-10-201. 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.

#### **4. Analysis of consistency with state and federal statutes and rules**

Subsection (22) should refer to the definition in A.R.S. § 32-1601. Otherwise, the rule is consistent with state and federal statutes and rules.

### **R9-10-202. 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 hospitals.

#### **4. Analysis of consistency with state and federal statutes and rules**

Although the rule is currently consistent with state and federal statutes and rules, the rule will be inconsistent with A.R.S. § 36-425 as amended by Laws 2017, Ch. 122, once the changes to the statute are effective, because of references to “initial” and “renewal” licenses.

### **R9-10-203. Administration**

#### **2. Objective**

The objective of the rule is to establish minimum requirements for a hospital’s governing authority and administrative office.

### **R9-10-204. Quality Management**

#### **1. Authorization of the rule by existing statute**

The rule has A.R.S. § 36-445 as additional specific authority.

#### **2. Objective**

The objective of the rule is to establish minimum requirements for a hospital’s quality management program.

**R9-10-205. Contracted Services**

**2. Objective**

The objective of the rule is to establish minimum requirements for hospital services provided by a person who contracts with the licensee to provide hospital services to ensure that the contractor complies with applicable requirements.

**R9-10-206. Personnel**

**2. Objective**

The objective of the rule is to establish minimum standards for hospital personnel.

**6. Analysis of clarity, conciseness, and understandability**

The rule is clear, concise and understandable, although the rule would be clearer if the typographical error “R9-10-203(A)(5)” were corrected to “R9-10-203(5).”

**R9-10-207. Medical Staff**

**1. Authorization of the rule by existing statute**

The rule has A.R.S. §§ 36-445, 36-445.01, 36-445.02, and 36-445.03 as additional specific authority.

**2. Objective**

The objective of the rule is to establish minimum requirements for a hospital’s medical staff.

**6. Analysis of clarity, conciseness, and understandability**

The rule is clear, concise and understandable, although the rule would be clearer if the typographical error “R9-10-203(A)(5)” were corrected to “R9-10-203(5).”

**R9-10-208. Admission**

**2. Objective**

The objective of the rule is to establish minimum requirements for an individual’s admission to a hospital.

**7. Summary of the written criticisms of the rule received within the last five years**

Criticism: A comment was made asking for changes to the rules related to a patient designating a caregiver who would be assisting a patient after the patient’s discharge.

Response: The current rules do not prevent a patient or the patient’s representative from arranging for someone to assist the patient upon discharge from a hospital nor prevent a patient or the patient’s representative from allowing the disclosure of medical information to any individual, including someone who would be assisting the patient after discharge. Adding the suggested language creates the potential for a patient to be required to identify a caregiver which the patient may not want or

need. The Department believes that making the suggested changes may impose a burden on a hospital without a corresponding benefit to a patient. As such, these changes may not meet the standards in A.R.S. § 41-1038. However, the Department may consider the comment during the rulemaking proposed in paragraph 14.

**R9-10-209. Discharge Planning; Discharge**

**2. Objective**

The objective of the rule is to establish minimum requirements for discharge and discharge planning.

**7. Summary of the written criticisms of the rule received within the last five years**

Criticism: A comment was made asking for changes to the rules related to patient discharge planning and discharge to require a hospital to attempt to contact a patient's caregiver, who would be assisting a patient after the patient's discharge, to discuss the discharge plan; to include instructions and provide a demonstration of tasks to be performed for a patient after discharge to the patient, patient's representative, and patient's caregiver; to include a patient's caregiver, if present or available by telephone, in the discharge process and allow questions about the discharge plan and care to be provided to the patient after discharge; to provide a patient's caregiver with written information, at the patient's request, about other classes or subclasses of health care institutions that may meet the patient's assessed and anticipated needs after discharge; and to provide a patient's caregiver with discharge instructions.

Response: The current rules do not prevent a patient or the patient's representative from arranging for the patient's caregiver to be present or to listen in during a telephone call from the patient or the patient's representative while the patient's discharge is discussed or ask questions about the patient's care needs after discharge. Nor do the rules prevent a patient or patient's representative from asking for a second copy of documents provided to the patient or patient's representative or from making a second copy for the patient's caregiver. The Department believes that making some of the suggested changes may impose a burden on a hospital without a corresponding benefit to a patient. As such, these changes may not meet the standards in A.R.S. § 41-1038. However, the Department may consider the comment during the rulemaking proposed in paragraph 14.

**R9-10-210. Transport**

**2. Objective**

The objective of the rule is to establish minimum requirements for transport to ensure that a patient's health and safety are not compromised as a result of a transport.

**R9-10-211. Transfer**

**2. Objective**

The objective of the rule is to establish minimum requirements for the transfer of a patient to ensure that the health and safety of the patient are not compromised as a result of the patient's transfer.

**R9-10-212. Patient Rights**

**2. Objective**

The objective of the rule is to establish minimum standards for patient rights.

**R9-10-213. Medical Records**

**2. Objective**

The objective of the rule is to establish minimum requirements for patients' medical records.

**R9-10-214. Nursing Services**

**2. Objective**

The objective of the rule is to establish minimum requirements for nursing services in a hospital.

**R9-10-215. Surgical Services**

**2. Objective**

The objective of the rule is to establish minimum requirements for surgical services in a hospital.

**6. Analysis of clarity, conciseness, and understandability**

The rule is clear, concise and understandable, although the rule would be clearer if the typographical errors referring to subsection (A) were corrected and subsection (14) were reworded to be grammatically consistent with the other subsections.

**R9-10-216. Anesthesia Services**

**2. Objective**

The objective of the rule is to establish minimum requirements for anesthesia services in a hospital.

**R9-10-217. Emergency Services**

**2. Objective**

The objective of the rule is to establish minimum requirements for emergency services.

**7. Summary of the written criticisms of the rule received within the last five years**

Criticism: A comment was made expressing confusion and concern about the use of the term “seclusion room” in subsection (D), stating that the rules seem to require a “seclusion room for psych patients and not just a secure room” for a patient in an area of a hospital providing emergency services.

Response: A.A.C. R9-1-412 incorporates Guidelines for Design and Construction of Health Care Facilities (2010 ed.), published by the American Society for Healthcare Engineering and available from the Facility Guidelines Institute. This document provides standards for construction or modification of a hospital, specifying standards that are applicable in different locations in a hospital that are used for providing different types of services. The requirements in Section 2.1-2.4.3 apply to a “seclusion treatment room” within a unit of a hospital providing inpatient psychiatric services. The requirements in Section 2.2-3.1.4.4 apply to a “secure holding room” within an emergency department. Although the term “seclusion room” is used in subsection (D) to be consistent with the defined term used throughout the Chapter, the Department applies the requirements in Section 2.2-3.1.4.4 to a room within an area of a hospital providing emergency services used for providing care to patients with psychiatric conditions. During the rulemaking proposed in paragraph 14, the Department plans to clarify this requirement.

**R9-10-218.     Pharmaceutical Services**

**2.     Objective**

The objective of the rule is to establish minimum requirements for pharmaceutical services.

**R9-10-219.     Clinical Laboratory Services and Pathology Services**

**2.     Objective**

The objective of the rule is to establish minimum requirements for clinical laboratory services and pathology services.

**R9-10-220.     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.

**6.     Analysis of clarity, conciseness, and understandability**

The rule is clear, concise and understandable, although the rule would be clearer if the typographical error omitting the reference to subsection (A) were corrected.

**R9-10-221. Intensive Care Services**

**2. Objective**

The objective of the rule is to establish minimum requirements for intensive care services provided by a hospital.

**R9-10-222. Respiratory Care Services**

**2. Objective**

The objective of the rule is to establish minimum requirements for respiratory care services.

**R9-10-223. Perinatal Services**

**2. Objective**

The objective of the rule is to establish minimum requirements for perinatal services.

**R9-10-224. Pediatric Services**

**2. Objective**

The objective of the rule is to establish minimum requirements for providing pediatric services in a hospital.

**6. Analysis of clarity, conciseness, and understandability**

The rule is clear, concise and understandable, although the rule would be clearer if the rule did not use two terms, “organized pediatric services” and “pediatric organized services,” for the same hospital services.

**R9-10-225. Psychiatric Services**

**2. Objective**

The objective of the rule is to establish minimum requirements for providing psychiatric services in a hospital.

**R9-10-226. Behavioral Health Observation/Stabilization Services**

**2. Objective**

The objective of the rule is to establish minimum requirements for providing behavioral health observation/stabilization services in a hospital.

**6. Analysis of clarity, conciseness, and understandability**

The rule is clear, concise and understandable, although the extraneous “s” in “behavioral health observation/stabilizations services” should be removed.

**R9-10-227. Rehabilitation Services**

**2. Objective**

The objective of the rule is to establish minimum requirements for rehabilitation services.

**R9-10-228. Multi-organized Service Unit**

**2. Objective**

The objective of the rule is to establish minimum requirements for a multi-organized service unit in a hospital.

**R9-10-229. Social Services**

**2. Objective**

The objective of the rule is to establish minimum requirements for social services.

**R9-10-230. Infection Control**

**2. Objective**

The objective of the rule is to establish minimum requirements for infection control in a hospital.

**R9-10-231. Dietary Services**

**2. Objective**

The objective of the rule is to establish minimum requirements for dietary services.

**R9-10-232. Disaster Management**

**2. Objective**

The objective of the rule is to establish minimum requirements to ensure that a hospital is prepared for a disaster.

**R9-10-233. Environmental Standards**

**2. Objective**

The objective of the rule is to establish minimum requirements for a hospital's environmental services.

**R9-10-234. Physical Plant Standards**

**2. Objective**

The objective of the rule is to establish physical plant requirements for the construction or modification of a hospital's physical plant.

**R9-10-235. Administrative Separation**

**1. Authorization of the rule by existing statute**

The rule has A.R.S. § 36-502.01 as additional specific authority.

**2. Objective**

The objective of the rule is to establish requirements for administrative separation, as defined in the Section.



## **Replacement Check List**

For rules filed within the  
3rd Quarter  
July 1- September 30, 2016

# THE ARIZONA ADMINISTRATIVE CODE

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

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## **Title 9. Health Services**

### **Chapter 10. Department of Health Services - Health Care Institutions: Licensing**

Supplement Release Quarter: 16-3

**Sections, Parts, Exhibits, Tables or Appendices modified**  
R9-10-1025

REMOVE Supp. 16-2  
Pages: 1 - 259

REPLACE with Supp. 16-3  
Pages: 1 - 259

*The Department's contact person who can answer questions about rules in Supp. 16-3:*

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*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may have changed and is provided as a public courtesy.*

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**PUBLISHER**  
**Arizona Department of State**  
**Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
September 30, 2016

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### **RULES**

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### **THE ADMINISTRATIVE CODE**

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### **ADMINISTRATIVE CODE SUPPLEMENTS**

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### **HOW TO USE THE CODE**

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### **ARTICLES AND SECTIONS**

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### **HISTORICAL NOTES AND EFFECTIVE DATES**

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### **ARIZONA REVISED STATUTE REFERENCES**

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules are often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### **SESSION LAW REFERENCES**

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### **EXEMPTIONS FROM THE APA**

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### **EXEMPTIONS AND PAPER COLOR**

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### **PERSONAL USE/COMMERCIAL USE**

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES - HEALTH CARE INSTITUTIONS: LICENSING

Editor’s Note: The heading for 9 A.A.C. 10 changed from “Licensure” to “Licensing” per a request from the Department of Health Services (Supp. 03-4).

Editor’s Note: The Office of the Secretary of State publishes all Chapters on white paper (Supp. 01-2).

Editor’s Note: This Chapter contains rules which were adopted, amended, and repealed under exemptions from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1993, Ch. 163, § 3(B); Laws 1996, Ch. 329, § 5; Laws 1998, Ch. 178 § 17, and Laws 1999, Ch. 311. Exemption from A.R.S. Title 41, Chapter 6 means that the Department of Health Services did not submit these rules to the Governor’s Regulatory Review Council for review; the Department may not have submitted notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department 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.

ARTICLE 1. GENERAL

Table listing sections R9-10-101 through R9-10-124 with corresponding page numbers for Article 1.

ARTICLE 2. HOSPITALS

Article 2, consisting of Sections R9-10-201 through R9-10-233, adopted effective February 23, 1979.

Former Article 2, consisting of Sections R9-10-201 through R9-10-250, renumbered as Sections R9-10-301 through R9-10-335 as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days.

Table listing sections R9-10-201 through R9-10-211 with corresponding page numbers for Article 2.

Table listing sections R9-10-212 through R9-10-235 with corresponding page numbers for Article 1.

ARTICLE 3. BEHAVIORAL HEALTH INPATIENT FACILITIES

Article 3, consisting of Sections R9-10-311 through R9-10-333, repealed at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

Article 3, consisting of Sections R9-10-301 through R9-10-333, adopted effective February 4, 1981.

Former Article 3, consisting of Sections R9-10-301 through R9-10-335, repealed effective February 4, 1981.

Table listing sections R9-10-301 through R9-10-312 with corresponding page numbers for Article 3.

- c. According to requirements in A.A.C. R18-13-1406, A.A.C. R18-13-1407, and A.A.C. R18-13-1408; or
2. Complies with requirements in A.A.C. R18-13-1405.
- C. For purposes of this Section, the following definition applies: “Fetal tissue” means cells, or groups of cells with a specific function, obtained from an aborted human embryo or fetus.

**Historical Note**

New Section made by emergency rulemaking at 21 A.A.R. 1787, effective August 14, 2015 for 180 days (Supp. 15-3). Emergency expired February 10, 2016. Section amended by emergency rulemaking at 22 A.A.R. 420, effective February 11, 2016, for an additional 180 days; filed in the Office February 8, 2016 (Supp. 16-1). New Section made by final rulemaking at 22 A.A.R. 1343, with an immediate effective date upon filing under A.R.S. § 41-1032(A)(1) and (4) of May 5, 2016 (Supp. 16-2).

**R9-10-120. Reserved****R9-10-121. Repealed****Historical Note**

Amended effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3).

**R9-10-122. Repealed****Historical Note**

New Section made by final rulemaking at 7 A.A.R. 2145, effective May 1, 2001 (Supp. 01-2). Amended by final rulemaking at 8 A.A.R. 3578, effective July 26, 2002 (Supp. 02-3). Amended by exempt rulemaking at 14 A.A.R. 3958, effective September 26, 2008 (Supp. 08-3). Amended by exempt rulemaking at 15 A.A.R. 2100, effective January 1, 2010 (Supp. 09-4). Section repealed by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

**R9-10-123. Repealed****Historical Note**

Amended effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3).

**R9-10-124. Repealed****Historical Note**

Former Section R9-10-124 repealed, new Section R9-10-124 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3).

**ARTICLE 2. HOSPITALS****R9-10-201. 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. “Acuity” means a patient’s need for hospital services based on the patient’s medical condition.
2. “Acuity plan” means a method for establishing nursing personnel requirements by unit based on a patient’s acuity.
3. “Adult” means an individual the hospital designates as an adult based on the hospital’s criteria.
4. “Care plan” means a documented guide for providing nursing services and rehabilitation services to a patient

- that includes measurable objectives and the methods for meeting the objectives.
5. “Continuing care nursery” means a nursery where medical services and nursing services are provided to a neonate who does not require intensive care services.
  6. “Critically ill inpatient” means an inpatient whose severity of medical condition requires the nursing services of specially trained registered nurses for:
    - a. Continuous monitoring and multi-system assessment,
    - b. Complex and specialized rapid intervention, and
    - c. Education of the inpatient or inpatient’s representative.
  7. “Device” has the same meaning as in A.R.S. § 32-1901.
  8. “Diet” means food and drink provided to a patient.
  9. “Diet manual” means a written compilation of diets.
  10. “Dietary services” means providing food and drink to a patient according to an order.
  11. “Diversion” means notification to an emergency medical services provider, as defined in A.R.S. § 36-2201, that a hospital is unable to receive a patient from an emergency medical services provider.
  12. “Drug formulary” means a written list of medications available and authorized for use developed according to R9-10-218.
  13. “Emergency services” means unscheduled medical services provided in a designated area to an outpatient in an emergency.
  14. “Gynecological services” means medical services for the diagnosis, treatment, and management of conditions or diseases of the female reproductive organs or breasts.
  15. “Hospital services” means medical services, nursing services, and health-related services provided in a hospital.
  16. “Infection control risk assessment” means determining the probability for transmission of communicable diseases.
  17. “Inpatient” means an individual who:
    - a. Is admitted to a hospital as an inpatient according to policies and procedures,
    - b. Is admitted to a hospital with the expectation that the individual will remain and receive hospital services for 24 consecutive hours or more, or
    - c. Receives hospital services for 24 consecutive hours or more.
  18. “Intensive care services” means hospital services provided to a critically ill inpatient who requires the services of specially trained nursing and other personnel members as specified in policies and procedures.
  19. “Medical staff regulations” means standards, approved by the medical staff, that govern the day-to-day conduct of the medical staff members.
  20. “Multi-organized service unit” means an inpatient unit in a hospital where more than one organized service may be provided to a patient in the inpatient unit.
  21. “Neonate” means an individual:
    - a. From birth until discharge following birth, or
    - b. Who is designated as a neonate by hospital criteria.
  22. “Nurse anesthetist” means a registered nurse who meets the requirements of A.R.S. § 32-1661 and who has clinical privileges to administer anesthesia.
  23. “Nurse executive” means a registered nurse accountable for the direction of nursing services provided in a hospital.
  24. “Nursery” means an area in a hospital designated only for neonates.

## Department of Health Services – Health Care Institutions: Licensing

25. “Nurse supervisor” means a registered nurse accountable for managing nursing services provided in an organized service in a hospital.
26. “Nutrition assessment” means a process for determining a patient’s dietary needs using information contained in the patient’s medical record.
27. “On duty” means that an individual is at work and performing assigned responsibilities.
28. “Organized service” means specific medical services, such as surgical services or emergency services, provided in an area of a hospital designated for the provision of those medical services.
29. “Outpatient” means an individual who:
  - a. Is admitted to a hospital with the expectation that the individual will receive hospital services for less than 24 consecutive hours; or
  - b. Except as provided in subsection (17) receives, hospital services for less than 24 consecutive hours.
30. “Pathology” means an examination of human tissue for the purpose of diagnosis or treatment of an illness or disease.
31. “Patient care” means hospital services provided to a patient by a personnel member or a medical staff member.
32. “Pediatric” means pertaining to an individual designated by a hospital as a child based on the hospital’s criteria.
33. “Perinatal services” means medical services for the treatment and management of obstetrical patients and neonates.
34. “Post-anesthesia care unit” means a designated area for monitoring a patient following a medical procedure for which anesthesia was administered to the patient.
35. “Private duty staff” means an individual, excluding a personnel member, compensated by a patient or the patient’s representative.
36. “Psychiatric services” means the diagnosis, treatment, and management of a mental disorder.
37. “Rehabilitation services” means medical services provided to a patient to restore or to optimize functional capability.
38. “Single group license” means a license that includes authorization to operate health care institutions according to A.R.S. § 36-422(F) or (G).
39. “Social services” means assistance, other than medical services or nursing services, provided by a personnel member to a patient to assist the patient to cope with concerns about the patient’s illness or injury while in the hospital or the anticipated needs of the patient after discharge.
40. “Specialty” means a specific branch of medicine practiced by a licensed individual who has obtained education or qualifications in the specific branch in addition to the education or qualifications required for the individual’s license.
41. “Surgical services” means medical services involving a surgical procedure.
42. “Transfusion” means the introduction of blood or blood products from one individual into the body of another individual.
43. “Unit” means a designated area of an organized service.
44. “Vital record” has the same meaning as in A.R.S. § 36-301.
45. “Well-baby bassinet” means a receptacle used for holding a neonate who does not require treatment and whose anticipated discharge is within 96 hours after birth.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2785,

effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 4646, effective December 2, 2008 (Supp. 08-4). Amended 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).

**R9-10-202. Supplemental Application Requirements**

- A. In addition to the license application requirements in A.R.S. § 36-422 and 9 A.A.C. 10, Article 1, an applicant for an initial license shall include:
  1. On the application the requested licensed capacity for the hospital, including:
    - a. The number of inpatient beds for each organized service, not including well-baby bassinets; and
    - b. If applicable, the number of inpatient beds for each multi-organized service unit;
  2. On the application, if applicable, the requested licensed occupancy for providing behavioral health observation/stabilization services to:
    - a. Individuals who are under 18 years of age, and
    - b. Individuals 18 years of age and older; and
  3. A list, in a format provided by the Department, of medical staff specialties and subspecialties.
- B. For a single group license authorized in A.R.S. § 36-422(F), in addition to the requirements in subsection (A), a governing authority applying for an initial or renewal license shall submit the following to the Department, in a format provided by the Department, for each satellite facility under the single group license:
  1. The name, address, and telephone number of the satellite facility;
  2. The name of the administrator; and
  3. The hours of operation during which the satellite facility provides medical services, nursing services, or health-related services.
- C. For a single group license authorized in A.R.S. § 36-422(G), in addition to the requirements in subsection (A), a governing authority applying for an initial or renewal license shall submit the following to the Department in a format provided by the Department for each accredited satellite facility under the single group license:
  1. The name, address, and telephone number of the accredited satellite facility;
  2. The name of the administrator;
  3. The hours of operation during which the accredited satellite facility provides medical services, nursing services, or health-related services; and
  4. A copy of the accredited satellite facility’s current accreditation report.
- D. A governing authority shall:
  1. Notify the Department at least 30 calendar days before a satellite facility or an accredited satellite facility on a single group license terminates operations; and
  2. Submit an application, according to the requirements in 9 A.A.C. 10, Article 1, at least 60 calendar days but not more than 120 calendar days before a satellite facility or an accredited satellite facility licensed under a single group license anticipates providing medical services, nursing services, or health-related services under a license separate from the single group license.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final

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rulemaking at 14 A.A.R. 4646, effective December 2, 2008 (Supp. 08-4). Amended 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).

**R9-10-203. Administration****A.** A governing authority shall:

1. Consist of one or more individuals responsible for the organization, operation, and administration of a hospital;
2. Establish, in writing:
  - a. A hospital's scope of services,
  - b. Qualifications for an administrator,
  - c. Which organized services are to be provided in the hospital, and
  - d. The organized services that are to be provided in a multi-organized service unit according to R9-10-228(A);
3. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(b);
4. Grant, deny, suspend, or revoke a clinical privilege of a medical staff member or delegate authority to an individual to grant or suspend a clinical privilege for a limited time, according to medical staff by-laws;
5. Adopt a quality management program according to R9-10-204;
6. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
7. 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 a hospital's premises for more than 30 calendar days, or
  - b. Not present on a hospital's premises for more than 30 calendar days;
8. Except as provided in (A)(7), notify the Department according to A.R.S. § 36-425(I) if there is a change of administrator and identify the name and qualifications of the new administrator; and
9. For a health care institution under a single group license, ensure that the health care institution complies with the applicable requirements in this Chapter for the class or subclass of the health care institution.

**B.** An administrator:

1. Is directly accountable to the governing authority of a hospital for the daily operation of the hospital and hospital services and environmental services provided by or at the hospital;
2. Has the authority and responsibility to manage the hospital; and
3. Except as provided in subsection (A)(7), shall designate, in writing, an individual who is present on a hospital's premises and available and accountable for hospital services and environmental services when the administrator is not present on the hospital'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 patient that:
  - a. Cover job descriptions, duties, and qualifications including required skills and knowledge 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 patient care;
  - d. Cover the requirements in Title 36, Chapter 4, Article 11;
  - e. Cover cardiopulmonary resuscitation training required in R9-10-206(5) including:
    - i. The method and content of cardiopulmonary resuscitation training,
    - ii. The qualifications for an individual to provide cardiopulmonary resuscitation training,
    - iii. The time-frame for renewal of cardiopulmonary resuscitation training, and
    - iv. The documentation that verifies an individual has received cardiopulmonary resuscitation training;
  - f. Cover use of private duty staff, if applicable;
  - g. Cover diversion, including:
    - i. The criteria for initiating diversion;
    - ii. The categories or levels of personnel or medical staff that may authorize or terminate diversion;
    - iii. The method for notifying emergency medical services providers of initiation of diversion, the type of diversion, and termination of diversion; and
    - iv. When the need for diversion will be reevaluated;
  - h. Include a method to identify a patient to ensure the patient receives hospital services as ordered;
  - i. Cover patient rights, including assisting a patient who does not speak English or who has a disability to become aware of patient rights;
  - j. Cover health care directives;
  - k. Cover medical records, including electronic medical records;
  - l. Cover quality management, including incident report and supporting documentation;
  - m. Cover contracted services;
  - n. Cover tissue and organ procurement and transplant; and
  - o. Cover when an individual may visit a patient in a hospital, including visiting a neonate in a nursery, if applicable;
2. Policies and procedures for hospital services are established, documented, and implemented to protect the health and safety of a patient that:
    - a. Cover patient screening, admission, transport, transfer, discharge planning, and discharge;
    - b. Cover the provision of hospital services;
    - c. Cover acuity, including a process for obtaining sufficient nursing personnel to meet the needs of patients;
    - d. Include when general consent and informed consent are required;
    - e. Include the age criteria for providing hospital services to pediatric patients;
    - f. Cover dispensing, administering, and disposing of medication;
    - g. Cover prescribing a controlled substance to minimize substance abuse by a patient;
    - h. Cover infection control;
    - i. Cover restraints that:
      - i. Require an order, including the frequency of monitoring and assessing the restraint; or
      - ii. Are necessary to prevent imminent harm to self or others, including how personnel members

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- will respond to a patient's sudden, intense, or out-of-control behavior;
- j. Cover seclusion of a patient including:
    - i. The requirements for an order, and
    - ii. The frequency of monitoring and assessing a patient in seclusion;
  - k. Cover communicating with a midwife when the midwife's client begins labor and ends labor;
  - l. Cover telemedicine, if applicable; and
  - m. Cover environmental services that affect patient 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;
  5. The licensed capacity in an organized service is not exceeded except for an emergency admission of a patient;
  6. A patient is only admitted to an organized service that has exceeded the organized service's licensed capacity after a medical staff member reviews the medical history of the patient and determines that the patient's admission is an emergency; and
  7. 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 hospital, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the hospital.
- D.** An administrator of a special hospital shall ensure that:
1. Medical services are available to an inpatient in an emergency based on the inpatient's medical conditions and the scope of services provided by the special hospital; and
  2. A physician or nurse, qualified in cardiopulmonary resuscitation, is on the hospital premises.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 4004, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 4646, effective December 2, 2008 (Supp. 08-4). Amended by final rulemaking at 16 A.A.R. 688, effective November 1, 2010 (Supp. 10-2). Amended 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).

**R9-10-204. Quality Management**

- A.** A governing authority shall ensure that an ongoing quality management program is established that:
1. Complies with the requirements in A.R.S. § 36-445; and
  2. Evaluates the quality of hospital services and environmental services related to patient care.
- B.** 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 hospital services and environmental services related to patient care;
  - c. A method to evaluate the data collected to identify a concern about the delivery of hospital services or environmental services related to patient care;
  - d. A method to make changes or take action as a result of the identification of a concern about the delivery of hospital services or environmental services related to patient care;
  - e. A method to identify and document each occurrence of exceeding licensed capacity, as described in R9-10-203(C)(5), and to evaluate the occurrences of exceeding licensed capacity, including the actions taken for resolving occurrences of exceeding licensed capacity; and
  - f. The frequency of submitting a documented report required in subsection (B)(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 hospital services or environmental services related to patient care, and
    - b. Any changes made or actions taken as a result of the identification of a concern about the delivery of hospital services or environmental services related to patient care;
  3. The acuity plan required in R9-10-214(C)(2) is reviewed and evaluated at least once every 12 months and the results are documented and reported to the governing authority;
  4. The reports required in subsections (B)(2) and (3) and the supporting documentation for the reports are maintained for at least 12 months after the date the report is submitted to the governing authority; and
  5. Except for information or documentation that is confidential under federal or state law, a report or documentation required in this Section is provided to the Department for review within two hours after the Department's request.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Amended 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).

**R9-10-205. Contracted Services**

An administrator shall ensure that:

1. Contracted services are provided according to the requirements in this Article, and
2. A documented list of current contracted services is maintained that includes a description of the contracted services provided.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

**R9-10-206. Personnel**

An administrator shall ensure that:

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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 patients 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 a hospital's premises with the qualifications, skills, and knowledge necessary to:
  - a. Provide the services in the hospital's scope of services,
  - b. Meet the needs of a patient, and
  - c. Ensure the health and safety of a patient;
4. Orientation occurs within the first 30 calendar days after a personnel member begins providing hospital services and includes:
  - a. Informing a personnel member about Department rules for licensing and regulating hospitals and where the rules may be obtained,
  - b. Reviewing the process by which a personnel member may submit a complaint about patient care to a hospital, and
  - c. Providing the information required by policies and procedures;
5. Policies and procedures designate the categories of personnel providing medical services or nursing services who are:
  - a. Required to be qualified in cardiopulmonary resuscitation within 30 calendar days after the individual's starting date, and
  - b. Required to maintain current qualifications in cardiopulmonary resuscitation;
6. A personnel record for each personnel member is established and maintained and includes:
  - a. The personnel member's name, date of birth, and contact telephone number;
  - b. The personnel member's starting date and, if applicable, ending date;
  - c. Verification of a personnel member's certification, license, or education, if necessary for the position held;
  - d. Documentation of evidence of freedom from infectious tuberculosis required in R9-10-230(A)(5);
  - e. Verification of current cardiopulmonary resuscitation qualifications, if necessary for the position held; and
  - f. Orientation documentation;
7. Personnel receive in-service education according to criteria established in policies and procedures;
8. In-service education documentation for a personnel member includes:
  - a. The subject matter,
  - b. The date of the in-service education, and
  - c. The signature of the personnel member;
9. Personnel records and in-service education documentation are maintained by the hospital for at least 24 months after the last date the personnel member worked; and
10. Personnel records and in-service education documentation, for a personnel member who has not worked in the hospital during the previous 12 months, are provided to the Department within 72 hours after the Department's request.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Amended 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).

**R9-10-207. Medical Staff**

- A.** A governing authority shall ensure that:
1. The organized medical staff is directly accountable to the governing authority for the quality of care provided by a medical staff member to a patient in a hospital;
  2. The medical staff bylaws and medical staff regulations are approved according to the medical staff bylaws and governing authority requirements;
  3. A medical staff member complies with medical staff bylaws and medical staff regulations;
  4. The medical staff of a general hospital or a special hospital includes at least two physicians who have clinical privileges to admit inpatients to the general hospital or special hospital;
  5. The medical staff of a rural general hospital includes at least one physician who has clinical privileges to admit inpatients to the rural general hospital and one additional physician who serves on a committee according to subsection (A)(7)(c);
  6. A medical staff member is available to direct patient care;
  7. Medical staff bylaws or medical staff regulations are established, documented, and implemented for the process of:
    - a. Conducting peer review according to A.R.S. Title 36, Chapter 4, Article 5;
    - b. Appointing members to the medical staff, subject to approval by the governing authority;
    - c. Establishing committees including identifying the purpose and organization of each committee;
    - d. Appointing one or more medical staff members to a committee;

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- e. Obtaining and documenting permission for an autopsy of a patient, performing an autopsy, and notifying, if applicable, the medical practitioner coordinating the patient's medical services when an autopsy is performed;
  - f. Requiring that each inpatient has a medical practitioner who coordinates the inpatient's care;
  - g. Defining the responsibilities of a medical staff member to provide medical services to the medical staff member's patient;
  - h. Defining a medical staff member's responsibilities for the transport or transfer of a patient;
  - i. Specifying requirements for oral, telephone, and electronic orders including which orders require identification of the time of the order;
  - j. Establishing a time-frame for a medical staff member to complete a patient's medical record;
  - k. Establishing criteria for granting, denying, revoking, and suspending clinical privileges;
  - l. Specifying pre-anesthesia and post-anesthesia responsibilities for medical staff members; and
  - m. Approving the use of medication and devices under investigation by the U.S. Department of Health and Human Services, Food and Drug Administration including:
    - i. Establishing criteria for patient selection;
    - ii. Obtaining informed consent before administering the investigational medication or device; and
    - iii. Documenting the administration of and, if applicable, the adverse reaction to an investigational medication or device; and
8. The organized medical staff reviews the medical staff bylaws and the medical staff regulations at least once every three years and updates the bylaws and regulations as needed.
- B.** An administrator shall ensure that:
- 1. A medical staff member provides evidence of freedom from infectious tuberculosis according to the requirements in R9-10-230(A)(5);
  - 2. A record for each medical staff member is established and maintained that includes:
    - a. A completed application for clinical privileges;
    - b. The dates and lengths of appointment and reappointment of clinical privileges;
    - c. The specific clinical privileges granted to the medical staff member, including revision or revocation dates for each clinical privilege; and
    - d. A verification of current Arizona health care professional active license according to A.R.S. Title 32; and
  - 3. Except for documentation of peer review conducted according to A.R.S. § 36-445, a record under subsection (B)(2) is provided to the Department for review:
    - a. As soon as possible, but not more than two hours after the time of the Department's request, if the individual is a current medical staff member; and
    - b. Within 72 hours after the time of the Department's request if the individual is no longer a current medical staff member.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended 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).

**R9-10-208. Admission**

An administrator shall ensure that:

1. A patient is admitted as an inpatient on the order of a medical staff member;
2. An individual, authorized by policies and procedures, is available to accept a patient for admission;
3. Except in an emergency, informed consent is obtained from a patient or the patient's representative before or at the time of admission;
4. The informed consent obtained in subsection (3) or the lack of consent in an emergency is documented in the patient's medical record;
5. A physician or other medical staff member performs a medical history and physical examination on a patient within 30 calendar days before admission or within 48 hours after admission and documents the medical history and physical examination in the patient's medical record within 48 hours after admission; and
6. If a physician or other medical staff member performs a medical history and physical examination on a patient before admission, the physician or the medical staff member enters an interval note into the patient's medical record at the time of admission.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Section R9-10-208 renumbered to R9-10-214; new Section R9-10-208 renumbered from R9-10-210 and amended 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).

**R9-10-209. Discharge Planning; Discharge**

- A.** For an inpatient, an administrator shall ensure that discharge planning:
1. Identifies the specific needs of the patient after discharge, if applicable;
  2. Includes the participation of the patient or the patient's representative;
  3. Is completed before discharge occurs;
  4. Provides the patient or the patient's representative with written information identifying classes or subclasses of health care institutions and the level of care that the health care institutions provide that may meet the patient's assessed and anticipated needs after discharge, if applicable; and
  5. Is documented in the patient's medical record.
- B.** For an inpatient discharge or a transfer of an inpatient, an administrator shall ensure that:
1. There is a discharge summary that includes:
    - a. A description of the patient's medical condition and the medical services provided to the patient; and
    - b. The signature of the medical practitioner coordinating the patient's medical services;
  2. There is a documented discharge order for the patient by a medical practitioner coordinating the patient's medical services before discharge unless the patient leaves the hospital against a medical staff member's advice; and
  3. If the patient is not being transferred:
    - a. There are documented discharge instructions; and
    - b. The patient or the patient's representative is provided with a copy of the discharge instructions.

- C. Except as provided in subsection (D), an administrator shall ensure that an outpatient is discharged according to policies and procedures.
- D. For a discharge of an outpatient receiving emergency services, an administrator shall ensure that:
1. A discharge order is documented by a medical practitioner who provided medical services to the patient before the patient is discharged unless the patient leaves against a medical staff member's advice; and
  2. Discharge instructions are documented and provided to the patient or the patient's representative before the patient is discharged unless the patient leaves the hospital against a medical staff member's advice.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Section R9-10-209 renumbered to R9-10-212; new Section R9-10-209 renumbered from R9-10-211 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

**R9-10-210. Transport**

- A. For a transport of a patient, the administrator of a sending hospital shall ensure that:
1. Policies and procedures are established, documented, and implemented that:
    - a. Specify the process by which the sending hospital personnel members coordinate the transport and the medical services provided to a patient to protect the health and safety of the patient;
    - b. Require an assessment of the patient by a registered nurse or a medical staff member before transporting the patient and after the patient's return;
    - c. Specify the information in the sending hospital's patient medical record that is required to accompany the patient, which shall include the information related to the medical services to be provided to the patient at the receiving health care institution;
    - d. Specify how the sending hospital personnel members communicate patient medical record information that the sending hospital does not provide at the time of transport but is requested by the receiving health care institution; and
    - e. Specify how a medical staff member explains the risks and benefits of a transport to the patient or the patient's representative based on the:
      - i. Patient's medical condition, and
      - ii. Mode of transport; and
  2. Documentation in the patient's medical record includes:
    - a. Consent for transport by the patient or the patient's representative or why consent could not be obtained;
    - b. The acceptance of the patient by and communication with an individual at the receiving health care institution;
    - c. The date and the time of the transport to the receiving health care institution;
    - d. The date and time of the patient's return to the sending hospital, if applicable;
    - e. The mode of transportation; and
    - f. The type of personnel member or medical staff member assisting in the transport if an order requires that a patient be assisted during transport.
- B. For a transport of a patient to a receiving hospital, the administrator of the receiving hospital shall ensure that:

1. Policies and procedures are established, documented, and implemented that:
  - a. Specify the process by which the receiving hospital personnel members coordinate the transport and the medical services provided to a patient to protect the health and safety of the patient;
  - b. Require an assessment of the patient by a registered nurse or a medical staff member upon arrival of the patient and before the patient is returned to the sending hospital unless the receiving facility is a satellite facility, as established in A.R.S. § 36-422, and does not have a registered nurse or a medical staff member at the satellite facility;
  - c. Specify the information in the receiving hospital's patient medical record required to accompany the patient when the patient is returned to the sending hospital, if applicable; and
  - d. Specify how the receiving hospital personnel members communicate patient medical record information to the sending hospital that is not provided at the time of the patient's return; and
2. Documentation in the patient's medical record includes:
  - a. The date and time the patient arrives at the receiving hospital;
  - b. The medical services provided to the patient at the receiving hospital;
  - c. Any adverse reaction or negative outcome the patient experiences at the receiving hospital, if applicable;
  - d. The date and time the receiving hospital returns the patient to the sending hospital, if applicable;
  - e. The mode of transportation to return the patient to the sending hospital, if applicable; and
  - f. The type of personnel member or medical staff member assisting in the transport if an order requires that a patient be assisted during transport.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-210 renumbered to R9-10-208; new Section R9-10-210 renumbered from R9-10-212 and amended 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).

**R9-10-211. Transfer**

- For a transfer of a patient, the administrator of a sending hospital shall ensure that:
1. Policies and procedures are established, documented, and implemented that:
    - a. Specify the process by which the sending hospital personnel members coordinate the transfer and the medical services provided to a patient to protect the health and safety of the patient during the transfer;
    - b. Require an assessment of the patient by a registered nurse or a medical staff member of the sending hospital before the patient is transferred;
    - c. Specify how the sending hospital personnel members communicate medical record information that is not provided at the time of the transfer; and
    - d. Specify how a medical staff member explains the risks and benefits of a transfer to the patient or the patient's representative based on the:
      - i. Patient's medical condition, and
      - ii. Mode of transfer;

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2. One of the following accompanies the patient during transfer:
  - a. A copy of the patient's medical record for the current inpatient admission; or
  - b. All of the following for the current inpatient admission:
    - i. A medical staff member's summary of medical services provided to the patient,
    - ii. A care plan containing up-to-date information,
    - iii. Consultation reports,
    - iv. Laboratory and radiology reports,
    - v. A record of medications administered to the patient for the seven calendar days before the date of transfer,
    - vi. Medical staff member's orders in effect at the time of transfer, and
    - vii. Any known allergy; and
3. Documentation in the patient's medical record includes:
  - a. Consent for transfer by the patient or the patient's representative, except in an emergency;
  - b. The acceptance of the patient by and communication with an individual at the receiving health care institution;
  - c. The date and the time of the transfer to the receiving health care institution;
  - d. The mode of transportation; and
  - e. The type of personnel member or medical staff member assisting in the transfer if an order requires that a patient be assisted during transfer.
- h. Seclusion, except as allowed under R9-10-217 or R9-10-225;
- i. Restraint, if not necessary to prevent imminent harm to self or others or as allowed under R9-10-225;
- j. Retaliation for submitting a complaint to the Department or another entity; or
- k. Misappropriation of personal and private property by a hospital's medical staff, personnel members, employees, volunteers, or students; and
3. A patient or the patient's representative:
  - a. Except in an emergency, either consents to or refuses treatment;
  - b. May refuse examination or withdraw consent for treatment before treatment is initiated;
  - c. Is informed of:
    - i. Except in an emergency, alternatives to a proposed psychotropic medication or surgical procedure and associated risks and possible complications of the proposed psychotropic medication or surgical procedure;
    - ii. How to obtain a schedule of hospital rates and charges required in A.R.S. § 36-436.01(B);
    - iii. The patient complaint policies and procedures, including the telephone number of hospital personnel to contact about complaints, and the Department's telephone number if the hospital is unable to resolve the patient's complaint; and
    - iv. Except as authorized by the Health Insurance Portability and Accountability Act of 1996, proposed involvement of the patient in research, experimentation, or education, if applicable;
  - d. Except in an emergency, is provided a description of the health care directives policies and procedures:
    - i. If an inpatient, at the time of admission; or
    - ii. If an outpatient:
      - (1) Before any invasive procedure, except phlebotomy for obtaining blood for diagnostic purposes; or
      - (2) If the hospital services include a planned series of treatments, at the start of each series;
  - e. Consents to photographs of the patient before the patient is photographed, except that a patient may be photographed when admitted to a hospital for identification and administrative purposes; and
  - f. Except as otherwise permitted by law, provides written consent to the release of information in the patient's:
    - i. Medical record, or
    - ii. Financial records.

**Historical Note**

Former Section R9-10-211 renumbered as R9-10-311 as an emergency effective February 22, 1979, new Section R9-10-211 adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-211 renumbered to R9-10-209; new Section R9-10-211 renumbered from R9-10-213 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

**R9-10-212. Patient Rights**

- A. An administrator shall ensure that:
  1. The requirements in subsection (B) and the patient rights in subsection (C) are conspicuously posted on the hospital's premises;
  2. At the time of admission, a patient or the patient's representative receives a written copy of the requirements in subsection (B) and the patient rights in subsection (C); and
  3. Policies and procedures include:
    - a. How and when a patient or the patient's representative is informed of patient rights in subsection (C), and
    - b. Where patient rights are posted as required in subsection (A)(1).
- B. An administrator shall ensure that:
  1. A patient is treated with dignity, respect, and consideration;
  2. A patient is not subjected to:
    - a. Abuse;
    - b. Neglect;
    - c. Exploitation;
    - d. Coercion;
    - e. Manipulation;
    - f. Sexual abuse;
    - g. Sexual assault;
- C. A patient 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 patient's individuality, choices, strengths, and abilities;
  3. To receive privacy in treatment and care for personal needs;
  4. To have access to a telephone;
  5. To review, upon written request, the patient's own medical record according to A.R.S. §§ 12-2293, 12-2294, and 12-2294.01;
  6. To receive a referral to another health care institution if the hospital is not authorized or not able to provide physi-

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- cal health services or behavioral health services needed by the patient;
7. To participate or have the patient's representative participate in the development of, or decisions concerning, treatment;
  8. To participate or refuse to participate in research or experimental treatment; and
  9. To receive assistance from a family member, representative, or other individual in understanding, protecting, or exercising the patient's rights.

**Historical Note**

Former Section R9-10-212 renumbered as R9-10-312 as an emergency effective February 22, 1979, new Section R9-10-212 adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Section R9-10-212 renumbered to R9-10-210; new Section R9-10-212 renumbered from R9-10-209 and amended 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).

**R9-10-213. Medical Records**

- A.** An administrator shall ensure that:
1. A medical record is established and maintained for each patient according to A.R.S. § Title 12, Chapter 13, Article 7.1;
  2. An entry in a patient's medical record is:
    - a. Recorded only by a personnel member 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 patient's medical record and includes the time of the order;
    - b. Authenticated by a medical staff member according to policies and procedures; and
    - c. If the order is a verbal order, authenticated by a medical staff member or medical practitioner;
  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 patient's medical record is available to personnel members and medical staff members authorized by policies and procedures to access the medical record;
  6. Policies and procedures include the maximum time-frame to retrieve an onsite or off-site patient's medical record at the request of a medical staff member or authorized personnel member; and
  7. A patient's medical record is protected from loss, damage, or unauthorized use.
- B.** If a hospital maintains patients' 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 patient's medical record is recorded by the computer's internal clock.
- C.** An administrator shall ensure that a medical record for an inpatient contains:
1. Patient information that includes:
    - a. The patient's name;
    - b. The patient's address;
- D.** An administrator shall ensure that a hospital's medical record for an outpatient contains:
1. Patient information that includes:
    - a. The patient's name;
    - b. The patient's address;
    - c. The patient's date of birth;
    - d. The name and contact information of the patient's representative, if applicable; and
    - e. Any known allergy including medication allergies or sensitivities;
  2. Medication information that includes:
    - a. A medication ordered for the patient; and
    - b. A medication administered to the patient including:
      - i. The date and time of administration;
      - ii. The name, strength, dosage, amount, and route of administration;
      - iii. The identification and authentication of the individual administering the medication; and
      - iv. Any adverse reaction the patient has to the medication;
  3. Documentation of general consent and, if applicable, informed consent for treatment by the patient or the patient's representative, except in an emergency;
  4. A medical history and results of a physical examination or an interval note;
  5. If the patient provides a health care directive, the health care directive signed by the patient;
  6. An admitting diagnosis;
  7. The date of admission and, if applicable, the date of discharge;
  8. Names of the admitting medical staff member and medical practitioners coordinating the patient's care;
  9. If applicable, the name and contact information of the patient's representative and:
    - a. If the patient is 18 years of age or older or an emancipated minor, the document signed by the patient consenting for the patient's representative to act on the patient's behalf; or
    - b. If the patient'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;
  10. Orders;
  11. Care plans;
  12. Documentation of hospital services provided to the patient;
  13. Progress notes;
  14. The disposition of the patient after discharge;
  15. Discharge planning, including discharge instructions required in R9-10-209(B)(3);
  16. A discharge summary; and
  17. If applicable:
    - a. A laboratory report,
    - b. A pathology report,
    - c. An autopsy report,
    - d. A radiologic report,
    - e. A diagnostic imaging report,
    - f. Documentation of restraint or seclusion, and
    - g. A consultation report.

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2. If necessary for treatment, medication information that includes:
    - a. A medication ordered for the patient; and
    - b. A medication administered to the patient including:
      - i. The date and time of administration;
      - ii. The name, strength, dosage, amount, and route of administration;
      - iii. The identification and authentication of the individual administering the medication; and
      - iv. Any adverse reaction the patient has to the medication;
  3. Documentation of general and, if applicable, informed consent for treatment by the patient or the patient's representative, except in an emergency;
  4. An admitting diagnosis or reason for outpatient medical services;
  5. Orders;
  6. Documentation of hospital services provided to the patient; and
  7. If applicable:
    - a. A laboratory report,
    - b. A pathology report,
    - c. An autopsy report,
    - d. A radiologic report,
    - e. A diagnostic imaging report,
    - f. Documentation of restraint or seclusion, and
    - g. A consultation report.
- E.** In addition to the requirements in subsection (D), an administrator shall ensure that the hospital's record of emergency services provided to a patient contains:
1. Documentation of treatment the patient received before arrival at the hospital, if available;
  2. The patient's medical history;
  3. An assessment, including the name of the individual performing the assessment;
  4. The patient's chief complaint;
  5. The name of the individual who treated the patient in the emergency room, if applicable; and
  6. The disposition of the patient after discharge.

**Historical Note**

Former Section R9-10-213 renumbered as R9-10-313 as an emergency effective February 23, 1979, new Section R9-10-213 adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Section R9-10-213 renumbered to R9-10-211; new Section R9-10-213 renumbered from R9-10-228 and amended 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).

**R9-10-214. Nursing Services**

- A.** An administrator shall ensure that:
1. Nursing services are provided 24 hours a day, and
  2. A nurse executive is appointed who is qualified according to policies and procedures.
- B.** A nurse executive shall designate a registered nurse who is present on the hospital's premises to be accountable for managing the nursing services when the nurse executive is not present in the hospital.
- C.** A nurse executive shall ensure that:
1. Policies and procedures for nursing services are established, documented, and implemented;

2. An acuity plan is established, documented, and implemented that includes:
  - a. A method that establishes the types and numbers of nursing personnel that are required for each unit in the hospital;
  - b. An assessment of a patient's need for nursing services made by a registered nurse providing nursing services directly to the patient; and
  - c. A policy and procedure stating the steps a hospital will take to:
    - i. Obtain the necessary nursing personnel to meet patient acuity, and
    - ii. Make assignments for patient care according to the acuity plan;
3. Registered nurses, including registered nurses providing nursing services directly to a patient, are knowledgeable about the acuity plan and implement the acuity plan established under subsection (C)(2);
4. If licensed capacity in an organized service is exceeded or patients are kept in areas without licensed beds, nursing personnel are assigned according to the specific rules for the organized service in this Chapter;
5. There is at least one registered nurse on the hospital's premises whether or not there is a patient;
6. A general hospital has at least two registered nurses on the general hospital's premises when there is more than one patient;
7. A special hospital offering emergency services or obstetrical services has at least two registered nurses on the special hospital's premises when there is more than one patient;
8. A special hospital not offering emergency services or obstetrical services has at least one registered nurse and one other nurse on the special hospital's premises when there is more than one patient;
9. A rural general hospital with more than one patient has at least one registered nurse and at least one other nursing personnel member on the rural general hospital's premises. If there is only one registered nurse on the rural general hospital's premises, an additional registered nurse is on-call who is able to be present on the rural general hospital's premises within 15 minutes after being called;
10. If a hospital has a patient in a unit, there is at least one registered nurse present in the unit;
11. If a hospital has more than one patient in a unit, there is at least one registered nurse and one additional nursing personnel member present in the unit;
12. At least one registered nurse is present and accountable for the nursing services provided to a patient:
  - a. During the delivery of a neonate,
  - b. In an operating room, and
  - c. In a post-anesthesia care unit;
13. Nursing personnel work schedules are planned, reviewed, adjusted, and documented to meet patient needs and emergencies;
14. A registered nurse assesses, plans, directs, and evaluates nursing services provided to a patient;
15. There is a care plan for each inpatient based on the inpatient's need for nursing services; and
16. Nursing personnel document nursing services in a patient's medical record.

**Historical Note**

Former Section R9-10-214 renumbered as R9-10-314 as an emergency effective February 22, 1979, new Section R9-10-214 adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final

rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-214 renumbered to R9-10-215; new Section R9-10-214 renumbered from R9-10-208 and amended 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).

#### **R9-10-215. Surgical Services**

An administrator of a general hospital shall ensure that:

1. There is an organized service that provides surgical services under the direction of a medical staff member;
2. There is a designated area for providing surgical services as an organized service;
3. The area of the hospital designated for surgical services is managed by a registered nurse or a physician;
4. Documentation is available in the surgical services area that specifies each medical staff member's clinical privileges to perform surgical procedures in the surgical services area;
5. Postoperative orders are documented in the patient's medical record;
6. There is a chronological log of surgical procedures performed in the surgical services area that contains:
  - a. The date of the surgical procedure,
  - b. The patient's name,
  - c. The type of surgical procedure,
  - d. The time in and time out of the operating room,
  - e. The name and title of each individual performing or assisting in the surgical procedure,
  - f. The type of anesthesia used,
  - g. An identification of the operating room used, and
  - h. The disposition of the patient after the surgical procedure;
7. The chronological log required in subsection (A)(6) is maintained in the surgical services area for at least 12 months after the date of the surgical procedure and then maintained by the hospital for an additional 12 months;
8. The medical staff designate in writing the surgical procedures that may be performed in areas other than the surgical services area;
9. The hospital has the medical staff members, personnel members, and equipment to provide the surgical procedures offered in the surgical services area;
10. A patient and the surgical procedure to be performed on the patient are identified before initiating the surgical procedure;
11. Except in an emergency, a medical staff member or a surgeon performs a medical history and physical examination within 30 calendar days before performing a surgical procedure on a patient;
12. Except in an emergency, a medical staff member or a surgeon enters an interval note in the patient's medical record before performing a surgical procedure;
13. Except in an emergency, the following are documented in a patient's medical record before a surgical procedure:
  - a. A preoperative diagnosis;
  - b. Each diagnostic test performed in the hospital;
  - c. A medical history and physical examination as required in subsection (A)(11) and an interval note as required in subsection (A)(12);
  - d. A consent or refusal for blood or blood products signed by the patient or the patient's representative, if applicable; and
  - e. Informed consent according to policies and procedures; and

14. Within 24 hours after a surgical procedure on a patient is completed.

#### **Historical Note**

Former Section R9-10-215 renumbered as R9-10-315 as an emergency effective February 22, 1979, new Section R9-10-215 adopted effective February 23, 1979 (Supp. 79-1). Amended subsection (D) effective August 31, 1988 (Supp. 88-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-215 renumbered to R9-10-216; new Section R9-10-215 renumbered from R9-10-214 and amended 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).

#### **R9-10-216. Anesthesia Services**

An administrator shall ensure that:

1. Anesthesia services provided in conjunction with surgical services performed in the operating room are provided as an organized service under the direction of a medical staff member;
2. Documentation is available in the surgical services area that specifies the medical staff member's clinical privileges to administer anesthesia;
3. Except in an emergency, an anesthesiologist or a nurse anesthetist performs a pre-anesthesia evaluation within 48 hours before anesthesia is administered in conjunction with surgical services;
4. Anesthesia administration is documented in a patient's medical record and includes:
  - a. A pre-anesthesia evaluation, if applicable;
  - b. An intra-operative anesthesia record;
  - c. The postoperative status of the patient upon leaving the operating room; and
  - d. Post-anesthesia documentation by the individual performing the post-anesthesia evaluation that includes the information required by the medical staff bylaws and medical staff regulations; and
5. A registered nurse or a physician documents resuscitative measures in the patient's medical record.

#### **Historical Note**

Adopted as an emergency effective April 2, 1976 (Supp. 76-2). Adopted effective August 25, 1977 (Supp. 77-4). Former Section R9-10-216 renumbered as R9-10-316 as an emergency effective February 22, 1979, new Section R9-10-216 adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-216 renumbered to R9-10-217; new Section R9-10-216 renumbered from R9-10-215 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

#### **R9-10-217. Emergency Services**

- A.** An administrator of a general hospital or a rural general hospital shall ensure that:
1. Emergency services are provided 24 hours a day in a designated area of the hospital;
  2. Emergency services are provided as an organized service under the direction of a medical staff member;
  3. The scope and extent of emergency services offered are documented in the hospital's scope of services;

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4. Emergency services are provided to an individual, including a woman in active labor, requesting emergency services;
  5. If emergency services cannot be provided at the hospital to meet the needs of a patient in an emergency, measures and procedures are implemented to minimize risk to the patient until the patient is transported or transferred to another hospital;
  6. A roster of on-call medical staff members is available in the emergency services area;
  7. There is a chronological log of emergency services provided to patients that includes:
    - a. The patient's name;
    - b. The date, time, and mode of arrival; and
    - c. The disposition of the patient including discharge, transfer, or admission; and
  8. The chronological log required in subsection (A)(7) is maintained:
    - a. In the emergency services area for at least 12 months after the date of the emergency services; and
    - b. By the hospital for at least an additional four years.
- B.** An administrator of a special hospital that provides emergency services shall comply with subsection (A).
- C.** An administrator of a hospital that provides emergency services, but does not provide perinatal organized services, shall ensure that emergency perinatal services are provided within the hospital's capabilities to meet the needs of a patient and a neonate, including the capability to deliver a neonate and to keep the neonate warm until transfer to a hospital providing perinatal organized services.
- D.** An administrator of a hospital that provides emergency services shall ensure that a room used for seclusion in a designated area of the hospital used for providing emergency services, complies with applicable physical plant health and safety codes and standards for seclusion rooms, incorporated by reference in A.A.C. R9-1-412.

**Historical Note**

Adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-217 renumbered to R9-10-218; new Section R9-10-217 renumbered from R9-10-216 and amended 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).

**R9-10-218. Pharmaceutical Services**

An administrator shall ensure that:

1. Pharmaceutical services are provided under the direction of a pharmacist according to A.R.S. Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23;
2. A copy of the pharmacy license is provided to the Department for review upon the Department's request;
3. A committee, composed of at least one physician, one pharmacist, and other personnel members as determined by policies and procedures, is established to:
  - a. Develop a drug formulary,
  - b. Update the drug formulary at least once every 12 months,
  - c. Develop medication usage and medication substitution policies and procedures, and
  - d. Specify which medications and medication classifications are required to be automatically stopped after a specified time period unless the ordering medical staff member specifically orders otherwise;

4. An expired, mislabeled, or unusable medication is disposed of according to policies and procedures;
5. A medication administration error or an adverse reaction is reported to the ordering medical staff member or the medical staff member's designee;
6. A pharmacy medication dispensing error is reported to the pharmacist;
7. In a pharmacist's absence, personnel members designated by policies and procedures have access to a locked area containing a medication;
8. A medication is maintained at temperatures recommended by the manufacturer;
9. A cart used for an emergency:
  - a. Contains medication, supplies, and equipment as specified in policies and procedures;
  - b. Is available to a unit; and
  - c. Is sealed until opened in an emergency;
10. Emergency cart contents and sealing of the emergency cart are verified and documented according to policies and procedures;
11. Policies and procedures specify individuals who may:
  - a. Order medication, and
  - b. Administer medication;
12. A medication is administered in compliance with an order;
13. A medication administered to a patient is documented as required in R9-10-213;
14. If pain medication is administered to a patient, documentation in the patient's medical record includes:
  - a. An assessment of the patient's pain before administering the medication, and
  - b. The effect of the pain medication administered; and
15. Policies and procedures specify a process for review through the quality management program of:
  - a. A medication administration error,
  - b. An adverse reaction to a medication, and
  - c. A pharmacy medication dispensing error.

**Historical Note**

Adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Section R9-10-218 renumbered to R9-10-219; new Section R9-10-218 renumbered from R9-10-217 and amended 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).

**R9-10-219. Clinical Laboratory Services and Pathology Services**

An administrator shall ensure that:

1. Clinical laboratory services and pathology services are provided by a hospital through 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;
2. A copy of the certificate of accreditation or compliance in subsection (1) is provided to the Department for review upon the Department's request;
3. A general hospital or a rural general hospital provides clinical laboratory services 24 hours a day on the hospital's premises to meet the needs of a patient in an emergency;

4. A special hospital whose patients require clinical laboratory services:
  - a. Is able to provide clinical laboratory services when needed by the patients,
  - b. Obtains specimens for clinical laboratory services without transporting the patients from the special hospital's premises, and
  - c. Has the examination of the specimens performed by a clinical laboratory on the special hospital's premises or by arrangement with a clinical laboratory not on the special hospital's premises;
5. A hospital that provides clinical laboratory services 24 hours a day has on duty or on-call laboratory personnel authorized by policies and procedures to perform testing;
6. A hospital that offers surgical services provides pathology services on the hospital's premises or by contracted service to meet the needs of a patient;
7. Clinical laboratory and pathology test results are:
  - a. Available to the medical staff:
    - i. Within 24 hours after the test is completed if the test is performed at a laboratory on the hospital's premises, or
    - ii. Within 24 hours after the test result is received if the test is performed at a laboratory not on the hospital's premises; and
  - b. Documented in a patient's medical record;
8. If a test result is obtained that indicates a patient may have an emergency medical condition, as established by medical staff, laboratory personnel notify the ordering medical staff member or a registered nurse in the patient's assigned unit;
9. If a clinical laboratory report, a pathology report, or an autopsy report is completed on a patient, a copy of the report is included in the patient's medical record;
10. Policies and procedures are established, documented, and implemented for:
  - a. Procuring, storing, transfusing, and disposing of blood and 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;
11. If blood and blood products are provided by contract, the contract includes:
  - a. The availability of blood and blood products from the contractor, and
  - b. The process for delivery of blood and blood products from the contractor; and
12. Expired laboratory supplies are discarded according to policies and procedures.

#### Historical Note

Adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Section R9-10-219 renumbered to R9-10-220; new Section R9-10-219 renumbered from R9-10-218 and amended 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).

#### R9-10-220. Radiology Services and Diagnostic Imaging Services

- A.** 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 provided to the Department for review upon the Department's request;
  3. A general hospital or a rural general hospital provides radiology services 24 hours a day on the hospital's premises to meet the emergency needs of a patient;
  4. A hospital that provides surgical services has radiology services and diagnostic imaging services on the hospital's premises to meet the needs of patients;
  5. A general hospital or a rural general hospital has a radiologic technologist on duty or on-call; and
  6. Except as provided in subsection (A)(4), a special hospital whose patients require radiology services and diagnostic imaging services is able to provide the radiology services and diagnostic imaging services when needed by the patients:
    - a. On the special hospital's premises, or
    - b. By arrangement with a radiology and diagnostic imaging facility that is not on the special hospital's premises.
- B.** An administrator of a hospital that provides radiology services or diagnostic imaging services on the hospital's premises shall ensure that:
1. Radiology services and diagnostic imaging services are provided:
    - a. Under the direction of a medical staff member; and
    - b. According to an order that includes:
      - i. The patient's name,
      - ii. The name of the ordering individual,
      - iii. The radiological or diagnostic imaging procedure ordered, and
      - iv. The reason for the procedure;
  2. A medical staff member or radiologist interprets the radiologic or diagnostic image;
  3. A radiologic or diagnostic imaging patient report is prepared that includes:
    - a. The patient's name;
    - b. The date of the procedure;
    - c. A medical staff member's or radiologist's interpretation of the image;
    - d. The type and amount of radiopharmaceutical used, if applicable; and
    - e. The adverse reaction to the radiopharmaceutical, if any; and
  4. A radiologic or diagnostic imaging report is included in the patient's medical record.

#### Historical Note

Adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Section R9-10-220 renumbered from R9-10-221; new Section R9-10-220 renumbered from R9-10-219 and amended 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).

**R9-10-221. Intensive Care Services**

Except for a special hospital that provides only psychiatric services, an administrator of a hospital that provides intensive care services shall ensure that:

1. Intensive care services are provided as an organized service in a designated area under the direction of a medical staff member;
2. An inpatient admitted for intensive care services is personally visited by a physician at least once every 24 hours;
3. Admission and discharge criteria for intensive care services are established;
4. A personnel member's responsibilities for initiation of medical services in an emergency to a patient in an intensive care unit pending the arrival of a medical staff member are established and documented in policies and procedures;
5. In addition to the requirements in R9-10-214(C), an intensive care unit is staffed:
  - a. With at least one registered nurse assigned for every two patients, and
  - b. According to an acuity plan as required in R9-10-214;
6. Each intensive care unit has a policy and procedure that provides for meeting the needs of the patients;
7. If the medical services of an intensive care patient are reduced to a lesser level of care in the hospital, but the patient is not physically relocated, the nurse to patient ratio is based on the needs of the patient;
8. Private duty staff do not provide hospital services in an intensive care unit;
9. At least one registered nurse assigned to a patient in an intensive care unit is certified in advanced cardiac life support specific to the age of the patient;
10. Resuscitation, emergency, and other equipment are available to meet the needs of a patient including:
  - a. Ventilatory assistance equipment,
  - b. Respiratory and cardiac monitoring equipment,
  - c. Suction equipment,
  - d. Portable radiologic equipment, and
  - e. A patient weighing device for patients restricted to a bed; and
11. An intensive care unit has at least one emergency cart that is maintained according to R9-10-218.

**Historical Note**

Former Section R9-10-221 renumbered as R9-10-317 as an emergency effective February 22, 1979, new Section R9-10-221 adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-221 renumbered to R9-10-222; new Section R9-10-221 renumbered from R9-10-220 and amended 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).

**R9-10-222. Respiratory Care Services**

An administrator of a hospital that provides respiratory care services shall ensure that:

1. Respiratory care services are provided under the direction of a medical staff member;
2. Respiratory care services are provided according to an order that includes:
  - a. The patient'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 patient are documented in the patient's medical record and include:
    - a. The date and time of administration;
    - b. The type of respiratory care services;
    - c. The effect of respiratory care services;
    - d. If applicable, any adverse reaction to respiratory care services; 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 R9-10-219.

**Historical Note**

Former Section R9-10-222 renumbered as R9-10-318 as an emergency effective February 22, 1979, new Section R9-10-222 adopted effective February 23, 1979 (Supp. 79-1). Correction, subsection (D)(3) reference to paragraph (E)(2) should read subsection (D)(2). (Supp. 79-6). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Section R9-10-222 renumbered to R9-10-223; new Section R9-10-222 renumbered from R9-10-221 and amended 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).

**R9-10-223. Perinatal Services**

- A. An administrator of a hospital that provides perinatal organized services shall ensure that:
1. Perinatal services are provided in a designated area under the direction of a medical staff member;
  2. Only medical and surgical procedures approved by the medical staff are performed in the perinatal services unit;
  3. The perinatal services unit has the capability to initiate an emergency cesarean delivery within the time-frame established by the medical staff and documented in policies and procedures;
  4. Only a patient in need of perinatal services or gynecological services receives perinatal services or gynecological services in the perinatal services unit;
  5. A patient receiving gynecological services does not share a room with a patient receiving perinatal services;
  6. A chronological log of perinatal services provided to patients is maintained that includes:
    - a. The patient's name;
    - b. The date, time, and mode of the patient's arrival;
    - c. The disposition of the patient including discharge, transfer, or admission time; and
    - d. The following information for a delivery of a neonate:
      - i. The neonate's name or other identifier;
      - ii. The name of the medical staff member who delivered the neonate;
      - iii. The delivery time and date; and
      - iv. Complications of delivery, if any;
  7. The chronological log required in subsection (A)(6) is maintained by the hospital in the perinatal services unit

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for at least 12 months after the date the perinatal services are provided and then maintained by the hospital for at least an additional 12 months;

8. The perinatal services unit provides fetal monitoring;
  9. The perinatal services unit has ultrasound capability;
  10. Except in an emergency, a neonate is identified as required by policies and procedures before moving the neonate from a delivery area;
  11. Policies and procedures specify:
    - a. Security measures to prevent neonatal abduction, and
    - b. How the hospital determines to whom a neonate may be discharged;
  12. A neonate is discharged only to an individual who:
    - a. Is authorized according to subsection (A)(11), and
    - b. Provides identification;
  13. A neonate's medical record identifies the individual to whom the neonate is discharged;
  14. A patient or the individual to whom the neonate is discharged receives perinatal education, discharge instructions, and a referral for follow-up care for a neonate in addition to the discharge planning requirements in R9-10-209;
  15. Intensive care services for neonates comply with the requirements in R9-10-221;
  16. At least one registered nurse is on duty in a nursery when there is a neonate in the nursery except as provided in subsection (A)(17);
  17. A nursery occupied only by a neonate, who is placed in the nursery for the convenience of the neonate's mother and does not require treatment as established in this Article, is staffed by a nurse;
  18. Equipment and supplies are available to a nursery, labor-delivery-recovery room, or labor-delivery-recovery-postpartum room to meet the needs of each neonate; and
  19. In a nursery, only a neonate's bed or bassinet is used for changing diapers, bathing, or dressing the neonate.
- B.** An administrator of a hospital that does not provide perinatal organized services shall comply with the requirements in R9-10-217(C).

#### Historical Note

Former Section R9-10-223 renumbered as R9-10-319 as an emergency effective February 22, 1979, new Section R9-10-223 adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-223 renumbered to R9-10-224; new Section R9-10-223 renumbered from R9-10-222 and amended 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).

#### R9-10-224. Pediatric Services

- A.** An administrator of a hospital that provides pediatric services or organized pediatric services according to the requirements in this Section shall ensure that:
1. Consistent with the health and safety of a pediatric patient, arrangements are made for a parent or a guardian of the pediatric patient to stay overnight;
  2. Policies and procedures are established, documented, and implemented for:
    - a. Infection control for shared toys, books, stuffed animals, and other items in a community playroom; and
    - b. Visitation of a pediatric patient, including age limits if applicable;
- 3.** A pediatric inpatient is only admitted if the hospital has the staff, equipment, and supplies available to meet the needs of the pediatric patient based on the pediatric patient's medical condition and the hospital's scope of services; and
- 4.** If the hospital provides pediatric intensive care services, the pediatric intensive care services comply with intensive care services requirements in R9-10-221.
- B.** An administrator of a hospital that provides pediatric organized services shall ensure that pediatric services are provided in a designated area under the direction of a medical staff member.
- C.** An administrator shall ensure that in a multi-organized service unit or a patient care unit that is providing medical and nursing services to an adult patient and a pediatric patient according to this Section:
1. A pediatric patient is not placed in a patient room with an adult patient, and
  2. A medication for a pediatric patient that is stored in the patient care unit is stored separately from a medication for an adult patient.
- D.** Except as provided in subsections (F) and (G), an administrator of a hospital that does not provide pediatric organized services may admit a pediatric inpatient only in an emergency.
- E.** A hospital may use a bed in a pediatric organized services patient care unit for an adult patient if an administrator establishes, documents, and implements policies and procedures that:
1. Delineate the specific conditions under which an adult patient is placed in a bed in the pediatric organized services unit, and
  2. Except as provided in subsection (H) and (I), ensure that an adult patient is:
    - a. Not placed in a pediatric organized services patient care unit if a pediatric patient is admitted to and present in the pediatric organized services patient care unit, and
    - b. Transferred out of the pediatric organized services patient care unit to an appropriate level of care when a pediatric patient is admitted to the pediatric organized services patient care unit.
- F.** Subsection (G) only applies to a general hospital or rural general hospital that:
1. Does not provide pediatric organized services;
  2. Has designated in the general hospital's or rural general hospital's scope of services, inpatient services that are available to a pediatric patient;
  3. Has a licensed capacity of less than 100; and
  4. Is located in a county with a population of less than 500,000.
- G.** An administrator of a general hospital or rural general hospital that meets the criteria in subsection (F) shall ensure that:
1. There are pediatric-appropriate equipment and supplies available based on the hospital services designated for pediatric patients in the general hospital or rural general hospital's scope of services; and
  2. Personnel members that are or may be assigned to provide hospital services to a pediatric patient have the appropriate skills and knowledge for providing hospital services to a pediatric patient based on the general hospital's or rural general hospital's scope of services.
- H.** Subsection (I) only applies to a general hospital or a rural general hospital that:

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1. Provides organized pediatric services in a patient care unit;
  2. Has designated in the general hospital's or rural general hospital's scope of services, inpatient services that are available to an adult patient in an organized pediatric services patient care unit;
  3. Has a licensed capacity of less than 100; and
  4. Is located in a county with a population of less than 500,000.
- I. An administrator of a general hospital or rural general hospital that meets the criteria in subsection (H) shall comply with the requirements in subsection (E)(1).

**Historical Note**

Adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by exempt rulemaking at 18 A.A.R. 1719, effective June 30, 2012 (Supp. 12-2). Section R9-10-224 renumbered to R9-10-225; new Section R9-10-224 renumbered from R9-10-223 and amended 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).

**R9-10-225. Psychiatric Services**

- A. An administrator of a hospital that contains an organized psychiatric services unit or a special hospital licensed to provide psychiatric services shall ensure that in the organized psychiatric unit or special hospital:
1. Psychiatric services are provided under the direction of a medical staff member;
  2. An inpatient admitted to the organized psychiatric services unit or special hospital has a principal diagnosis of a mental disorder, a personality disorder, substance abuse, or a significant psychological or behavioral response to an identifiable stressor;
  3. Except in an emergency, a patient receives a nursing assessment before treatment for the patient is initiated;
  4. An individual whose medical needs cannot be met while the individual is an inpatient in an organized psychiatric services unit or a special hospital is not admitted to or is transferred out of the organized psychiatric services unit or special hospital;
  5. Policies and procedures for the organized psychiatric services unit or special hospital are established, documented, and implemented that:
    - a. Establish qualifications for medical staff members and personnel members who provide clinical oversight to behavioral health technicians;
    - b. Establish the process for patient assessment, including identification of a patient's medical conditions and criteria for the on-going monitoring of any identified medical condition;
    - c. Establish the process for developing and implementing a patient's care plan including:
      - i. Obtaining the patient's or the patient's representative's participation in the development of the patient's care plan;
      - ii. Ensuring that the patient is informed of the modality, frequency, and duration of any treatments that are included in the patient's care plan;
      - iii. Informing the patient that the patient has the right to refuse any treatment;
- iv. Updating the patient's care plan and informing the patient of any changes to the patient's care plan; and
  - v. Documenting the actions in subsection (A)(5)(c)(i) through (iv) in the patient's medical record;
- d. Establish the process for warning an identified or identifiable individual, as described in A.R.S. § 36-517.02 (B) through (C), if a patient communicates to a medical staff member or personnel member a threat of imminent serious physical harm or death to the individual and the patient has the apparent intent and ability to carry out the threat;
- e. Establish the criteria for determining when an inpatient's absence is unauthorized, including whether the inpatient:
- i. Was admitted under A.R.S. Title 36, Chapter 5, Articles 1, 2, or 3;
  - ii. Is absent against medical advice; or
  - iii. Is under 18 years of age;
- f. Identify each type of restraint and seclusion used in the organized psychiatric services unit or special hospital and include for each type of restraint and seclusion used:
- i. The qualifications of a medical staff member or personnel member who can:
    - (1) Order the restraint or seclusion,
    - (2) Place a patient in the restraint or seclusion,
    - (3) Monitor a patient in the restraint or seclusion,
    - (4) Evaluate a patient's physical and psychological well-being after being placed in the restraint or seclusion and when released from the restraint or seclusion, or
    - (5) Renew the order for restraint or seclusion;
  - ii. On-going training requirements for a medical staff member or personnel member who has direct patient contact while the patient is in a restraint or in seclusion; and
  - iii. Criteria for monitoring and assessing a patient including:
    - (1) Frequencies of monitoring and assessment based on a patient's condition, cognitive status, situational factors, and risks associated with the specific restraint or seclusion;
    - (2) For the renewal of an order for restraint or seclusion, whether an assessment is required before the order is renewed and, if an assessment is required, who may conduct the assessment;
    - (3) Assessment content, which may include, depending on a patient's condition, the patient's vital signs, respiration, circulation, hydration needs, elimination needs, level of distress and agitation, mental status, cognitive functioning, neurological functioning, and skin integrity;
    - (4) If a mechanical restraint is used, how often the mechanical restraint is monitored or loosened; and
    - (5) A process for meeting a patient's nutritional needs and elimination needs;
- g. Establish the criteria and procedures for renewing an order for restraint or seclusion;

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- h. Establish procedures for internal review of the use of restraint or seclusion;
  - i. Establish requirements for notifying the parent or guardian of a patient who is under 18 years of age and who is restrained or secluded; and
  - j. Establish medical record and personnel record documentation requirements for restraint and seclusion, if applicable;
6. If time out is used in the organized psychiatric services unit or special hospital, a time out:
- a. Takes place in an area that is unlocked, lighted, quiet, and private;
  - b. Does not take place in the room approved for seclusion by the Department under R9-10-104;
  - c. Is time-limited and does not exceed two hours per incident or four hours per day;
  - d. Does not result in a patient's missing a meal if the patient is in time out at mealtime;
  - e. Includes monitoring of the patient by a medical staff member or personnel member at least once every 15 minutes to ensure the patient's health, safety, and welfare and to determine if the patient is ready to leave time out; and
  - f. Is documented in the patient's medical record, to include:
    - i. The date of the time out,
    - ii. The reason for the time out,
    - iii. The duration of the time out, and
    - iv. The action planned and taken to address the reason for the time out;
7. Restraint or seclusion is:
- a. Not used as a means of coercion, discipline, convenience, or retaliation;
  - b. Only used when all of the following conditions are met:
    - i. Except as provided in subsection (A)(8), after obtaining an order for the restraint or seclusion;
    - ii. For the management of a patient's aggressive, violent, or self-destructive behavior;
    - iii. When less restrictive interventions have been determined to be ineffective; and
    - iv. To ensure the immediate physical safety of the patient, to prevent imminent harm to the patient or another individual, or to stop physical harm to another individual; and
  - c. Discontinued at the earliest possible time;
8. If as a result of a patient's aggressive, violent, or self-destructive behavior, harm to the patient or another individual is imminent or the patient or another individual is being physically harmed, a personnel member:
- a. May initiate an emergency application of restraint or seclusion for the patient before obtaining an order for the restraint or seclusion, and
  - b. Obtains an order for the restraint or seclusion of the patient during the emergency application of the restraint or seclusion;
9. Restraint or seclusion is:
- a. Only ordered by a physician or a registered nurse practitioner, and
  - b. Not written as a standing order or on an as-needed basis;
10. An order for restraint or seclusion includes:
- a. The name of the individual ordering the restraint or seclusion;
  - b. The date and time that the restraint or seclusion was ordered;
  - c. The specific restraint or seclusion ordered;
  - d. If a drug is ordered as a chemical restraint, the drug's name, strength, dosage, and route of administration;
  - e. The specific criteria for release from restraint or seclusion without an additional order; and
  - f. The maximum duration authorized for the restraint or seclusion;
11. An order for restraint or seclusion is limited to the duration of the emergency situation and does not exceed:
- a. Four continuous hours for a patient who is 18 years of age or older,
  - b. Two continuous hours for a patient who is between the ages of nine and 17 years of age, or
  - c. One continuous hour for a patient who is younger than nine years of age;
12. If restraint and seclusion are used on a patient simultaneously, the patient receives continuous:
- a. Face-to-face monitoring by a medical staff member or personnel member, or
  - b. Video and audio monitoring by a medical staff member or personnel member who is in close proximity to the patient;
13. If an order for restraint or seclusion of a patient is not provided by a medical practitioner coordinating the patient's medical services, the medical practitioner is notified as soon as possible;
14. A medical staff member or personnel member does not participate in restraint or seclusion, monitor a patient during restraint or seclusion, or evaluate a patient after restraint or seclusion until the medical staff member or personnel member completes education and training that:
- a. Includes:
    - i. Techniques to identify medical staff member, personnel member, and patient behaviors; events; and environmental factors that may trigger circumstances that require restraint or seclusion;
    - ii. The use of nonphysical intervention skills, such as de-escalation, mediation, conflict resolution, active listening, and verbal and observational methods;
    - iii. Techniques for identifying the least restrictive intervention based on an assessment of the patient's medical or behavioral health condition;
    - iv. The safe use of restraint and the safe use of seclusion, including training in how to recognize and respond to signs of physical and psychological distress in a patient who is restrained or secluded;
    - v. Clinical identification of specific behavioral changes that indicate that the restraint or seclusion is no longer necessary;
    - vi. Monitoring and assessing a patient while the patient is in restraint or seclusion according to policies and procedures; and
    - vii. Training exercises in which medical staff members and personnel members successfully demonstrate the techniques that the medical staff members and personnel members have learned for managing emergency situations; and
  - b. Is provided by individuals qualified according to policies and procedures;
15. When a patient is placed in restraint or seclusion:

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- a. The restraint or seclusion is conducted according to policies and procedures;
  - b. The restraint or seclusion is proportionate and appropriate to the severity of the patient's behavior and the patient's:
    - i. Chronological and developmental age;
    - ii. Size;
    - iii. Gender;
    - iv. Physical condition;
    - v. Medical condition;
    - vi. Psychiatric condition; and
    - vii. Personal history, including any history of physical or sexual abuse;
  - c. The physician or registered nurse practitioner who ordered the restraint or seclusion is available for consultation throughout the duration of the restraint or seclusion;
  - d. A patient is monitored and assessed according to policies and procedures;
  - e. A physician or other health professional authorized by policies and procedures assesses the patient within one hour after the patient is placed in the restraint or seclusion and determines:
    - i. The patient's current behavior,
    - ii. The patient's reaction to the restraint or seclusion used,
    - iii. The patient's medical and behavioral condition, and
    - iv. Whether to continue or terminate the restraint or seclusion;
  - f. The patient is given the opportunity:
    - i. To eat during mealtime, and
    - ii. To use the toilet; and
  - g. The restraint or seclusion is discontinued at the earliest possible time, regardless of the length of time identified in the order;
16. If a patient is placed in seclusion, the room used for seclusion:
- a. Is approved for use as a seclusion room by the Department under R9-10-104;
  - b. Is not used as a patient's bedroom or a sleeping area;
  - c. Allows full view of the patient in all areas of the room;
  - d. Is free of hazards, such as unprotected light fixtures or electrical outlets;
  - e. Contains at least 60 square feet of floor space; and
  - f. Except as provided in subsection (A)(17), contains a non-adjustable bed that:
    - i. Consists of a mattress on a solid platform that is:
      - (1) Constructed of a durable, non-hazardous material; and
      - (2) Raised off of the floor;
    - ii. Does not have wire springs or a storage drawer; and
    - iii. Is securely anchored in place;
17. If a room used for seclusion does not contain a non-adjustable bed required in subsection (A)(16)(f):
- a. A piece of equipment is available for use in the room used for seclusion that:
    - i. Is commercially manufactured to safely and humanely restrain a patient's body;
    - ii. Provides support to the trunk and head of a patient's body;
    - iii. Provides restraint to the trunk of a patient's body;
    - iv. Is able to restrict movement of a patient's arms, legs, trunk, and head;
    - v. Allows a patient's body to recline; and
    - vi. Does not inflict harm on a patient's body; and
  - b. Documentation of the manufacturer's specifications for the piece of equipment in subsection (A)(17)(a) is maintained;
18. A seclusion room may be used for services or activities other than seclusion if:
- a. A sign stating the service or activity scheduled or being provided in the room is conspicuously posted outside the room;
  - b. No permanent equipment other than the bed required in subsection (A)(16)(f) is in the room;
  - c. Policies and procedures are established, documented, and implemented that:
    - i. Delineate which services or activities other than seclusion may be provided in the room,
    - ii. List what types of equipment or supplies may be placed in the room for the delineated services, and
    - iii. Provide for the prompt removal of equipment and supplies from the room before the room is used for seclusion; and
  - d. The sign required in subsection (A)(18)(a) and equipment and supplies in the room, other than the bed required in subsection (A)(16)(f), are removed before a patient is placed in seclusion in the room;
19. A medical staff member or personnel member documents the following information in a patient's medical record before the end of the shift in which the patient is placed in restraint or seclusion or, if the patient's restraint or seclusion does not end during the shift in which it began, during the shift in which the patient's restraint or seclusion ends:
- a. The emergency situation that required the patient to be restrained or put in seclusion;
  - b. The times the patient's restraint or seclusion actually began and ended;
  - c. The time of the face-to-face assessment required in subsection (A)(12)(a);
  - d. The monitoring required in subsection (A)(12)(b) or (15)(d), as applicable;
  - e. The times the patient was given the opportunity to eat or use the toilet according to subsection (A)(15)(f); and
  - f. The names of the medical staff members and personnel members with direct patient contact while the patient was in the restraint or seclusion; and
20. If an emergency situation continues beyond the time limit of an order for restraint or seclusion, the order is renewed according to policies and procedures.
- B.** An administrator of a hospital that provides opioid treatment services to an outpatient shall comply with the requirements in R9-10-1020.

**Historical Note**

Adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-225 renumbered to R9-10-227; new Section R9-10-225 renumbered from R9-10-224 and amended 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).

**R9-10-226. Behavioral Health Observation/Stabilization Services**

An administrator of a hospital that is authorized to provide behavioral health observation/stabilizations services shall ensure that:

1. Behavioral health observation/stabilization services are provided according to the requirements in R9-10-1012, and
2. Restraint and seclusion are provided according to the requirements for restraint and seclusion in R9-10-225.

**Historical Note**

Adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-226 renumbered to R9-10-229; new Section R9-10-226 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).

**R9-10-227. Rehabilitation Services**

An administrator shall ensure that:

1. If rehabilitation services are provided as an organized service, the rehabilitation services are provided under the direction of an individual qualified according to policies and procedures;
2. Rehabilitation services are provided according to an order; and
3. The medical record of a patient 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 patient's response to the rehabilitation services, and
  - e. The authentication of the individual providing the rehabilitation services.

**Historical Note**

Adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-227 renumbered to R9-10-231; new Section R9-10-227 renumbered from R9-10-225 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

**R9-10-228. Multi-organized Service Unit**

A. A governing authority may designate the following as a multi-organized service unit:

1. An adult unit that provides both intensive care services and medical and nursing services other than intensive care services,
2. A pediatric unit that provides both intensive care services and medical and nursing services other than intensive care services,
3. A unit that provides both perinatal services and intensive care services for obstetrical patients,
4. A unit that provides both intensive care services for neonates and a continuing care nursery, or
5. A unit that provides medical and nursing services to adult and pediatric patients.

B. An administrator shall ensure that:

1. For a patient in a multi-organized service unit, a medical staff member designates in the patient's medical record which organized service is to be provided to the patient;
2. A multi-organized service unit is in compliance with the requirements in this Article that would apply if each organized service were offered as a single organized service unit; and
3. A multi-organized service unit and each bed in the unit are in compliance with physical plant health and safety codes and standards incorporated by reference in A.A.C. R9-1-412 for all organized services provided in the multi-organized service unit.

**Historical Note**

Adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Section R9-10-228 renumbered to R9-10-213; new Section R9-10-228 renumbered from R9-10-234 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

**R9-10-229. Social Services**

An administrator of a hospital that provides social services shall ensure that:

1. A registered nurse or another personnel member designated according to policies and procedures coordinates social services;
2. 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;
3. A medical staff member, nurse, patient, patient's representative, or member of the patient's family may request social services;
4. A personnel member providing social services participates in discharge planning as necessary to meet the needs of a patient;
5. The patient has privacy when communicating with a personnel member providing social services; and
6. Social services provided to a patient are documented in the patient's medical record and the entries are authenticated by the individual providing the social services.

**Historical Note**

Adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-229 renumbered to R9-10-230; new Section R9-10-229 renumbered from R9-10-226 and amended 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).

**R9-10-230. Infection Control**

An administrator shall ensure that:

1. An infection control program that meets the requirements of this Section is established under the direction of an individual qualified according to policies and procedures;
2. An infection control program has a procedure for documenting:
  - a. The collection and analysis of infection control data,
  - b. The actions taken relating to infections and communicable diseases, and
  - c. Reports of communicable diseases to the governing authority and state and county health departments;

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3. Infection control documents are maintained for at least 12 months after the date of the document;
4. Policies and procedures are established, documented, and implemented:
  - a. To prevent or minimize, identify, report, and investigate infections and communicable diseases that include:
    - i. Isolating a patient;
    - ii. Sterilizing equipment and supplies;
    - iii. Maintaining and storing sterile equipment and supplies;
    - iv. Using personal protective equipment such as gowns, masks, or face protection;
    - v. Disposing of biohazardous medical waste; and
    - vi. Moving and processing soiled linens and clothing;
  - b. That specify communicable diseases, medical conditions, or criteria that prevent an individual, a personnel member, or a medical staff member from:
    - i. Working in the hospital,
    - ii. Providing patient care, or
    - iii. Providing environmental services;
  - c. That establish criteria for determining whether a medical staff member is at an increased risk of exposure to infectious tuberculosis based on:
    - i. The level of risk in the area of the hospital premises where the medical staff member practices, and
    - ii. The work that the medical staff member performs; and
  - d. That establish the frequency of tuberculosis screening for an individual determined to be at an increased risk of exposure;
5. Tuberculosis screening is performed:
  - a. As part of a tuberculosis infection control program that complies with the Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-care Settings according to R9-10-113(2); or
  - b. Using a screening method described in R9-10-113(1), as follows:
    - i. For a personnel member, on or before the date the personnel member begins providing services at or on behalf of the hospital and at least once every 12 months thereafter or more frequently if the personnel member is determined to be at an increased risk of exposure based on the criteria in subsection (4)(c);
    - ii. Except as required in subsection (4)(d), for a medical staff member, at least once every 24 months; and
    - iii. For a medical staff member at an increased risk of exposure based on the criteria in subsection (4)(c), at the frequency required by policies and procedures, but no less frequently than once every 24 months;
6. Soiled linen and clothing are:
  - a. Collected in a manner to minimize or prevent contamination,
  - b. Bagged at the site of use, and
  - c. Maintained separate from clean linen and clothing and away from food storage, kitchen, or dining areas;
7. A personnel member washes hands or uses a hand disinfection product after each patient contact and after handling soiled linen, soiled clothing, or potentially infectious material;
8. An infection control committee is established according to policies and procedures and consists of:
  - a. At least one medical staff member,
  - b. The individual directing the infection control program, and
  - c. Other personnel identified in policies and procedures; and
9. The infection control committee:
  - a. Develops a plan for preventing, tracking, and controlling infections;
  - b. Reviews the type and frequency of infections and develops recommendations for improvement;
  - c. Meets and provides a quarterly written report for inclusion by the quality management program; and
  - d. Maintains a record of actions taken and minutes of meetings.

**Historical Note**

Adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-230 renumbered to R9-10-233; new Section R9-10-230 renumbered from R9-10-229 and amended 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).

**R9-10-231. Dietary Services**

An administrator shall ensure that:

1. Dietary services are provided according to 9 A.A.C. 8, Article 1;
2. A copy of the hospital's food establishment license or permit under 9 A.A.C. 8, Article 1, is maintained;
3. For a hospital that contracts with a food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the hospital, a copy of the contracted food establishment's license or permit under 9 A.A.C. 8, Article 1, is maintained;
4. If a hospital contracts with a food establishment to prepare and deliver food to the hospital, the hospital is able to store, refrigerate, and reheat food to meet the dietary needs of a patient;
5. Dietary services are provided under the direction of an individual qualified to direct the provision of dietary services according to policies and procedures;
6. There are personnel members on duty to meet the dietary needs of patients;
7. Personnel members providing dietary services are qualified to provide dietary services according to policies and procedures;
8. A nutrition assessment of a patient is:
  - a. Performed according to policies and procedures, and
  - b. Communicated to the medical practitioner coordinating the patient's medical services if the nutrition assessment reveals a specific dietary need;
9. A medical staff member documents an order for a diet for each patient in the patient's medical record;
10. A current diet manual approved by a registered dietitian is available to personnel members and medical staff members; and
11. A patient's dietary needs are met 24 hours a day.

**Historical Note**

Former Section R9-10-231 renumbered as R9-10-320 as an emergency effective February 22, 1979, new Section R9-10-231 adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final

rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-231 renumbered to R9-10-232; new Section R9-10-231 renumbered from R9-10-227 and amended 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).

### **R9-10-232. Disaster Management**

An administrator shall ensure that:

1. A disaster plan is developed and documented that includes:
  - a. Procedures for protecting the health and safety of patients and other individuals;
  - b. Assigned personnel responsibilities; and
  - c. Instructions for the evacuation, transport, or transfer of patients, maintenance of medical records, and arrangements to provide any other hospital services to meet the patients' needs;
2. A plan exists for back-up power and water supply;
3. A fire drill is performed on each shift at least once every three months;
4. A disaster drill is performed on each shift at least once every 12 months;
5. Documentation of a fire drill required in subsection (3) and a disaster drill required in subsection (4) includes:
  - a. The date and time of the drill;
  - b. A critique of the drill; and
  - c. Recommendations for improvement, if applicable; and
6. Documentation of a fire drill or a disaster drill is maintained by the hospital for at least 12 months after the date of the drill.

#### **Historical Note**

Former Section R9-10-232 renumbered as R9-10-321 as an emergency effective February 22, 1979, new Section R9-10-232 adopted effective February 23, 1979 (Supp. 79-1). Section amended by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-232 renumbered to R9-10-234; new Section R9-10-232 renumbered from R9-10-231 and amended 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).

### **R9-10-233. Environmental Standards**

An administrator shall ensure that:

1. An individual providing environmental services who has the potential to transmit infectious tuberculosis to patients, as determined by the infection control risk assessment criteria in R9-10-230(4)(c), provides evidence of freedom from infectious tuberculosis:
  - a. Using a screening method described in R9-10-113(1), on or before the date the individual begins providing environmental services at or on behalf of the hospital and at least once every 12 months thereafter; or
  - b. According to R9-10-113(2);
2. The hospital premises and equipment are:
  - a. Cleaned and disinfected according to policies and procedures or manufacturer's instructions to prevent, minimize, and control infection or illness; and
  - b. Free from a condition or situation that may cause a patient or other individual to suffer physical injury;
3. A pest control program is implemented and documented;

4. The hospital maintains a tobacco smoke-free environment;
5. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
6. Equipment used to provide hospital services is:
  - a. Maintained in working order;
  - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
  - c. Used according to the manufacturer's recommendations; and
7. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair.

#### **Historical Note**

Former Section R9-10-233 renumbered as R9-10-322 as an emergency effective February 22, 1979, new Section R9-10-233 adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section expired under A.R.S. § 41-1056(E) at 14 A.A.R. 2374, effective February 29, 2008 (Supp. 08-2). New Section R9-10-233 renumbered from R9-10-230 and amended 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).

### **R9-10-234. Physical Plant Standards**

**A.** An administrator shall ensure that:

1. A hospital complies with the applicable physical plant health and safety codes and standards incorporated by reference in A.A.C. R9-1-412 in effect on the date the hospital submitted, according to R9-10-104, an application for an approval of architectural plans and specifications to the Department;
2. A hospital's premises or any part of the hospital premises is not leased to or used by another person;
3. A unit with inpatient beds is not used as a passageway to another health care institution; and
4. A hospital's premises are not licensed as more than one health care institution.

**B.** 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 inspection report, and
3. Maintain documentation of a current fire inspection report.

#### **Historical Note**

New Section made by final rulemaking 14 A.A.R. 4646, effective December 2, 2008 (Supp. 08-4). Section R9-10-234 renumbered to R9-10-228; new Section R9-10-234 renumbered from R9-10-232 and amended 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).

### **R9-10-235. Administrative Separation**

**A.** In addition to the definitions in A.R.S. § 36-401, R9-10-101, and R9-10-201, the following definition applies in this Sec-

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tion: “Administrative separation” means the temporary isolation of a patient for the purpose of preserving the integrity of evidence during the course of a criminal investigation or for a situation where not isolating the patient presents a risk of serious harm to other individuals or a serious risk to the safety or security of a hospital.

- B. Only a hospital established according to A.R.S. § 36-202 may use administrative separation.
- C. An administrator appointed according to A.R.S. § 36-205 shall ensure that:
  - 1. Administrative separation:
    - a. Is only used for a patient admitted to the hospital pursuant to a criminal court order; and
    - b. Is not used:
      - i. In conjunction with a restraint,
      - ii. As a method to manage behaviors, or
      - iii. If prohibited by law; and
  - 2. Policies and procedures are established, documented, and implemented for administrative separation that:
    - a. Include the process and criteria for requesting an administrative separation;
    - b. Include the process and deadlines for approving a request for an administrative separation;
    - c. Cover patient notification of the right to appeal the administrative separation and to file a complaint;
    - d. Include the process for providing a patient access to:
      - i. Incoming mail, and
      - ii. An advocate or legal representative;
    - e. Include the process for providing treatment to a patient while in administrative separation;
    - f. Include the process for establishing investigative goals; and
    - g. Include the process for determining when administrative separation will no longer be used for a patient.

**Historical Note**

New Section R9-10-235 made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**ARTICLE 3. BEHAVIORAL HEALTH INPATIENT FACILITIES**

*Article 3, consisting of Sections R9-10-311 through R9-10-333, repealed at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).*

**R9-10-301. 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:

“Child and adolescent residential treatment services” means behavioral health services and physical health services provided in or by a behavioral health inpatient facility to a patient who is:

- Under 18 years of age, or
- Under 21 years of age and meets the criteria in R9-10-318(B).

**Historical Note**

New Section R9-10-301 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).

**R9-10-302. 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 behavioral health inpatient facility shall include in a Department-pro-

vided format whether the applicant is requesting authorization to provide:

1. Inpatient services to individuals 18 years of age and older, including the licensed capacity requested;
2. Court-ordered pre-petition screening;
3. Court-ordered evaluation;
4. Court-ordered treatment;
5. Behavioral health observation/stabilization services, including the licensed occupancy requested for providing behavioral health observation/stabilization services to individuals:
  - a. Under 18 years of age, and
  - b. 18 years of age and older;
6. Child and adolescent residential treatment services, including the licensed capacity requested;
7. Detoxification services;
8. Seclusion;
9. Clinical laboratory services;
10. Radiology services; or
11. Diagnostic imaging services.

**Historical Note**

New Section R9-10-302 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).

**R9-10-303. Administration**

- A. A governing authority shall:
  1. Consist of one or more individuals responsible for the organization, operation, and administration of a behavioral health inpatient facility;
  2. Establish, in writing:
    - a. A behavioral health inpatient 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 R9-10-304;
  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 the behavioral health inpatient facility’s premises for more than 30 calendar days, or
    - b. Not present on the behavioral health inpatient facility’s premises for more than 30 calendar days; and
  7. Except as provided in subsection (A)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in the administrator and identify the name and qualifications of the new administrator.
- B. An administrator:
  1. Is directly accountable to the governing authority of a behavioral health inpatient facility for the daily operation of the behavioral health inpatient facility and for all services provided by or at the behavioral health inpatient facility;
  2. Has the authority and responsibility to manage the behavioral health inpatient facility; and
  3. Except as provided in subsection (A)(6), designates, in writing, an individual who is present on the behavioral health inpatient facility’s premises and accountable for the behavioral health inpatient facility when the adminis-

### **36-132. Department of health services; functions; contracts**

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- **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**

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- **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. 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. 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.
- **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 H, 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**

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- **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.

### **36-422. Application for license; notification of proposed change in status; joint licenses; definitions**

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- **A.** A person who wishes to apply for a license to operate a health care institution pursuant to this chapter shall submit to the department all of the following:
  - **1.** An application on a written or electronic form that is prescribed, prepared and furnished by the department that contains all of the following:
    - **(a)** The name and location of the health care institution.
    - **(b)** Whether the health care institution is to be operated as a proprietary or nonproprietary institution.
    - **(c)** The name of the governing authority. The applicant shall be the governing authority having the operative ownership of, or the governmental agency charged with the administration of, the health care institution sought to be licensed. If the applicant is a partnership that is not a limited partnership, the partners shall apply jointly, and the partners are jointly the governing authority for purposes of this article.
    - **(d)** The name and business or residential address of each controlling person and an affirmation that none of the controlling persons has been denied a license or certificate by a health profession regulatory board pursuant to title 32 or by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution in this state or another state or has had 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 or a license to operate a health care institution revoked. If a controlling person has been denied a license or certificate by a health profession regulatory board pursuant to title 32 or by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution in this state or another state or has had a health care professional license or a license to operate a health care institution revoked, the controlling person shall include in the application a comprehensive description of the circumstances for the denial or the revocation.

- **(e)** The class or subclass of health care institution to be established or operated.
  - **(f)** The types and extent of the health care services to be provided, including emergency services, community health services and services to indigent patients.
  - **(g)** The name and qualifications of the chief administrative officer implementing direction in that specific health care institution.
  - **(h)** Other pertinent information required by the department for the proper administration of this chapter and department rules.
- **2.** The architectural plans and specifications or the department's approval of the architectural plans and specifications required by section 36-421, subsection A.
- **3.** The applicable application fee.
- **B.** An application submitted pursuant to this section shall contain the written or electronic signature of:
  - **1.** If the applicant is an individual, the owner of the health care institution.
  - **2.** If the applicant is a partnership, limited liability company or corporation, two of the officers of the corporation or managing members of the partnership or limited liability company or the sole member of the limited liability company if it has only one member.
  - **3.** If the applicant is a governmental unit, the head of the governmental unit.
- **C.** An application for licensure shall be submitted at least sixty but not more than one hundred twenty days before the anticipated date of operation. An application for a substantial compliance survey submitted pursuant to section 36-425, subsection G shall be submitted at least thirty days before the date on which the substantial compliance survey is requested.
- **D.** If a current licensee intends to terminate the operation of a licensed health care institution or if a change of ownership is planned, the current licensee shall notify the director in writing at least thirty days before the termination of operation or change in ownership is to take place. The current licensee is responsible for preventing any interruption of services required to sustain the life, health and safety of the patients or residents. A new owner shall not begin operating the health care institution until the director issues a license to the new owner.
- **E.** A licensed health care institution for which operations have not been terminated for more than thirty days may be relicensed pursuant to the codes and standards for architectural plans and specifications that were applicable under its most recent license.
- **F.** If a person operates a hospital in a county with a population of more than five hundred thousand persons in a setting that includes satellite facilities of the hospital that are located separately from the main hospital building, the department at the request of the applicant or licensee shall issue a single group license to the hospital and its designated satellite facilities located within one-half mile of the main hospital building if all of the facilities meet or exceed department licensure requirements for the designated facilities. At the request of the applicant or licensee, the department shall also issue a single group license that includes the hospital and not more than ten of its designated satellite facilities that are located farther than one-half mile from the main

hospital building if all of these facilities meet or exceed applicable department licensure requirements. Each facility included under a single group license is subject to the department's licensure requirements that are applicable to that category of facility. Subject to compliance with applicable licensure or accreditation requirements, the department shall reissue individual licenses for the facility of a hospital located in separate buildings from the main hospital building when requested by the hospital. This subsection does not apply to nursing care institutions and residential care institutions. The department is not limited in conducting inspections of an accredited health care institution to ensure that the institution meets department licensure requirements. If a person operates a hospital in a county with a population of five hundred thousand persons or less in a setting that includes satellite facilities of the hospital that are located separately from the main hospital building, the department at the request of the applicant or licensee shall issue a single group license to the hospital and its designated satellite facilities located within thirty-five miles of the main hospital building if all of the facilities meet or exceed department licensure requirements for the designated facilities. At the request of the applicant or licensee, the department shall also issue a single group license that includes the hospital and not more than ten of its designated satellite facilities that are located farther than thirty-five miles from the main hospital building if all of these facilities meet or exceed applicable department licensure requirements.

- **G.** If a county with a population of more than one million persons or a special health care district in a county with a population of more than one million persons operates an accredited hospital that includes the hospital's accredited facilities that are located separately from the main hospital building and the accrediting body's standards as applied to all facilities meet or exceed the department's licensure requirements, the department shall issue a single license to the hospital and its facilities if requested to do so by the hospital. If a hospital complies with applicable licensure or accreditation requirements, the department shall reissue individual licenses for each hospital facility that is located in a separate building from the main hospital building if requested to do so by the hospital. This subsection does not limit the department's duty to inspect a health care institution to determine its compliance with department licensure standards. This subsection does not apply to nursing care institutions and residential care institutions.
- **H.** An applicant or licensee must notify the department within thirty days after any change regarding a controlling person and provide the information and affirmation required pursuant to subsection A, paragraph 1, subdivision (d) of this section.
- **I.** This section does not limit the application of federal laws and regulations to an applicant or licensee that is certified as a medicare or an Arizona health care cost containment system provider under federal law.
- **J.** Except for an outpatient treatment center providing dialysis services or abortion procedures, a person wishing to begin operating an outpatient treatment center before a licensing inspection is completed shall submit all of the following:
  - **1.** The license application required pursuant to this section.
  - **2.** All applicable application and license fees.

- **3.** A written request for a temporary license that includes:
    - **(a)** The anticipated date of operation.
    - **(b)** An attestation signed by the applicant that the applicant and the facility comply with and will continue to comply with the applicable licensing statutes and rules.
- **K.** Within seven days after the department’s receipt of the items required in subsection J of this section, but not before the anticipated operation date submitted pursuant to subsection C of this section, the department shall issue a temporary license that includes:
  - **1.** The name of the facility.
  - **2.** The name of the licensee.
  - **3.** The facility’s class or subclass.
  - **4.** The temporary license’s effective date.
  - **5.** The location of the licensed premises.
- **L.** A facility may begin operating on the effective date of the temporary license.
- **M.** The director may cease the issuance of temporary licenses at any time if the director believes that public health and safety is endangered.
- **N.** For the purposes of this section:
  - **1.** “Accredited” means accredited by a nationally recognized accreditation organization.
  - **2.** “Satellite facility” means an outpatient facility at which the hospital provides outpatient medical services.

**36-424. Inspections; suspension or revocation of license; report to board of examiners of nursing care institution administrators**

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- **A.** Subject to the limitation prescribed by subsection B of this section, the director shall inspect the premises of the health care institution and investigate the character and other qualifications of the applicant to ascertain whether the applicant and the health care institution are in substantial compliance with the requirements of this chapter and the rules established pursuant to this chapter. The director may prescribe rules regarding department background investigations into an applicant’s character and qualifications.
- **B.** The director shall accept proof that a health care institution is an accredited hospital or is an accredited health care institution in lieu of all compliance inspections required by this chapter if the director receives a copy of the institution’s accreditation report for the licensure period. If the health care institution’s accreditation report is not valid for the entire licensure period, the department may conduct a compliance inspection of the health care institution during the time period the department does not have a valid accreditation report for the health care institution.
- **C.** On a determination by the director that there is reasonable cause to believe a health care institution is not adhering to the licensing requirements of this chapter, the director and any duly designated employee or agent of the director, including county health representatives and county or municipal fire inspectors, consistent with standard

medical practices, may enter on and into the premises of any health care institution that is licensed or required to be licensed pursuant to this chapter at any reasonable time for the purpose of determining the state of compliance with this chapter, the rules adopted pursuant to this chapter and local fire ordinances or rules. Any application for licensure under this chapter constitutes permission for and complete acquiescence in any entry or inspection of the premises during the pendency of the application and, if licensed, during the term of the license. If an inspection reveals that the health care institution is not adhering to the licensing requirements established pursuant to this chapter, the director may take action authorized by this chapter. Any health care institution, including an accredited hospital, whose license has been suspended or revoked in accordance with this section is subject to inspection on application for relicensure or reinstatement of license.

- **D.** The director shall immediately report to the board of examiners of nursing care institution administrators information identifying that a nursing care institution administrator's conduct may be grounds for disciplinary action pursuant to section 36-446.07.

#### **36-425. Inspections; issuance of license; posting requirements; provisional license; denial of license**

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- **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.

### **36-445. Review of certain medical practices**

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- The governing body of each licensed hospital or outpatient surgical center shall require that physicians admitted to practice in the hospital or center organize into committees or other organizational structures to review the professional practices within the hospital or center for the purposes of reducing morbidity and mortality and for the improvement of the care of patients provided in the institution. Such review shall include the nature, quality and necessity of the care provided and the preventability of complications and deaths occurring in the hospital or center. Such review need not identify the patient or doctor by name but may use a case number or some other such designation.

#### **36-445.01. Confidentiality of information; conditions of disclosure**

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- **A.** All proceedings, records and materials prepared in connection with the reviews provided for in section 36-445, including all peer reviews of individual health care providers practicing in and applying to practice in hospitals or outpatient surgical centers and the records of such reviews, are confidential and are not subject to discovery except in proceedings before the Arizona medical board or the board of osteopathic examiners, or in actions by an individual health care provider against a hospital or center or its medical staff arising from discipline of such individual health care provider or refusal, termination, suspension or limitation of the health care provider's privileges. No member of a committee established under the provisions of section 36-445 or officer or other member of a hospital's or center's medical, administrative or nursing staff engaged in assisting the hospital or center to carry out functions in accordance with that section or any person furnishing information to a committee performing peer review may be subpoenaed to testify in any judicial or quasi-judicial proceeding if the subpoena is based solely on those activities.
- **B.** This article does not affect any patient's claim to privilege or privacy or to prevent the subpoena of a patient's medical records if they are otherwise subject to discovery or to restrict the powers and duties of the director pursuant to this chapter, with respect to records and information that are not subject to this article. In any legal action brought against a hospital or outpatient surgical center licensed pursuant to this chapter claiming negligence for failure to adequately do peer review, representatives of the hospital or center are permitted to testify as to whether there was peer review as to the

subject matter being litigated. The contents and records of the peer review proceedings are fully confidential and inadmissible as evidence in any court of law.

### **36-445.02. Immunity relating to review of medical practices**

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- **A.** Any individual who, in connection with duties or functions of a hospital or outpatient surgical center pursuant to section 36-445, makes a decision or recommendation as a member, agent or employee of the medical or administrative staff of a hospital or center or of one of its review committees or related organizations or who furnishes any records, information, or assistance to such medical staff or review committee or related organization is not subject to liability for civil damages or legal action in consequence thereof.
- **B.** No hospital or outpatient surgical center and no individual involved in carrying out review or disciplinary duties or functions of a hospital or center pursuant to section 36-445 may be liable in damages to any person who is denied the privilege to practice in a hospital or center or whose privileges are suspended, limited or revoked. The only legal action which may be maintained by a licensed health care provider based on the performance or nonperformance of such duties and functions is an action for injunctive relief seeking to correct an erroneous decision or procedure. The review shall be limited to a review of the record. If the record shows that the denial, revocation, limitation or suspension of membership or privileges is supported by substantial evidence, no injunction shall issue. In such actions, the prevailing party shall be awarded taxable costs, but no other monetary relief shall be awarded.
- **C.** Nothing in this section relieves any individual, hospital or outpatient surgical center from liability arising from treatment of a patient.

### **36-445.03. Limitation of publication; identity of patient confidential**

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- Any publication of the results of a review for the purposes provided in sections 36-445 and 36-445.01 shall be made only for the purposes provided in those sections and shall keep confidential the identity of any patient whose condition, care or treatment was a part thereof.

### **36-502.01. Powers and duties of director of the department of health services; rules; expenditure limitation**

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- **A.** The director of the department shall make rules that include standards for the state hospital when providing services as an evaluation agency or mental health agency and shall prescribe forms as may be necessary for the proper administration and enforcement of those responsibilities. The rules shall be applicable to patients admitted to, evaluated by or treated in the state hospital as set forth in this chapter and shall provide for periodic inspections of the state hospital.
- **B.** The director of the department shall make rules concerning the admission of patients to the state hospital and the transfer of patients between the state hospital and other mental health treatment agencies. A patient undergoing court-ordered treatment may be transferred between the state hospital and another mental health treatment agency

in accordance with the rules of the director of the department, subject to the approval of the court. The director of the department shall consult with the director of the administration on rules relating to transfers to and from the state hospital and other mental health treatment agencies.

- **C.** The director of the department may make rules concerning leaves, visits and absences of patients from the state hospital.
- **D.** The total amount of state monies that may be spent in any fiscal year by the department for mental health services pursuant to this chapter may not exceed the amount appropriated or authorized by section 35-173 for that purpose. This chapter does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or 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.

**ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F-17-0902)**  
Title 9, Chapter 28, Article 3, Preadmission Screening (PAS)



**GOVERNOR'S REGULATORY REVIEW COUNCIL  
ANALYSIS OF FIVE-YEAR REVIEW REPORT**

**MEETING DATE: October 3, 2017**

**AGENDA ITEM: E-3**

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**TO:** Members of the Governor's Regulatory Review Council

**FROM:** Shama Thathi, Staff Attorney

**DATE :** September 19, 2017

**SUBJECT: ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F-17-0902)**  
Title 9, Chapter 28, Article 3, Preadmission Screening (PAS)

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**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 seven rules in A.A.C. Title 9, Chapter 28, Article 3, related to preadmission screening (PAS). The Arizona Long Term Care System (ALTCS) program is Arizona's Medicaid program for individuals who are at least 65 years old, blind, or disabled, and require an institutional level of care. Individuals must meet specific financial requirements to qualify for ALTCS. In addition, individuals must satisfy the medical and functional eligibility requirements used to determine an institutional level of care for placement in a nursing facility or an intermediate care facility for individuals with developmental disabilities (ICF-IID). The rules in Article 3 establish the medical and functional eligibility criteria. The PAS is conducted by an AHCCCS registered nurse or social worker with consultation by a physician, if necessary.

**Article Contents**

Article 3 contains seven rules that address definitions; general provisions; PAS process; PAS criteria for an individual who is elderly and physically disabled; PAS criteria for an individual who is developmentally disabled; reassessments; and the ALTCS transitional program.

## **Year that Each Rule was Last Amended or Newly Made**

The rules were last amended at various times between 2001 and 2011.

## **Proposed Action**

The Administration plans to amend R9-28-303, R9-28-306, and R9-28-307 within 120 days following approval of this report, to improve clarity, conciseness, and understandability of the rules. However, the Administration has not yet sought approval from the moratorium.

## **Substantive or Procedural Concerns**

None.

## **Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:**

**1. Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

Yes. The Administration has certified its compliance with A.R.S. § 41-1091.

**2. Has the agency analyzed the rules' effectiveness in achieving their objectives?**

Yes. The Administration indicates that the rules are effective in achieving their objectives.

**3. Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

Yes. The Administration indicates that it has not received any written criticisms of the rules during the last five years.

**4. Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Administration cites to A.R.S. § 36-2903.01(F) as general 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.”

As specific authority, the Administration cites to A.R.S. § 36-2936, which requires the director to adopt rules “establishing a uniform statewide preadmission screening program to determine if a person who has met the eligibility criteria prescribed in section 36-2934 is eligible for institutional services pursuant to this article.”

5. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes. The Administration indicates that the rules are consistent with other rules and statutes.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Administration indicates that the rules are enforced as written.

7. **Has the agency analyzed whether the rules are clear, concise, and understandable?**

Yes. The Administration notes that rules are generally clear, concise, and understandable, with the following exceptions:

- In R9-28-303, references to ICF-MR (immediate care facility for mentally retarded) should be updated to ICF-IID. In addition, the Administration proposes to add "These assessments will not receive a numeric score." at the end of subsections (A)(1), (A)(2), and (A)(3) to improve clarity.
- In R9-28-306 and R9-28-307, references to ICF-MR should be updated to ICF-IID.

8. **Has the agency analyzed whether:**

a. **The rules are more stringent than corresponding federal law?**

Yes. The Administration indicates that the rules are not more stringent than federal law.

b. **There is statutory authority to exceed the requirements of federal law?**

Not applicable.

9. **For rules adopted after July 29, 2010, has the agency analyzed whether:**

a. **The rules require issuance of a regulatory permit, license or agency authorization?**

Not applicable. The rules do not require issuance of a permit, license, or agency authorization.

b. **It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?**

Not applicable.

**10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?**

Yes. The Administration did not propose a course of action in the previous five-year-review report approved by the Council on February 7, 2012.

**11. Has the agency included a proposed course of action?**

Yes. The Administration plans to amend R9-28-303, R9-28-306, and R9-28-307 within 120 days following approval of this report.

**Conclusion**

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends that the report be approved.



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

MEETING DATE: October 3, 2017

AGENDA ITEM: E-3

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**TO:** Members of the Governor's Regulatory Review Council

**FROM:** GRRRC Economic Team

**DATE :** September 19, 2017

**SUBJECT:** **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F-17-0902)**  
Title 9, Chapter 28, Article 3, Preadmission Screening (PAS)

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I have reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

**1. Economic Impact Comparison**

The economic, small business, and consumer impact statement (EIS) from the most recent Arizona Health Care Cost Containment System Administration (Administration) rulemaking completed in 2012 was reviewed for Article 3.

The Article 3 rules address procedures for the Preadmission Screening (PAS) for the Arizona Long-Term Care System (ALTCS). ALTCS is managed within Arizona's Medicaid Program for individuals who are 65 years or older, blind, or disabled, and are determined to require an institutional level of care.

Key stakeholders that are impacted are the Administration, ALTCS vendors, and taxpayers. As of July 2017, the Administration, directly or through contracts, is responsible for the provision of health care coverage for approximately 2 million Arizonans. Approximately 1.7 million are enrolled in one of several managed care entities under contract with AHCCCS. Approximately 60,000 Arizonans are enrolled with program vendors in the ALTCS.

The Administration concludes that the economic impact has generally been as predicted in the prior EIS for the rules.

**2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?**

The Administration determines the rules as written impose the least burden and cost when meeting their objectives.

**3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?**

No analysis was submitted to the Administration by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

**4. Conclusion**

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

June 28, 2017

Ms. Nicole Ong, Chair  
Governor's Regulatory Review Council  
100 N. 15<sup>th</sup> 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 3. 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

**Arizona Health Care Cost Containment System  
(AHCCCS)**

**5 YEAR REVIEW REPORT**

**A.A.C. Title 9, Chapter 28, Article 3**

June 2017

## **I. General Information about 9 A.A.C. 28, Article 3**

### **Overview:**

The Arizona Long Term Care System (ALTCS) program is Arizona's Medicaid Program for individuals who are 65 years of age or older, blind, or disabled and who also are determined to require an institutional level of care. ALTCS services are provided in the all Arizona counties. Contractors under contract with AHCCCS coordinate, manage, and are responsible for provision of acute care, long term care, and behavioral health and case management services to ALTCS members. As of June 1, 2017, approximately 60,000 members are served through ALTCS where more than 50% are individuals who are elderly and/or members with physical disabilities. Slightly less than 50% of ALTCS members are individuals who have developmental disabilities.

In order to qualify for the ALTCS Program, the individual must satisfy specific financial requirements. In addition, the individual must meet the medical and functional eligibility requirements establishing an institutional level of care for placement in a nursing facility (NF) or an intermediate care facility for individuals with intellectual disabilities (ICF-IID). The individual must meet medical and functional eligibility criteria as established by the Preadmission Screening tool (PAS). ARS §36-2936 provides that "The director shall adopt rules establishing a uniform statewide preadmission screening program to determine if a person who has met the eligibility criteria prescribed in section 36-2934 is eligible for institutional services pursuant to this article. To be eligible for institutional services or home and community based services as defined in section 36-2931, a person shall have a nonpsychiatric medical condition or have a developmental disability as defined in section 36-551 that, by itself or in combination with other medical conditions, necessitates the level of care that is provided in a nursing facility or intermediate care facility. These rules shall establish a uniform preadmission screening instrument that assesses the functional, medical, nursing, social and developmental needs of the applicant."

The PAS is conducted by an AHCCCS registered nurse or social worker with consultation by a physician, if necessary, to evaluate the person's medical status. The PAS is used to determine whether the person is at risk of placement in a nursing facility or an intermediate care facility for individuals with intellectual disabilities. Most ALTCS beneficiaries live in their own homes or other community placements such as an assisted living facility and receive medically necessary home and community based services.

The PAS tools were initially implemented with the ALTCS program in 1988. Since that time, the PAS tools used for persons who are elderly or physically disabled applicants were revised in 1993 and 2006. The tools used for persons with a developmentally disability were revised in 1995, and, for children with a developmental disability from birth through age 5 years, in 2011. Other aspects of the general PAS process were amended in 2011.

The PAS rules described in Article 3 set forth the requirements for meeting the medical and functional requirements for eligibility in the ALTCS Program consistent with federal and state requirements. The PAS tools are intended to reflect the current consensus of the medical community and experts regarding best practices for reliably assessing the need for institutional care.

## **II. Five Year Report on 9 A.A.C. 28, Article 3 rules:**

### **General and specific statutes authorizing the rule:**

A.R.S. §§ 36-2903.01(F), 36-2932 provides general authority to AHCCCS to adopt rules for the ALTCS Program.

A.R.S. § 36-2936 provides specific authority to AHCCCS in regards to Preadmission Screening (PAS).

### **Objective of the rule:**

R9-28-301 – The objective of the rule is to provide definitions for terms used within the PAS tool.

R9-28-302 – The objective of the rule is to delineate General Requirements that apply to the PAS process.

R9-28-303 – The objective of the rule is to delineate criteria that must be satisfied in order for a person to complete the PAS process.

R9-28-304 – The objective of the rule is to delineate PAS criteria for persons who are elderly or physically disabled.

R9-28-305 – The objective of the rule is to delineate PAS criteria for persons who are developmentally disabled.

R9-28-306 – The objective of the rule is to set forth requirements for a reassessment of ALTCS eligibility.

R9-28-307 – The objective of the rule is to set forth requirements for the ALTCS transitional Program for persons who no longer meet the EPD or DD PAS threshold.

**Effectively meets its objectives, including any available data supporting conclusion:**

Chapter 28, Article 3 rules meet the objectives listed above. No data was attained.

**Consistent with Statutes, rules, (including Federal, State, Waiver, Policy)**

Chapter 28, Article 3 rules are consistent with statutes and federal regulations.

**Is enforced:**

Chapter 28, Article 3 rules are enforced with no issues.

**Clarity, conciseness and understandability of the rule:**

The rules in Chapter 28, Article 3 are clear, concise and understandable with the following recommendations for revisions.

R9-28-303: The Administration intends to update all references from ICF-MR to ICF-IID (Intermediate Care Facility for Individuals with Intellectual Disabilities). In addition, added at the end of subparts (A)(1), (A)(2), and (A)(3), AHCCCS proposes adding, “These assessments will not receive a numeric score.” This revision is to add further clarity for individuals going through the preadmission screening process. All three of these subparts refer to assessment of children over the age of 6 and under the age of 12, under the age of 6, and under the age of 6 months, respectively. Currently, the way R9-28-303 is written, it gives

the impression that for those who fall under these subparts a numerical score is indicative of their risk of institutionalization. However, for these subparts, a larger number of factors, including the physician's assessment, are used to calculate this risk.

R9-28-306: The Administration intends to update all references from ICF-MR to ICF-IID (Intermediate Care Facility for Individuals with Intellectual Disabilities).

R9-28-307: The Administration intends to update all references from ICF-MR to ICF-IID (Intermediate Care Facility for Individuals with Intellectual Disabilities).

**Had written criticisms in the past five years, including written analyses submitted questioning if the rule is based on valid scientific or reliable principles or methods:**

Written criticisms or written analyses for Chapter 28, Article 3 have not been submitted in the past five years.

**Comparison of estimated economic, small business, and consumer impact.**

The economic impact estimated at the time of rule promulgation has not been significantly different than the actual economic impact.

**Was there any 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:**

No.

**If applicable, has the agency completed the course of action indicated in the agency's previous five-year review:**

According to the prior 5 Year Review Report for R9-28-301-307, filed in December 2011, "The Administration does not intend to make any updates to these rules since the majority of the rules were recently updated and the remaining rules do not require any changes."

Therefore we believe AHCCCS completed the course of action indicated in the prior 5 Year Review Report.

**Has there been 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 Administration believes the rules as written impose the least burden and cost when meeting their objectives.

**A determination after analysis that the rule is not more stringent than a corresponding federal law. Are the rules more stringent than a corresponding federal law? Is there a statutory authority that exceeds the requirements of that federal law?:**

Under 42 U.S.C. 1315, the authority for AHCCCS's 1115 Demonstration Program with CMS since the inception of the AHCCCS Program, the Administration is authorized to utilize the pre-admission screening instrument to determine whether individuals are at risk of institutionalization for purposes of ALTCS eligibility. As a result, AHCCCS promulgated the administrative rules delineated in R9-28-300 et seq. which set forth requirements for the preadmission screening instrument. No federal laws directly correspond to R9-28-300 et seq. The rules are consistent with federal authority for use of the PAS, and the rules are not more stringent than federal law.

**Does the rule comply with section 41-1037 for issuance of permit, license or agency authorization?**

The Administration does not issue permits, license or agency authorization, and therefore, this question is inapplicable to these rules.

**Course of action, including the month and year when the agency anticipates submitting rules to the GRRC to amend repeal or make a rule:**

R9-28-303: The Administration intends to update this rule within 120 days following approval of this 5 Year Review Report by GRRC.

R9-28-306: The Administration intends to update this rule within 120 days following approval of this 5 Year Review Report by GRRC.

R9-28-307: The Administration intends to update this rule within 120 days following approval of this 5 Year Review Report by GRRC.

Arizona Health Care Cost Containment System – Arizona Long-term Care System

**TITLE 9. HEALTH SERVICES**

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ARIZONA LONG-TERM CARE SYSTEM**

*Editor’s Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 01-3).*

*Editor’s Note: This Chapter contains rules which were adopted under an exemption from the rulemaking provisions of the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6, §§ 1001 et seq.) as specified in Laws 1992, Ch. 301, § 61 and Ch. 302, § 13, and Laws 1994, Ch. 322, § 21. Exemption from A.R.S. Title 41, Chapter 6 means that AHCCCS did not submit notice of this rulemaking to the Secretary of State’s Office for publication in the Arizona Administrative Register; AHCCCS did not submit these rules to the Governor’s Regulatory Review Council; AHCCCS 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. The rules affected by this exemption appear throughout this Chapter.*

**ARTICLE 3. PREADMISSION SCREENING (PAS)**

Section

R9-28-301.	Definitions .....
R9-28-302.	General Provisions .....
R9-28-303.	Preadmission Screening (PAS) Process .....
R9-28-304.	Preadmission Screening Criteria for an Applicant or Member who is Elderly and Physically Disabled (EPD)
R9-28-305.	Preadmission Screening Criteria for an Applicant or Member who is Developmentally Disabled (DD)
R9-28-306.	Reassessments .....
R9-28-307.	The ALTCS Transitional Program for a Member who is Elderly and Physically Disabled (EPD) or Developmentally Disabled (DD) .....

**ARTICLE 3. PREADMISSION SCREENING (PAS)**

**R9-28-301. Definitions**

**A.** Common definitions. In addition to definitions contained in A.R.S. Title 36, Chapter 29, and 9 A.A.C. 28, Article 1, the words and phrases in this Article have the following meanings for an individual who is elderly or physically disabled (EPD) or developmentally disabled (DD) unless the context explicitly requires another meaning:

“Applicant” is defined in A.A.C. R9-22-101.

“Assessor” means a social worker as defined in this subsection or a licensed registered nurse (RN) who:

Is employed by the Administration to conduct PAS assessments,

Completes a minimum of 30 hours of classroom training in both EPD and DD PAS for a total of 60 hours, and

Receives intensive oversight and monitoring by the Administration during the first 30 days of employment and ongoing oversight by the Administration during all periods of employment.

“Current” means belonging to the present time.

“Disruptive behavior” means inappropriate behavior by the applicant or member including urinating or defecating in inappropriate places, sexual behavior inappropriate to time, place, or person or excessive whining, crying, or screaming that interferes with an applicant’s or member’s normal activities or the activities of others and requires intervention to stop or interrupt the behavior.

“Frequency” means the number of times a specific behavior occurs within a specified interval.

“Functional assessment” means an evaluation of information about an applicant’s or member’s ability to perform activities related to:

Developmental milestones,

Activities of daily living,

Communication, and

Behavior.

“Immediate risk of institutionalization” means the status of an applicant or member under A.R.S. § 36-2934(A)(5) and as specified in A.R.S. § 36-2936 and in the Administration’s Section 1115 Waiver with Centers for Medicare and Medicaid Services (CMS).

“Intervention” means therapeutic treatment, including the use of medication, behavior modification, and physical restraints to control behavior. Intervention may be formal or informal and includes actions taken by friends or family to control the behavior.

“Medical assessment” means an evaluation of an applicant’s or member’s medical condition and the applicant’s or member’s need for medical services.

“Medical or nursing services and treatments” or “services and treatments” means specific, ongoing medical, psychiatric, or nursing intervention used actively to resolve or prevent deterioration of a medical condition. Durable medical equipment and activities of daily living assistive devices are not treatment unless the equipment or device is used specifically and actively to resolve the existing medical condition.

“Physician consultant” means a physician who contracts with the Administration.

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“Social worker” means an individual with two years of case management-related experience or a baccalaureate or master’s degree in:

- Social work,
- Rehabilitation,
- Counseling,
- Education,
- Sociology,
- Psychology, or
- Other closely related field.

“Special diet” means a diet planned by a dietitian, nutritionist, or nurse that includes high fiber, low sodium, or pureed food.

“Toileting” means the process involved in an applicant’s or member’s managing of the elimination of urine and feces in an appropriate place.

“Vision” means the ability to perceive objects with the eyes.

**B. EPD.** In addition to definitions contained in subsection (A), the following also apply to an applicant or member who is EPD:

“Aggression” means physically attacking another, including:

- Throwing an object,
- Punching,
- Biting,
- Pushing,
- Pinching,
- Pulling hair,
- Scratching, and
- Physically threatening behavior.

“Bathing” means the process of washing, rinsing, and drying all parts of the body, including an applicant’s or member’s ability to transfer to a tub or shower and to obtain bath water and equipment.

“Continence” means the applicant’s or member’s ability to control the discharge of body waste from bladder and bowel.

“Dressing” means the physical process of choosing, putting on, securing fasteners, and removing clothing and footwear. Dressing includes choosing a weather-appropriate article of clothing but excludes aesthetic concerns. Dressing includes the applicant’s or member’s ability to put on artificial limbs, braces, and other appliances that are needed daily.

“Eating” means the process of putting food and fluids by any means into the digestive system.

“Emotional and cognitive functioning” means an applicant’s or member’s orientation and mental state, as evidenced by aggressive, self-injurious, wandering, disruptive, and resistive behaviors.

“EPD” means an applicant or member who is elderly and physically disabled.

“Grooming” means an applicant’s or member’s process of tending to appearance. Grooming includes: combing or brushing hair; washing face and hands; shaving; oral hygiene (including denture care); and menstrual care. Grooming does not include aesthetics such as styling hair, skin care, nail care, and applying cosmetics.

“Mobility” means the extent of an applicant’s or member’s purposeful movement within a residential environment.

“Orientation” means an applicant’s or member’s awareness of self in relation to person, place, and time.

“Physically disabled” means an applicant or member who is determined to be physically impaired by the Administration through the PAS assessment as allowed under the Administration’s Section 1115 Waiver with CMS.

“Resistiveness” means inappropriately obstinate and uncooperative behaviors, including passive or active obstinate behaviors, or refusing to participate in self-care or to take necessary medications. Resistiveness does not include difficulties with auditory processing or reasonable expressions of self-advocacy.

“Self-injurious behavior” means repeated self-induced, abusive behavior that is directed toward infliction of immediate physical harm to the body.

“Sensory” means of or relating to the senses.

“Transferring” means an applicant’s or member’s ability to move horizontally or vertically between two surfaces within a residential environment, excluding transfer for toileting or bathing.

“Wandering” means an applicant’s or member’s moving about with no rational purpose and with a tendency to go beyond the physical parameter of the residential environment.

**C. DD.** In addition to definitions contained in subsection (A), the following also apply to an applicant or member who is DD:

“Acute” means an active medical condition having a sudden onset, lasting a short time, and requiring immediate medical intervention.

“Aggression” means physically attacking another, including:

- Throwing objects,
- Punching,
- Biting,
- Pushing,
- Pinching,
- Pulling hair, and
- Scratching.

“Ambulation” means the ability to walk and includes quality of the walking and the degree of independence in walking.

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“Bathing or showering” means an applicant’s or member’s ability to complete the bathing process including drawing the bath water, washing, rinsing, and drying all parts of the body, and washing the hair.

“Clarity of communication” means an ability to speak in recognizable language or use a formal symbolic substitution, such as American-Sign Language.

“Community mobility” means the applicant’s or member’s ability to move about a neighborhood or community independently, by any mode of transportation.

“Crawling and standing” means an applicant’s or member’s ability to crawl and stand with or without support.

“DD” means developmentally disabled.

“Developmental milestone” means a measure of an applicant’s or member’s functional abilities, including:

- Fine motor skills,
- Gross motor skills,
- Communication,
- Socialization,
- Daily living skills, and
- Behaviors.

“Dressing” means the ability to put on and remove an article of clothing. Dressing does not include the ability to put on or remove braces nor does it reflect an applicant’s or member’s ability to match colors or choose clothing appropriate for the weather.

“Eating or drinking” means the process of putting food and fluid by any means into the digestive system.

“Expressive verbal communication” means an applicant’s or member’s ability to communicate thoughts with words or sounds.

“Food preparation” means the ability to prepare a simple meal including a sandwich, cereal, or a frozen meal.

“Hand use” means the applicant’s or member’s ability to use both hands, or one hand if an applicant or member has only one hand or has the use of only one hand.

“History” means a medical condition that occurred in the past, regardless of whether the medical condition required treatment in the past, and is not now active.

“Personal hygiene” means the process of tending to one’s appearance. Personal hygiene may include: combing or brushing hair, washing face and hands, shaving, performing routine nail care, oral hygiene including denture care, and menstrual care. This does not include aesthetics such as styling hair, skin care, and applying cosmetics.

“Rolling and sitting” means an applicant’s or member’s ability to roll and sit independently or with the physical support of another person or with a device such as a pillow or specially-designed chair.

“Running or wandering away” means an applicant or member leaving a physical environment without notifying or receiving permission from the appropriate individuals.

“Self-injurious behavior” means an applicant’s or member’s repeated behavior that causes injury to the applicant or member.

“Verbal or physical threatening” means any behavior in which an applicant or member uses words, sounds, or action to threaten harm to self, others, or an object.

“Wheelchair mobility” means an applicant’s or member’s mobility using a wheelchair and does not include the ability to transfer to the wheelchair.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsection (C) effective June 6, 1989 (Supp. 89-2). Amended effective July 13, 1992 (Supp. 92-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed by emergency action, new Section adopted by emergency action, subsection (A) effective June 30, 1995, subsection (B) effective September 1, 1995, pursuant to A.R.S. § 41-1026, valid for 180 days; entire Section filed in the Secretary of State’s Office June 30, 1995 (Supp. 95-2). Section repealed by emergency action, new Section adopted again by emergency action with changes effective January 2, 1996, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 96-1). Emergency expired June 1, 1996. Section in effect before emergency action restored. Section repealed; new Section adopted effective January 14, 1997 (Supp. 97-1). Amended by final rulemaking at 7 A.A.R. 5824, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 12 A.A.R. 4007, effective October 5, 2006 (Supp. 06-4). Amended by final rulemaking at 17 A.A.R. 167, effective March 12, 2011 (Supp. 11-1).

**R9-28-302. General Provisions**

To qualify for services described in A.R.S. § 36-2939:

1. An applicant shall meet the financial criteria described in Article 4, and
2. AHCCCS shall determine that the applicant is at immediate risk of institutionalization under the PAS assessment as specified in this Article.

**Historical Note**

New Section adopted by emergency action, subsection (A) effective June 30, 1995, subsection (B) effective September 1, 1995, pursuant to A.R.S. § 41-1026, valid for 180 days; entire Section filed in the Office of the Secretary of State June 30, 1995 (Supp. 95-2). New Section adopted again by emergency action with changes effective January 2, 1996, pursuant to A.R.S. § 41-1026 (Supp. 96-1). Emergency expired June 1, 1996. New Section adopted effective January 14, 1997 (Supp. 97-1). Amended by final rulemaking at 7 A.A.R. 5824, effective December 7, 2001 (Supp. 01-4).

**R9-28-303. Preadmission Screening (PAS) Process**

## Arizona Health Care Cost Containment System – Arizona Long-term Care System

- A.** The assessor shall use the PAS instrument to determine whether the following applicants or members are at immediate risk of institutionalization:
1. The assessor shall use the PAS instrument prescribed in R9-28-304 to assess an applicant or member who is EPD except as specified in subsection (A)(2) for an applicant or member who is physically disabled and who is less than 6 years old. After assessing a child who is physically disabled and age 6 years to less than 12 years, the assessor shall refer the child for physician consultant review under subsections (G) through (J).
  2. The assessor shall use the age-specific PAS instrument prescribed in R9-28-305 to assess an applicant or member who is physically disabled and less than 6 years old. After assessing the child, the assessor shall refer the child for physician consultant review under subsections (G) through (J).
  3. The assessor shall use the PAS instrument prescribed in R9-28-305 to assess an applicant or member who is DD, except as specified in subsection (A)(4) for an applicant or member who is DD and residing in a NF. After assessing a child who is DD and less than 6 months of age, the assessor shall refer the child for physician consultant review under subsections (G) through (J).
  4. The assessor shall use the PAS instrument prescribed in R9-28-304 for an applicant or a member who is DD and residing in a NF.
  5. The assessor shall use the PAS instrument prescribed in R9-28-304 or R9-28-305, whichever is applicable, to assess an applicant or member who is classified as ventilator-dependent, under Section 1902(e)(9) of the Social Security Act.
- B.** For an initial assessment of an applicant who is in a hospital or other acute care setting:
1. A registered nurse assessor shall complete the PAS assessment; or
  2. In the event that a registered nurse assessor is not available, a social worker assessor shall complete the PAS assessment; and
  3. The assessor shall conduct the PAS assessment and determine medical eligibility when discharge is scheduled within seven days.
- C.** An assessor shall conduct a face-to-face PAS assessment with an applicant or member, except as provided in subsection (F). The assessor shall make reasonable efforts to obtain the applicant's or member's available medical records. The assessor may also obtain information for the PAS assessment from face-to-face interviews with the:
1. Applicant or member,
  2. Parent,
  3. Guardian,
  4. Caregiver, or
  5. Any person familiar with the applicant's or member's functional or medical condition.
- D.** Using the information described in subsection (C), an assessor shall complete the PAS assessment based on the assessor's education, experience, professional judgment, and training.
- E.** After the assessor completes the PAS assessment, the assessor shall calculate a PAS score. The assessor shall compare the PAS score to an established threshold score. The scoring methodology and threshold scores are specified in R9-28-304 and R9-28-305. Except as determined by physician consultant review as provided in subsections (G) through (J), the threshold score is the point at which an applicant or member is determined to be at immediate risk of institutionalization.
- F.** Upon request from a person acting on behalf of the applicant, the Administration shall conduct a PAS assessment to determine whether a deceased applicant who was residing in a NF or who received services in an ICF-MR any time during the time period covered by the application would have been eligible to receive ALTCS benefits for those months.
- G.** In the following circumstances, the Administration shall request that a physician consultant review the PAS assessment, the available medical records, and use professional judgment to make the determination that an applicant or member has a developmental disability or has a nonpsychiatric medical condition that, by itself or in combination with other medical conditions, places an applicant or member at immediate risk of institutionalization:
1. The PAS score of an applicant or member who is EPD is less than the threshold specified in R9-28-304, but is at least 56;
  2. The PAS score of an applicant or member who is DD is less than the threshold specified in R9-28-305, but is at least 38;
  3. An applicant or member scores below the threshold specified in R9-28-304, but the Administration has reasonable cause to believe that the applicant's or member's unique functional abilities or medical condition may place the applicant or member at immediate risk of institutionalization;
  4. An applicant or member scores below the threshold specified in R9-28-304 and has a documented diagnosis of autism, autistic-like behavior, or pervasive developmental disorder;
  5. An applicant or member who is seriously mentally ill as defined in A.R.S. § 36-550 who scores at or above the threshold specified in R9-28-304, but may not meet the requirements of A.R.S. § 36-2936. When an applicant or member who is seriously mentally ill scores at or above the threshold, the physician consultant shall exercise professional judgment to determine whether the applicant or member meets the requirements of A.R.S. § 36-2936.
  6. An applicant is an AHCCCS acute care member and scores at or above the threshold specified in R9-28-304 but the Administration has reasonable cause to believe that the applicant's condition is convalescent and requires less than 90 days of institutional care;
  7. An applicant or member is a child who is physically disabled and is at least 6 but less than 12 years of age;
  8. An applicant or member is a child who is physically disabled and is under 6 years of age; and
  9. An applicant is under 6 months of age.
- H.** The physician consultant shall consider the following:
1. Activities of daily living dependence;
  2. Delay in development;
  3. Continence;
  4. Orientation;

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5. Behavior;
  6. Any medical condition, including stability and prognosis of the condition;
  7. Any medical nursing treatment provided to the applicant or member including skilled monitoring, medication, and therapeutic regimens;
  8. The degree to which the applicant or member must be supervised;
  9. The skill and training required of the applicant or member's caregiver; and
  10. Any other factor of significance to the individual case.
- I.** If the physician consultant is unable to make the determination from the PAS assessment and the available medical records, the physician consultant may conduct a face-to-face review with the applicant or member or contact others familiar with the applicant's or member's needs, including a primary care physician or other caregiver, to make the determination.
- J.** The physician consultant shall state the reasons for the determination in the physician review comment section of the PAS instrument.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective July 13, 1992 (Supp. 92-3). 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 5, 1993 (Supp. 93-4). Section repealed by emergency action, new Section adopted by emergency action effective June 30, 1995, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 95-2). Section repealed by emergency action, new Section adopted again by emergency action effective January 2, 1996, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 96-1). Emergency expired June 1, 1996. Section in effect before emergency action restored. Section repealed; new Section adopted effective January 14, 1997 (Supp. 97-1). Former Section R9-28-303 renumbered to R9-28-304; new Section R9-28-303 made by final rulemaking at 7 A.A.R. 5824, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 12 A.A.R. 4007, effective October 5, 2006 (Supp. 06-4). Amended by final rulemaking at 17 A.A.R. 167, effective March 12, 2011 (Supp. 11-1).

**R9-28-304. Preadmission Screening Criteria for an Applicant or Member who is Elderly and Physically Disabled (EPD)**

- A.** The PAS instrument for an applicant or member who is EPD includes the following categories:
1. Intake information category. The assessor solicits intake information category information on an applicant's or member's demographic background. The components of the intake information category are not included in the calculated PAS score.
  2. Functional assessment category. The assessor solicits functional assessment category information on an applicant's or member's:
    - a. Need for assistance with activities of daily living, including:
      - i. Bathing,
      - ii. Dressing,
      - iii. Grooming,
      - iv. Eating,
      - v. Mobility,
      - vi. Transferring, and
      - vii. Toileting in the residential environment or other routine setting;
    - b. Communication and sensory skills, including hearing, expressive communication, and vision; and
    - c. Continence, including bowel and bladder functioning.
  3. Emotional and cognitive functioning category. The assessor solicits emotional and cognitive functioning category information on an applicant's or member's:
    - a. Orientation to person, place, and time. In soliciting this information, the assessor shall also take into account the caregiver's judgment; and
    - b. Behavior, including:
      - i. Wandering,
      - ii. Self-injurious behavior,
      - iii. Aggression,
      - iv. Resistiveness, and
      - v. Disruptive behavior.
  4. Medical assessment category. The assessor solicits medical assessment category information on an applicant's or member's:
    - a. Medical conditions that have an impact on the applicant's or member's functional ability in relation to activities of daily living, continence, and vision;
    - b. Medical condition that requires medical or nursing service and treatment;
    - c. Medication, treatment, and allergies;
    - d. Specific services and treatments that the applicant or member is currently receiving; and
    - e. Physical measurements, hospitalization history, and ventilator dependency.
- B.** The assessor shall use the PAS instrument to assess an applicant or member who is EPD as specified in this Section. A copy of the PAS instrument is available from the Administration. The Administration uses the assessor's PAS assessment to calculate three scores: a functional score, a medical score, and a total score.
1. Functional score.
    - a. The Administration calculates the functional score from responses to scored items in the functional assessment and emotional and cognitive functioning categories. For each response to a scored item, a number of points is assigned, which is multiplied by a weighted numerical value. The result is a weighted score for each response.

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- b. In the functional assessment matrix, all items in the following categories are scored according to subsection (C):
  - i. Activities of daily living,
  - ii. Continence,
  - iii. Sensory,
  - iv. Orientation, and
  - v. Behavior.
- c. The sum of the weighted scores equals the functional score. The weighted score per item can range from 0 to 15. The maximum functional score attainable by an applicant or member is 166.
- 2. Medical score.
  - a. In the medical assessment matrix, all items in the following categories are scored according to:
    - i. Medical conditions as specified in subsection (C), and
    - ii. Medical or nursing services and treatments in subsection (C).
  - b. The Administration calculates the medical score based on the applicant's or member's:
    - i. Diagnosis of Alzheimer's, dementia, or organic brain syndrome (OBS);
    - ii. Diagnosis of paralysis; and
    - iii. Current use of oxygen.
  - c. The maximum medical score attainable by an applicant or member is 31.5.
- 3. Total score.
  - a. The sum of an applicant's or member's functional and medical scores equals the total score.
  - b. The total score is compared to the established threshold score as calculated under this Section. The threshold score is 60.
  - c. As defined in R9-28-303, an applicant or member is determined at immediate risk of institutionalization if the total score is equal to or greater than 60.
- C. The following matrices represent the number of points available and the respective weight for each scored item.
  - 1. Functional assessment points. The lowest value in the range of points available per item in the functional assessment category, zero, indicates minimal to no impairment. Conversely, the highest value indicates severe impairment.
  - 2. Medical assessment points. The lowest value in the range of points available per item in the medical assessment category, zero, indicates that the applicant or member:
    - a. Does not have the scored medical condition,
    - b. Does not need the scored medical or nursing services, or
    - c. Does not receive the scored medical or nursing services.

FUNCTIONAL ASSESSMENT	# of Points Available Per Item (P)	Weight (W)	Range of Possible Weighted Score per Item (P)x(W)
<b>Activities of Daily Living Section</b>			
Mobility	0-3	5	0-15
Transfer	0-3	5	0-15
Bathing	0-3	5	0-15
Dressing	0-3	5	0-15
Grooming	0-3	5	0-15
Eating	0-3	5	0-15
Toileting	0-3	5	0-15
<b>Continence Section</b>			
Bowel	0-3	1	0-3
Bladder	0-3	1	0-3
<b>Sensory Section</b>			
Vision	0-3	2	0-6
<b>Orientation Section</b>			
Place	0-4	.5	0-2
Time	0-4	.5	0-2
<b>Emotional or Cognitive Behavior Section</b>			
Aggression-Frequency	0-3	1.5	0-4.5
Aggression-Intervention	0-3	1.5	0-4.5

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Self-injurious-Frequency	0-3	1.5	0-4.5
Self-injurious-Intervention	0-3	1.5	0-4.5
Wandering-Frequency	0-3	1.5	0-4.5
Wandering-Intervention	0-3	1.5	0-4.5
Resistiveness-Frequency	0-3	1.5	0-4.5
Resistiveness-Intervention	0-3	1.5	0-4.5
Disruptive-Frequency	0-3	1.5	0-4.5
Disruptive-Intervention	0-3	1.5	0-4.5

MEDICAL ASSESSMENT	# of Points Available Per Item (P)	Weight (W)	Range of Possible Weighted Score Per Item (P)x(W)
Medical Conditions Section			
Paralysis	0-1	6.5	0 or 6.5
Alzheimer's, or OBS, or Dementia	0-1	20	0 or 20
Services and Treatments Section			
Oxygen	0-1	5	0 or 5

**Historical Note**

New Section adopted by emergency action, subsection (A) effective June 30, 1995, subsection (B) effective September 1, 1995, pursuant to A.R.S. § 41-1026, valid for 180 days; entire Section filed as an emergency rule with the Secretary of State's Office June 30, 1995 (Supp. 95-2). New Section adopted again by emergency action with changes effective January 2, 1996, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 96-1). Emergency expired. New Section adopted effective January 14, 1997 (Supp. 97-1). Former Section R9-28-304 renumbered to R9-28-305; new Section R9-28-304 renumbered from R9-28-303 and amended by final rulemaking at 7 A.A.R. 5824, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 12 A.A.R. 4007, effective October 5, 2006 (Supp. 06-4).

**R9-28-305. Preadmission Screening Criteria for an Applicant or Member who is Developmentally Disabled (DD)**

- A. The Administration shall conduct a PAS assessment of an applicant or member who is DD using one of three PAS instruments specifically designed to assess an applicant or member in the following age groups:
  1. Twelve years of age and older,
  2. Six through 11 years of age, and
  3. Birth through 5 years of age.
- B. The PAS instruments for an applicant or member who is DD include three major categories:
  1. Intake information category. The assessor solicits intake information category information on an applicant's or member's demographic background. The components of this category are not included in the calculated PAS score.
  2. Functional assessment category. The functional assessment category differs by age group as indicated in subsections (B)(2)(a) through (e):
    - a. For an applicant or member 12 years of age and older, the assessor solicits the functional assessment category information on an applicant's or member's:
      - i. Need for assistance with independent living skills, including hand use, ambulation, wheelchair mobility, transfer, eating or drinking, dressing, personal hygiene, bathing or showering, food preparation, community mobility, and toileting;
      - ii. Communication skills and cognitive abilities, including expressive verbal communication, clarity of communication, associating time with an event and action, and remembering an instruction and a demonstration; and
      - iii. Behavior, including aggression, verbal or physical threatening, self-injurious behavior, and resistive or rebellious behavior.
    - b. For an applicant or member 6 through 11 years of age, the assessor solicits the functional assessment category information on an applicant's or member's:
      - i. Need for assistance with independent living skills, including rolling and sitting, crawling and standing, ambulation, climbing stairs or ramps, wheelchair mobility, dressing, personal hygiene, bathing or showering, toileting, level of bladder control, and orientation to familiar settings;

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- ii. Communication, including expressive verbal communication and clarity of communication; and
- iii. Behavior, including aggression, verbal or physical threatening, self-injurious behavior, running or wandering away, and disruptive behavior.
- c. For an applicant or member 6 months through 5 years of age, the assessor solicits the functional assessment category information on an applicant's or member's performance with respect to a series of developmental milestones that measure an applicant's or member's degree of functional growth.
- d. For an applicant or member less than 6 months of age, the assessor shall not complete a functional assessment. The assessor shall include a description of the applicant's or member's development in the PAS instrument narrative summary.
- 3. Medical assessment category. The assessor solicits medical assessment category information on an applicant's or member's:
  - a. Medical condition;
  - b. Specific services and treatments the applicant or member receives or needs and the frequency of those services and treatments;
  - c. Current medication;
  - d. Medical stability;
  - e. Sensory functioning;
  - f. Physical measurements; and
  - g. Current living arrangement, ventilator dependency and eligibility for DES Division of Developmental Disabilities program services.
- C. The assessor shall use the PAS instrument to assess an applicant or member who is DD. A copy of the PAS instrument is available from the Administration. The Administration uses the assessor's PAS instrument responses to calculate three scores: a functional score, a medical score, and a total score.
  - 1. Functional score.
    - a. The Administration calculates the functional score from responses to scored items in the functional assessment category. Each response is assigned a number of points which is multiplied by a weighted numerical value, resulting in a weighted score for each response.
    - b. The following items are scored as indicated in subsection (D), under the Functional Assessment matrix:
      - i. For an applicant or member 12 years of age and older, all items in the behavior section are scored. Designated items in the independent living skills, communication skills, and cognitive abilities sections are also scored;
      - ii. For an applicant or member 6 through 11 years of age, all items in the communication section are scored. Designated items in the independent living skills and behavior sections are scored;
      - iii. For an applicant or member 6 months of age through 5 years of age, items in the developmental milestones section are scored based on the age of the applicant.
    - c. The sum of the weighted scores equals the functional score. The range of weighted score per item and maximum functional score for each age group is presented below:

AGE GROUP	RANGE FOR WEIGHTED SCORE PER ITEM	MAXIMUM FUNCTIONAL SCORE ATTAINABLE
12+	0 - 11.2	124.1
6-11	0 - 24	112.5
0-5	0 - 5.0	106.02

- d. No minimum functional score is required.
- 2. Medical score.
  - a. Subsections (C)(2)(a)(i) through (iii) are scored as indicated in subsection (D), under the Medical Assessment matrix:
    - i. The assessor shall score designated items in the medical conditions for an applicant or member 12 years of age and older and 6 years of age through 11 years of age.
    - ii. The assessor shall score designated items in the medical conditions and medical stability sections for an applicant or member 6 months of age through 5 years of age.
    - iii. The assessor shall complete only the medical assessment section of the PAS for an applicant or member less than 6 months of age. There is no weighted or calculated score assigned. The assessor shall refer the applicant or member for physician consultant review.
    - iv. The assessor shall complete only the medical assessment section of the PAS for an applicant or member less than 6 months of age. There is no weighted or calculated score assigned. The assessor shall refer the applicant or member for physician consultant review.
  - b. The Administration calculates the medical score from information obtained in the medical assessment category. Each response to a scored item is assigned a number of points. The sum of the points equals the medical score. The range of points per item and the maximum medical score attainable by an applicant or member is presented below:

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AGE GROUP	RANGE OF POINTS PER ITEM	MAXIMUM MEDICAL SCORE ATTAINABLE
12+	0 - 20.6	21.4
6-11	0 - 2.5	5
0-5	0 - 10	60

- c. No minimum medical score is required.
- 3. Total score.
  - a. The sum of an applicant’s or member’s functional and medical scores equals the total score.
  - b. The total score is compared to an established threshold score in R9-28-304. For an applicant or member who is DD, the threshold score is 40. Based upon the PAS instrument an applicant or member with a total score equal to or greater than 40 is at immediate risk of institutionalization.
- D. The following matrices represent the number of points available and the weight for each scored item.
  - 1. Functional assessment points. An applicant or member age group 0 to 5: The value is received for each negative response. An applicant or member age groups 6 to 11 and 12+: the lowest value in the range of points available per item in the functional assessment category indicates minimal to no impairment. Conversely, the highest value indicates severe impairment.
  - 2. Medical assessment points. The lowest value in the range of points available per item in the medical assessment category, zero, indicates that the applicant or member:
    - a. Does not have a medical condition specified in the following matrices,
    - b. Does not need medical or nursing service as specified in the following matrices, or
    - c. Does not receive any medical or nursing service as specified in the following matrices.

AGE GROUP 12 AND OLDER FUNCTIONAL ASSESSMENT	# of Points Available Per Item (P)	Weight (W)	Range of Possible Weighted Score Per Item (P) x (W)
Independent Living Skills Section			
Hand Use, Food Preparation	0-3	3.5	0-10.5
Ambulation, Toileting, Eating, Dressing, Personal Hygiene	0-4	2.8	0-11.2
Communicative Skills and Cognitive Abilities Section			
Associating Time, Remembering Instructions	0-3	0.5	0 - 1.5
Behavior Section			
Aggression, Threatening, Self Injurious	0-4	2.8	0-11.2
Resistive	0-3	3.5	0-10.5

AGE GROUP 12 AND OLDER MEDICAL ASSESSMENT	# of Points Available Per Item (P)	Weight (W)	Range of Possible Weighted Score Per Item (P) x (W)
Medical Conditions Section			
Cerebral Palsy, Epilepsy	0-1	0.4	0-.4
Moderate, Severe, Profound Mental Retardation	0-1	20.6	0-20.6

AGE GROUP 6-11 FUNCTIONAL ASSESSMENT	# of Points Available Per Item (P)	Weight (W)	Range of Possible Weighted Score Per Item (P) x (W)
Independent Living Skills Section			
Climbing Stairs, Wheelchair Mobility, Bladder Control	0-3	1.875	0-5.625
Ambulation, Dressing, Bathing, Toileting	0-4	1.5	0-6
Crawling or Standing	0-5	1.25	0-6.25
Rolling or Sitting	0-8	0.833	0-6.66
Communication Section			

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Clarity	0-4	1.5	0-6
Expressive Communication	0-5	1.25	0-6.25
Behavior Section			
Wandering	0-4	6	0-24
Disruptive	0-3	7.5	0-22.5

AGE GROUP 6 - 11	# of Points Available Per Item (P)	Weight (W)	Range of Possible Weighted Score Per Item (P) x (W)
MEDICAL ASSESSMENT			
Medical Conditions Section			
Cerebral Palsy, Epilepsy	0-1	2.50	0-2.5

AGE GROUP 0 – 5	Weight
FUNCTIONAL ASSESSMENT	
6 -9 Months	5.0
9-11 Months	4.1
12-17 Months	2.9
18-23 Months	2.125
24-29 Months	1.75
30-35 Months	1.55
36-47 Months	1.34
48-59 Months	1.14
60 Months+	1.03

AGE GROUP 0 - 5	Weight
MEDICAL ASSESSMENT	
Cerebral Palsy	5.0
Epilepsy	5.0
Moderate, Severe, or Profound Mental Retardation (36 Months and older only)	15.0
Autism + M-CHAT (18 Months and older only) Fails at least six M-CHAT based questions	7.0
Autism + Behaviors (30-35 Months only) Exhibits at least 3 of 4 specific behaviors	5.0
Autism + Behaviors (36 Months and older only) Exhibits at least 6 of 8 specific behaviors	10.0
Drug Regulation + Administration (6 Months to 35 Months)	1.0
Drug Regulation + Administration (36 Months and older)	1.5
Non-Bowel/Bladder Ostomy Care (6 Months to 35 Months)	7.0
Non-Bowel/Bladder Ostomy Care (36 Months and older)	5.0
Tube Feeding (6 Months to 35 Months)	7.0
Tube Feeding (36 Months and older)	5.0
Physical Therapy or Occupational Therapy (6 Months to 35 Months)	1.0

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Physical Therapy or Occupational Therapy (36 Months and older)	1.5
Acute Hospital Admission (One)	1.0
Acute Hospital Admissions (Two or more)	2.0
Direct Care Staff Trained (6 Months to 11 Months)	0.5
Direct Care Staff Trained (12 Months and older)	1.0
Special Diet	2.0

**Historical Note**

Section adopted by emergency action effective June 30, 1995, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 95-2). Section adopted again by emergency action effective January 2, 1996, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 96-1). Emergency expired. New Section adopted effective January 14, 1997 (Supp. 97-1). Former Section R9-28-305 renumbered to R9-28-306; new Section R9-28-305 renumbered from R9-28-304 and amended by final rulemaking at 7 A.A.R. 5824, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 17 A.A.R. 167, effective March 12, 2011 (Supp. 11-1).

**R9-28-306. Reassessments**

- A. An assessor shall reassess an ALTCS member to determine continued eligibility:
  - 1. In connection with a routine audit of the PAS assessment by AHCCCS;
  - 2. In connection with a request by a provider, program contractor, case manager, or other party, if AHCCCS determines that continued eligibility is uncertain due to substantial evidence of a change in the member’s circumstances or error in the PAS assessment; or
  - 3. Annually when part of a population group identified by the Director in a written report as having an increased likelihood of becoming ineligible.
- B. An assessor shall determine continued eligibility for ALTCS using the same criteria used for the initial PAS assessment as prescribed in R9-28-303.
- C. An assessor shall refer the reassessment to physician consultant review if the member is:
  - 1. Determined ineligible,
  - 2. In the ALTCS Transitional Program under R9-28-307 and resides in a NF or ICF-MR, or
  - 3. Seriously mentally ill and no longer has a non-psychiatric medical condition that impacts the member’s ability to function.

**Historical Note**

Adopted effective September 1, 1995, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1994, Ch. 322, § 21; filed with the Office of the Secretary of State June 29, 1995 (Supp. 95-3). Former Section R9-28-306 renumbered to R9-28-307; new Section R9-28-306 renumbered from R9-28-305 and amended by final rulemaking at 7 A.A.R. 5824, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 10 A.A.R. 1312, effective May 1, 2004 (Supp. 04-1).

**R9-28-307. The ALTCS Transitional Program for a Member who is Elderly and Physically Disabled (EPD) or Developmentally Disabled (DD)**

- A. The ALTCS transitional program serves members enrolled in the ALTCS program who, at the time of reassessment as described in R9-28-306, no longer meet the threshold specified in R9-28-304 for EPD or in R9-28-305 for DD but do meet all other ALTCS eligibility criteria. The Administration shall compare the member’s PAS assessment to a scoring methodology for eligibility in the ALTCS transitional program as defined in subsections (B) and (C).
- B. The Administration shall transfer a member who is DD from the ALTCS program to the ALTCS transitional program if, at the time of a reassessment, the total PAS score is less than the threshold described in R9-28-305 but is at least 30, or the member is diagnosed with moderate, severe, or profound mental retardation.
- C. The Administration shall transfer a member who is EPD from the ALTCS program to the ALTCS transitional program if, at the time of a reassessment, the PAS score is less than the threshold described in R9-28-304 but is at least 40.
- D. For a member residing in a NF or ICF-MR, the program contractor or the Administration shall ensure that the member is moved to an approved home- and community-based setting within 90 continuous days from the enrollment date of the member's eligibility for the ALTCS transitional program.
- E. A member in the ALTCS transitional program shall continue to receive all medically necessary covered services as specified in Article 2.
- F. A member in the ALTCS transitional program is eligible to receive up to 90 continuous days per NF or ICF-MR admission when the member’s condition worsens to the extent that an admission is medically necessary.
- G. For a member requiring medically necessary NF or ICF-MR services for longer than 90 days, the program contractor shall request the Administration to conduct a reassessment under R9-28-306.

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**Historical Note**

New Section renumbered from R9-28-306 and amended by final rulemaking at 7 A.A.R. 5824, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 12 A.A.R. 4007, effective October 5, 2006 (Supp. 06-4).

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.

36-2936. Preadmission screening programs; functional tests; screening review

A. The director shall adopt rules establishing a uniform statewide preadmission screening program to determine if a person who has met the eligibility criteria prescribed in section 36-2934 is eligible for institutional services pursuant to this article. To be eligible for institutional services or home and community based services as defined in section 36-2931, a person shall have a nonpsychiatric medical condition or have a developmental disability as defined in section 36-551 that, by itself or in combination with other medical conditions, necessitates the level of care that is provided in a nursing facility or intermediate care facility. These rules shall establish a uniform preadmission screening instrument that assesses the functional, medical, nursing, social and developmental needs of the applicant.

B. A person is not eligible to receive home and community based services unless that person has been determined to need institutional services as determined by the preadmission screening instrument pursuant to subsection C of this section. The administration shall establish guidelines for the periodic reassessment of each member.

C. Preadmission screening conducted pursuant to subsection B of this section shall be conducted by a registered nurse licensed pursuant to title 32, chapter 15 or a social worker. The nurse or social worker shall have a physician licensed pursuant to title 32, chapter 13 or 17 available for consultation and may use the applicant's attending physician's physical assessment form, if appropriate, in assessing needs for long-term care services under this article. A physician who receives a referral from the nurse or social worker may use the physician's medical judgment to determine the medical eligibility of an applicant for the system or the continued medical eligibility of a member or eligible person. In the medical referral, the physician shall use the established combined thresholds for functional ability and medical condition as a guide to determine the risk of institutionalization.

D. If a person who is eligible for services pursuant to this article, who is enrolled with a program contractor pursuant to this article and who is enrolled with a program contractor pursuant to section 36-2940 fails the preadmission screening for institutional services pursuant to subsection A of this section at the time of a reassessment, the administration may administer a second preadmission screening designed to measure the functioning level of the person based on rules adopted by the director. If the person meets the established thresholds of the functional preadmission screening, the person is eligible for home and community based services pursuant to section 36-2939, subsection A, paragraphs 2, 3 and 4, subsection B, paragraph 2 and subsection C. If a person who is determined eligible pursuant to this subsection is institutionalized pursuant to section 36-2939, including residence in an intermediate care facility, institution for mental disease, inpatient psychiatric facility or nursing facility, the person has a maximum of ninety days to vacate the institutional setting and relocate to a home and community based setting approved pursuant to section 36-2939.

E. If the person is determined not to need services pursuant to this section, the administration shall provide the person with information on other available community services.

F. The administration or its designee shall complete the preadmission screening under subsection A of this section within eight days, excluding Saturdays and holidays, and excluding the time period allowed to determine eligibility pursuant to section 36-2934.

G. If a provider who contracts with the administration pursuant to section 36-2904, subsection A is dissatisfied with any action or decision of the administration regarding the eligibility of a person for the system as prescribed in this article, that provider may file a grievance in accordance with the provider grievance procedure prescribed in section 36-2932, subsection I, paragraph 1. If the director determines pursuant to the grievance process that the person should have been determined eligible pursuant to section 36-2933, the director may reimburse the provider for the net cost of services provided pursuant to this article after the cumulative time periods allowed pursuant to section 36-2934 and this section.

H. In addition to those persons seeking services pursuant to this article, the preadmission screening conducted pursuant to this section shall be made available to all other persons applying for admission to a nursing care institution. The cost of preadmission screenings conducted by the administration pursuant to this subsection shall be borne by the state. The administration shall provide nursing care institutions and the general public on request with detailed information about the preadmission screening program and booklets that describe in clear and simple language the availability of services and benefits from the system. The booklet shall:

1. Explain the availability of preadmission screening that will assess the functional, medical, nursing and social needs of the patient and make recommendations on services that meet the patient's needs as identified by the preadmission screening assessment.
2. Describe the availability of public and private services appropriate to meet the patient's needs in institutions and alternatives to institutions.
3. Explain financial eligibility standards for the Arizona long-term care system and its effect on separate and community property.

I. In addition to the preadmission screening program established in this section, the administration shall implement the preadmission screening program as set forth in section 1919 of the social security act. For persons applying for admission to a title XIX certified nursing care institution, an initial level I preadmission screening shall be conducted by the administration on all nursing care institution applicants who are applying for eligibility pursuant to section 36-2933 and by the nursing care institution on all other nursing care institution applicants. The administration shall develop a uniform identification screening instrument, which shall be used by the nursing care institution and the administration in conducting the initial level I screens. If the identification screen indicates the applicant may be mentally ill, the applicant shall be referred to the department of health services, which shall conduct the level II preadmission screening review using a level II screening instrument developed by the department of health services. If the identification screen indicates the applicant may have an intellectual disability,

the applicant shall be referred to the department, which shall conduct the level II preadmission screening review using a level II screening instrument developed by the department.

J. Within ten working days a nursing care institution shall notify the department of health services for a person who is mentally ill or the department of economic security for a person with developmental disabilities and the department of child safety if the person is a minor dependent of this state about any significant change that occurs in the physical or mental condition of a member who is residing in the nursing care institution. The department of health services or the department of economic security shall conduct a subsequent level II screening review of the member within the time frame required by the administration after the notification by the nursing care institution.

**ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F-17-1003)**  
Title 9, Chapter 28, Article 6, RFP and Contract Process



**GOVERNOR'S REGULATORY REVIEW COUNCIL  
ANALYSIS OF FIVE-YEAR REVIEW REPORT**

**MEETING DATE:** October 3, 2017

**AGENDA ITEM:** E-4

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**TO:** Members of the Governor's Regulatory Review Council

**FROM:** Shama Thathi, Staff Attorney

**DATE :** September 19, 2017

**SUBJECT:** **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F-17-1003)**  
Title 9, Chapter 28, Article 6, RFP and Contract Process

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**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 six rules in A.A.C. Title 9, Chapter 28, Article 6. As of July 2017, AHCCCS provides, directly or through contracts, health care coverage for approximately 2 million Arizonans. The rules in Article 6 govern the Request for Proposal (RFP) process, specifically with regards to the methods the Administration may employ to procure contracts with health care organizations to provide health care services to qualified candidates. These rules relate to the administration of the Arizona Long Term Care System (ALTCS).

**Article Contents**

Article 6 contains six rules that address general provisions; RFP; contract awards; contract or proposal protests and appeals; waiver of contractor's subcontract with hospitals; and contract compliance sanctions.

**Year that Each Rule was Last Amended or Newly Made**

The rules were last amended by final rulemaking in 2002, with the exception of Sections 604 and 606, which were amended in 2012.

## **Proposed Action**

The Administration does not propose a course of action, as no issues have been identified with the rules.

## **Substantive or Procedural Concerns**

None.

## **Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:**

**1. Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

Yes. The Administration has certified its compliance with A.R.S. § 41-1091.

**2. Has the agency analyzed the rules' effectiveness in achieving their objectives?**

Yes. The Administration indicates that the rules are effective in achieving their objectives.

**3. Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

Yes. The Administration indicates that it has not received any written criticisms of the rules during the last five years.

**4. Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Administration cites to A.R.S. § 36-2903.01(F) as general 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."

The Administration cites to A.R.S. § 36-2944 as specific authority for the Administration to adopt rules regarding the request for proposal process as specified in A.R.S. § 36-2932.

**5. Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes. The Administration indicates that the rules are consistent with other rules and statutes.

**6. Has the agency analyzed the current enforcement status of the rules?**

Yes. The Administration indicates that the rules are enforced as written.

7. **Has the agency analyzed whether the rules are clear, concise, and understandable?**

Yes. The Administration indicates that the rules are clear, concise, and understandable.

8. **Has the agency analyzed whether:**

a. **The rules are more stringent than corresponding federal law?**

Yes. The Administration indicates that the rules are not more stringent than federal law.

b. **There is statutory authority to exceed the requirements of federal law?**

Not applicable.

9. **For rules adopted after July 29, 2010, has the agency analyzed whether:**

a. **The rules require issuance of a regulatory permit, license or agency authorization?**

Not applicable. The rules do not require issuance of a permit, license, or agency authorization.

b. **It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?**

Not applicable.

10. **Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?**

Yes. The Administration did not propose a course of action in the previous five-year-review report, approved by the Council on August 7, 2012.

11. **Has the agency included a proposed course of action?**

Yes. The Administration has not identified any issues with the rules. Hence, there is no proposed course of action.

**Conclusion**

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends that the report be approved.



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

MEETING DATE: October 3, 2017

AGENDA ITEM: E-4

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**TO:** Members of the Governor's Regulatory Review Council

**FROM:** GRRC Economic Team

**DATE :** September 19, 2017

**SUBJECT:** **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F-17-1003)**  
Title 9, Chapter 28, Article 6, RFP and Contract Process

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I have reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

**1. Economic Impact Comparison**

The economic, small business, and consumer impact statement (EIS) from the most recent Arizona Health Care Cost Containment System Administration (Administration) rulemaking completed in 2012 was reviewed for Article 6. The Article 6 rules address the procedures for proposing, awarding, and protesting contracts with vendors who administer the Arizona Long-Term Care System (ALTCS). These rules also outline vendor sanctions imposed for noncompliance.

Key stakeholders that are impacted are the Administration, ALTCS vendors, and taxpayers. As of July 2017, AHCCCS, directly or through contracts, is responsible for the provision of health care coverage for approximately 2 million Arizonans. Approximately 1.7 million are enrolled in one of several managed care entities under contract with AHCCCS. Approximately 60,000 Arizonans are enrolled with program vendors in the ALTCS.

The Administration concludes that the economic impact has generally been as predicted in the prior EIS for the rules.

**2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?**

The Administration determines the rules as written impose the least burden and cost when meeting their objectives.

**3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?**

No analysis was submitted to the Administration by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

**4. Conclusion**

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

July 25, 2017

Ms. Nicole Ong, Chair  
Governor's Regulatory Review Council  
100 N. 15<sup>th</sup> 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 6. 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

**Arizona Health Care Cost Containment System  
(AHCCCS)**

**5 YEAR REVIEW REPORT**

**A.A.C. Title 9, Chapter 28, Article 6**

July 2017

## **I. General Information about 9 A.A.C. 28, Article 6**

### **Overview:**

The Arizona Health Care Cost Containment System Administration (AHCCCS) serves as the State's Medicaid Agency pursuant to Title XIX of the Social Security Act, also administering a variety of health care-related programs, including KidsCare, Arizona's version of the State Children's Health Insurance Program (SCHIP) authorized by Title XXI of the Social Security Act.

As of July 2017, AHCCCS, directly or through contracts, provides health care coverage for approximately 2 million Arizonans. Most beneficiaries receive coverage through managed care organizations (known as "health plans" and "program contractors") that contract with the AHCCCS Administration to provide covered physical and behavioral health services. In excess of 1.5 million persons are enrolled in one of several health plans under contract with the AHCCCS Administration to provide acute care services. In addition, almost 60,000 individuals are enrolled with program contractors under the Title XIX Arizona Long Term Care System. Program contractors serve as managed care organization, coordinating delivery of both acute and long-term care services to persons whose level of care meet criteria for care in an institutional setting and who are age 65 years or older, have a physical disability, or have a developmental disability. A few hundred thousand persons eligible for AHCCCS benefits receive health services on a fee-for-service basis, including American Indians who elect not to receive services through managed care organizations, and persons who are eligible only for emergency services.

With respect to the Arizona Long Term Care System, ARS §36-2944(B) authorizes the Director to adopt rules regarding the request for proposal process, and ARS §36-2932 (B) authorizes the Administration to promulgate rules for the Director to review and approve program contractors' requests for proposals. Subsection M provides general authority for the Director to adopt any rules necessary to carry out Article 2 of Title 36 Chapter 29. Pursuant to ARS §41-2501 (H), AHCCCS is exempt from the Arizona Procurement Code "for provider contracts pursuant to section 36-2904, subsection A and contracts for goods and services, including program contractor contracts pursuant to title 36, chapter 29, articles 2 and 3 and contracts with regional behavioral health authorities pursuant to title 36, chapter 34." As mentioned above, ARS § 36-

2944 requires that the AHCCCS Director establish rules for the request for proposal process with respect to the Arizona Long Term Care System. These rules implement this statutory requirement, and the rules under review describe the methods by which the AHCCCS Administration procures contracts for services provided under the Arizona Long Term Care System. In 2012, R9-28 604 and 606 were amended.

## **II. Five Year Report on 9 A.A.C. 28, Article 6 rules:**

### **General and specific statutes authorizing the rule:**

A.R.S. § 36-2932 provides general authority for AHCCCS to adopt rules.

A.R.S. § 36-2944 specifically authorizes the AHCCCS Administration to establish rules for the request for proposal process as specified in A.R.S. 36-2932.

### **Objective of the rule:**

R9-28-601 – The objective of the rule is to list the authority for the Request for Proposal (RFP) and describe the applicability of Title 9 Chapter 22 Article 6.

R9-28-602 – The objective of this rule is to prescribe the contents of the RFP and the proposal process.

R9-28-603 – The objective of this rule is to prescribe the process the Administration follows when awarding contracts.

R9-28-604 – The objective of this rule is to prescribe the means of protesting an RFP or award including the administrative appeal process.

R9-28-605 – The objective of this rule is to prescribe means by which an offeror or contractor may request from the Director a waiver of the requirement for hospital subcontracts.

R9-28-606 – The objective of this rule is to prescribe sanctions the Director may impose on contractors for noncompliance and the factors considered when doing so.

### **Effectively meets its objectives, including any available data supporting conclusion:**

Chapter 28, Article 6 rules meet the objectives listed above. No data was attained.

### **Consistent with Statutes, rules, (including Federal, State, Waiver, Policy)**

Chapter 28, Article 6 rules are consistent with statutes and federal regulations.

### **Is enforced:**

Chapter 28, Article 6 rules are enforced with no issues.

**Clarity, conciseness and understandability of the rule:**

The rules are clear, concise, and understandable.

**Had written criticisms in the past five years, including written analyses submitted questioning if the rule is based on valid scientific or reliable principles or methods:**

Written criticisms or written analyses for Chapter 28, Article 6 have not been submitted in the past five years.

**Comparison of estimated economic, small business, and consumer impact.**

The economic impact estimated at the time of rule promulgation has not been significantly different than the actual economic impact.

**Was there any 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:**

No.

**If applicable, has the agency completed the course of action indicated in the agency's previous five-year review:**

These rules provide that the request for proposal and the contract process for the ALTCS Program are conducted in accordance with the rules in Article 6 of Chapter 22. The rules are clear, concise, and understandable. The Agency has completed the course of action specified for R9-22-604.

**Has there been 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 Administration believes the rules as written impose the least burden and cost when meeting their objectives.

**A determination after analysis that the rule is not more stringent than a corresponding federal law. Are the rules more stringent than a corresponding federal law? Is there a statutory authority that exceeds the requirements of that federal law?:**

Federal regulations 2 CFR 200.319 and 42 CFR 75.328 set forth general requirements of competition for procurements involving federal monies. The provisions in R9-28-600 et seq. are consistent with federal requirements and also specify what must be included in the Administration's contracts with managed care organizations.

**Does the rule comply with section 41-1037 for issuance of permit, license or agency authorization?**

Not applicable, the Administration does not issue permits, license or agency authorization for purposes of Article 6.

**Course of action, including the month and year when the agency anticipates submitting rules to the GRRC to amend repeal or make a rule:**

The Agency has not identified any necessary courses of action for the rules in Article 6.

## Arizona Health Care Cost Containment System – Arizona Long-term Care System

**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**

## Arizona Health Care Cost Containment System – Arizona Long-term Care System

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

**R9-28-610. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 1, 1993 (Supp. 93-1). Section repealed by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

**ARTICLE 7. STANDARDS FOR PAYMENTS****R9-28-701. Standards for Payment Related Definitions**

Definitions. In this Article, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, the following phrase has the following meaning unless the context of the Article explicitly requires another meaning:

“County of fiscal responsibility” means the county that is financially responsible for the state’s share of ALTCS funding.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3).

**R9-28-701.10. General Requirements**

The following Sections of A.A.C. Chapter 22, Articles 2 and 7, are applicable to reimbursement for services provided under the ALTCS program, except that the term “program contractor” shall be substituted for “contractor.”

1. Scope of the Administration’s and Contractor’s Liability, R9-22-701.10;
2. Charges to Members, R9-22-702;
3. Payments by the Administration or by a program contractor, R9-22-703 and R9-22-705;
4. Contractor’s Liability to Hospitals for the Provision of Emergency and Post-stabilization Care, R9-22-709;
5. Payment for Non-hospital services, R9-22-710;
6. Specialty Contracts, R9-22-712(G)(3), R9-22-712.01 (10) and Article 2;
7. Payments by the Administration for Hospital Services Provided to an Eligible Person, R9-22-712; R9-22-712.01 and R9-22-712.10;
8. Overpayment and Recovery of Indebtedness, R9-22-713;
9. Payments to Providers, R9-22-714;
10. Hospital Rate Negotiations, R9-22-715; and
11. Reinsurance, R9-22-720.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-702. Nursing Facility Assessment**

A. For purposes of R9-28-702 and R9-28-703, in addition to the definitions under A.R.S. § 36-2999.51, the following terms have the following meaning unless the context specifically requires another meaning:

“820 transaction” means the standard health care premium payments transaction required by 45 CFR 162.1702.

“Assessment year” means the 12 month period beginning October 1st each year.

“Medicaid patient days” means patient days reported on the Nursing Care Institution Uniform Accounting Report (UAR) as attributable to AHCCCS and its contractors as the primary payor.

“Medicare days” means resident days where the Medicare program, a Medicare advantage or special needs plan, or the Medicare hospice program is the primary payor.

“Medicare patient days” means patient days reported on the Nursing Care Institution UAR as Skilled Medicare Patient Days or Part C/Advantage/Medicare Replacement Days.

“Nursing Care Institution UAR” means the Nursing Care Institution Uniform Accounting Report described by R9-11-204.

- B. Subject to Centers for Medicare and Medicaid Services (CMS) approval, effective October 1, 2012, nursing facilities shall be subject to a provider assessment payable on a quarterly basis.
- C. All nursing facilities licensed in the state of Arizona shall be subject to the provider assessment except for:
  1. A continuing care retirement community,
  2. A facility with 58 or fewer beds, according to the Arizona Department of Health Services, Division of Licensing Services, Provider & Facility Database,
  3. A facility designated by the Arizona Department of Health Services as an Intermediate Care Facility for the Intellectually Disabled,
  4. A tribally owned or operated facility located on a reservation, or
  5. Arizona Veteran’s Homes.
- D. The Administration shall calculate the prospective nursing facility provider assessment for qualifying nursing facilities as follows:
  1. In September of each year, the Administration shall obtain from the Arizona Department of Health Services the most recently published Nursing Care Institution UAR and the information required in subsection (C)(2). At the request of the Administration, a nursing facility shall provide the Administration with any additional information necessary to determine the assessment.
  2. The Administration shall use the information obtained under subsection (D)(1) to determine:
    - a. Each nursing facility’s total annual Medicaid patient days,
    - b. Each nursing facility’s total annual Medicare patient days,
    - c. Each nursing facility’s total annual patient days,
    - d. The aggregate net patient service revenue of all assessed providers, and
    - e. The slope described under 42 CFR 433.68(e)(2).
  3. For each nursing facility, other than a nursing facility exempted in subsection (C) or described in subsection (D)(4), the provider assessment is calculated by multiplying the nursing facility’s total annual patient days, other than Medicare patient days, by \$15.63.
  4. For a nursing facility, other than a nursing facility exempted in subsection (C), with a number of total annual Medicaid patient days greater than or equal to the number required to achieve a slope of at least 1 applying the uniformity tax waiver test described in 42 CFR 433.68(e)(2), the provider assessment is calculated by

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.

36-2932. 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.

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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.

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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.

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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.

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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.

**ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F-17-1004)**  
Title 9, Chapter 28, Article 7, Standards for Payments



**GOVERNOR'S REGULATORY REVIEW COUNCIL  
ANALYSIS OF FIVE-YEAR REVIEW REPORT**

**MEETING DATE:** October 3, 2017

**AGENDA ITEM:** E-5

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**TO:** Members of the Governor's Regulatory Review Council

**FROM:** Shama Thathi, Staff Attorney

**DATE :** September 19, 2017

**SUBJECT:** **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F-17-1004)**  
Title 9, Chapter 28, Article 7, Standards for Payments

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**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 five rules in A.A.C. Title 9, Chapter 28, Article 7, related to standards for payments. The rules establish the standard for payments for providers who render services to members in the Arizona Long Term Care System (ALTCS) program.

**Article Contents**

Article 7 contains five rules that address definitions; general requirements; nursing facility assessment; nursing facility supplement payments; and county of fiscal responsibility.

**Year that Each Rule was Last Amended or Newly Made**

The rules were last amended at various times between 2002 and 2017.

**Proposed Action**

The Administration plans to amend R9-28-703 to revise requirements for nursing facility supplemental payments, by submitting a rulemaking to the Council in November 2017.

## Substantive or Procedural Concerns

None.

### Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. **Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

Yes. The Administration has certified its compliance with A.R.S. § 41-1091.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

Yes. The Administration indicates that the rules are effective in achieving their objectives.

3. **Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

Yes. The Administration indicates that it has not received any written criticisms of the rules during the last five years.

4. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Administration cites to A.R.S. § 36-2903.01(F) as general 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."

The Administration cites to A.R.S. § 36-2932 as specific authority for the Administration to adopt rules to implement the ALTCS program, including the various administrative aspects of the program. A.R.S. §§ 36-2943, 36-2959, and 36-2999.51 also provide authority related to provider subcontracts, hospital reimbursements, reimbursement rates, and capitation rates.

5. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes. The Administration indicates that the rules are consistent with other rules and statutes.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Administration indicates that the rules are enforced as written.

7. **Has the agency analyzed whether the rules are clear, concise, and understandable?**

Yes. The Administration indicates that the rules are clear, concise, and understandable.

8. **Has the agency analyzed whether:**

a. **The rules are more stringent than corresponding federal law?**

Yes. The Administration indicates that the rules are not more stringent than corresponding federal Medicaid regulations.

b. **There is statutory authority to exceed the requirements of federal law?**

Not applicable.

9. **For rules adopted after July 29, 2010, has the agency analyzed whether:**

a. **The rules require issuance of a regulatory permit, license or agency authorization?**

Not applicable. The rules do not require issuance of a permit, license, or agency authorization.

b. **It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?**

Not applicable.

10. **Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?**

Yes. In the previous five-year-review report, approved by the Council on August 7, 2012, the Administration was awaiting legislative directive regarding changes to its tiered per diem payment methodology. Consistent with A.R.S. § 36-2903.01, the Administration promulgated rules establishing standards for payment.

11. **Has the agency included a proposed course of action?**

Yes. The Administration is currently in the process of amending the DRG rules to rebase the components of the DRG system using updated claims and encounter data. The Notice of Final Rulemaking for the APR-DRG Reimbursement Rates, in A.A.C. Title 9, Chapter 22, was submitted to the Council on August 21, 2017. If the rulemaking is approved by the Council, the Administration will amend R9-28-703 to revise requirements for nursing facility supplemental payments. The Administration plans to submit a rulemaking to the Council in November 2017.

## **Conclusion**

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends that the report be approved.



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

**MEETING DATE:** October 3, 2017

**AGENDA ITEM:** E-5

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**TO:** Members of the Governor's Regulatory Review Council

**FROM:** GRRC Economic Team

**DATE :** September 19, 2017

**SUBJECT: ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F-17-1004)**  
Title 9, Chapter 28, Article 7, Standards for Payments

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I have reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

**1. Economic Impact Comparison**

The economic, small business, and consumer impact statement (EIS) from the most recent Arizona Health Care Cost Containment System Administration (Administration) rulemaking completed in 2012 was reviewed for Article 7. The Article 7 rules address general reimbursement requirements, the nursing facility assessments and payment requirements, and the cost allocation criteria. All payments and assessments in this Article refer to vendors contracted for the Arizona Long-Term Care System (ALTCS).

Key stakeholders that are impacted are the Administration, ALTCS vendors, and taxpayers. As of July 2017, AHCCCS, directly or through contracts, is responsible for the provision of health care coverage for approximately 2 million Arizonans. Approximately 1.7 million are enrolled in one of several managed care entities under contract with AHCCCS. Approximately 60,000 Arizonans are enrolled with program vendors in the ALTCS.

The Administration concludes that the economic impact has generally been as predicted in the prior EIS for the rules.

**2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?**

The Administration determines the rules as written impose the least burden and cost when meeting their objectives.

**3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?**

No analysis was submitted to the Administration by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

**4. Conclusion**

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

July 25, 2017

Ms. Nicole Ong, Chair  
Governor's Regulatory Review Council  
100 N. 15<sup>th</sup> Ave, Suite 305  
Phoenix, AZ 85007

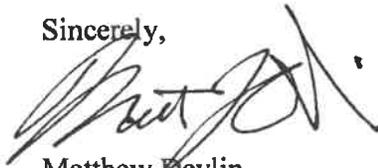
Dear Ms. Ong:

Pursuant to requirements in R1-6-301, attached is a copy of the 5-Year Review Report for Title 9, Chapter 28, Article 7. 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

**Arizona Health Care Cost Containment System  
(AHCCCS)**

**5 YEAR REVIEW REPORT**

**A.A.C. Title 9, Chapter 28, Article 7**

July 2017

## **I. General Information about 9 A.A.C. 28, Article 7**

### **Overview:**

The Arizona Health Care Cost Containment System Administration (AHCCCS) serves as the State's Medicaid Agency pursuant to Title XIX of the Social Security Act and also administers a variety of health care-related programs, including KidsCare, Arizona's version of the State Children's Health Insurance Program (SCHIP) authorized by Title XXI of the Social Security Act. Both AHCCCS Medicaid and KidsCare are cooperative joint federally and state funded programs where Arizona receives partial reimbursement of administrative and program costs from the federal government. AHCCCS must comply with federal statutes and regulations as well as state statutes and regulations to implement program requirements.

As of July 2017, AHCCCS, directly or through contracts, is responsible for the provision of health care coverage for approximately 2 million Arizonans. Most persons who are determined eligible receive coverage through managed care organizations that contract with the AHCCCS Administration. Approximately 1.7 million persons are enrolled in one of several managed care entities under contract with the AHCCCS Administration to provide acute health care services. Approximately 60,000 persons are enrolled with managed care entities (also known as program contractors) providing acute and long-term care services to members who are elderly, physically disabled, or developmentally disabled and whose level of care meet criteria for care in an institutional setting. Persons not enrolled with managed care entities receive services on a fee-for service basis.

The rules in A.A.C. Title 9, Chapter 28, Article 7 delineate the standards for payments of providers who render services to members in the ALTCS Program: the Title XIX Arizona Long Term Care System. The ALTCS program is a joint federal and state funded program that provides health care services to persons who are age 65 years or older, have a physical disability, or have a developmental disability and whose level of care meet criteria for care in an institutional setting. Approximately 60,000 individuals are enrolled with program contractors under the Title XIX Arizona Long Term Care System. Program contractors serve as managed care organization, coordinating delivery of both acute and long-term care services to eligible persons who meet designated income and resource levels. Services are reimbursed by managed care organizations

when members are enrolled with program contractors. Otherwise, services are received on a fee-for-service basis. Many of the standards of payment provisions from Title 9 Chapter 22 Article 7 apply to the ALTCS Program, and therefore, several ALTCS payment rules cross-reference the relevant rules in the acute care program. ARS §36-2943 provides that hospitals providing services to members in the ALTCS program shall be paid by program contractors “as prescribed in section 36-2903.01, or such lower rates as may be negotiated by the program contractor.” As mentioned in the Five Year Review Report for Chapter 22 Article 7, the Agency has engaged in extensive rulemaking activities regarding payment provisions during the past few years, including the implementation of the diagnosis-related group (DRG) hospital reimbursement methodology and the updating of payment standards for outpatient hospital services. Additionally, AHCCCS has promulgated rules for nursing facility assessments and supplemental payments during the 2014 through 2017 timeframe. The Agency is currently in the process of revising R9-28-703 to conform to updated federal requirements.

## **II. Five Year Report on 9 A.A.C. 28, Article 7 rules:**

### **General and specific statutes authorizing the rule:**

A.R.S. § 36-2932 provides general authority for AHCCCS to adopt rules.

A.R.S. §§ 36-2932, 36-2943, 36-2959, and 36-2999.51 et seq provide implementing authority.

### **Objective of the rule:**

R9-28-701 – The objective of this rule is to provide definitions that specifically support the payment regulations outlined in Article 7.

R9-28-701.10 – The objective of this rule is to describe the general reimbursement requirements cross-referencing Chapter 22 reimbursement rules.

R9-28-702 – The objective of this rule is to set forth the requirements for assessments to nursing facilities.

R9-28-703 – The objective of this rule is to set forth the requirements for supplemental payments for nursing facilities.

R9-28-712 - The objective of the rule is to set forth the criteria for determining the county that is financially responsible for the state's share of the ALTCS funding as referenced in A.R.S. §36-2913.

**Effectively meets its objectives, including any available data supporting conclusion:**

Chapter 28, Article 7 rules meet the objective listed above. No data was attained.

**Consistent with Statutes, rules, (including Federal, State, Waiver, Policy)**

Chapter 28, Article 7 rules are consistent with statutes and federal regulations.

**Is enforced:**

Chapter 28, Article 7 rules are enforced with no issues.

**Clarity, conciseness and understandability of the rule:**

Chapter 28, Article 7 rules are clear, concise, and understandable.

**Had written criticisms in the past five years, including written analyses submitted questioning if the rule is based on valid scientific or reliable principles or methods:**

Written criticisms or written analyses for Chapter 28, Article 7 have not been submitted in the past five years.

**Comparison of estimated economic, small business, and consumer impact.**

The economic impact estimated at the time of rule promulgation has not been significantly different than the actual economic impact.

**Was there any 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:**

No.

**If applicable, has the agency completed the course of action indicated in the agency's previous five-year review:**

According to the previous 5 Year Review Report, filed in May 2012, no changes were recommended until legislation directed otherwise. Therefore, AHCCCS completed the course of action indicated in the previous 5 Year Review Report.

**Has there been 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 Administration believes the rules as written impose the least burden and cost when meeting their objectives.

**A determination after analysis that the rule is not more stringent than a corresponding federal law. Are the rules more stringent than a corresponding federal law? Is there a statutory authority that exceeds the requirements of that federal law?:**

The reimbursement regulations in the 5 Year Review Report, R9-28-701 et seq. are not more stringent than their corresponding federal Medicaid regulations. They are consistent with federal law 42 USC 1396(a)(30)(A) and federal regulations in 42 CFR Part 447.

**Does the rule comply with section 41-1037 for issuance of permit, license or agency authorization?**

Not applicable, the Administration does not issue permits, license or agency authorization for the imposition the definitions section of Chapter 28.

**Course of action, including the month and year when the agency anticipates submitting rules to the GRRC to amend repeal or make a rule:**

The Agency is currently in the process of amending the DRG rules to rebase the components of the DRG system using updated claims and encounter data. The NOPR for the APR-DRG Reimbursement Rates was sent to GRRC staff on 08/21/2017. This rulemaking will also update the version of the All Patient Refined Diagnosis Related Group (APR-DRG) classification system established by 3M Health Information Systems for dates of discharge beginning January 1, 2018. The amended DRG rules are anticipated to be effective January 1, 2018. AHCCCS will also be amending A.A.C. R9-28-703 to revise requirements for nursing facility supplemental payments for spring 2018. The Notice of Proposed Rulemaking for this rule is expected to be filed with GRRC in November 2017.

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**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

**R9-28-610. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 1, 1993 (Supp. 93-1). Section repealed by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

**ARTICLE 7. STANDARDS FOR PAYMENTS****R9-28-701. Standards for Payment Related Definitions**

Definitions. In this Article, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, the following phrase has the following meaning unless the context of the Article explicitly requires another meaning:

“County of fiscal responsibility” means the county that is financially responsible for the state’s share of ALTCS funding.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3).

**R9-28-701.10. General Requirements**

The following Sections of A.A.C. Chapter 22, Articles 2 and 7, are applicable to reimbursement for services provided under the ALTCS program, except that the term “program contractor” shall be substituted for “contractor.”

1. Scope of the Administration’s and Contractor’s Liability, R9-22-701.10;
2. Charges to Members, R9-22-702;
3. Payments by the Administration or by a program contractor, R9-22-703 and R9-22-705;
4. Contractor’s Liability to Hospitals for the Provision of Emergency and Post-stabilization Care, R9-22-709;
5. Payment for Non-hospital services, R9-22-710;
6. Specialty Contracts, R9-22-712(G)(3), R9-22-712.01 (10) and Article 2;
7. Payments by the Administration for Hospital Services Provided to an Eligible Person, R9-22-712; R9-22-712.01 and R9-22-712.10;
8. Overpayment and Recovery of Indebtedness, R9-22-713;
9. Payments to Providers, R9-22-714;
10. Hospital Rate Negotiations, R9-22-715; and
11. Reinsurance, R9-22-720.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-702. Nursing Facility Assessment**

A. For purposes of R9-28-702 and R9-28-703, in addition to the definitions under A.R.S. § 36-2999.51, the following terms have the following meaning unless the context specifically requires another meaning:

“820 transaction” means the standard health care premium payments transaction required by 45 CFR 162.1702.

“Assessment year” means the 12 month period beginning October 1st each year.

“Medicaid patient days” means patient days reported on the Nursing Care Institution Uniform Accounting Report (UAR) as attributable to AHCCCS and its contractors as the primary payor.

“Medicare days” means resident days where the Medicare program, a Medicare advantage or special needs plan, or the Medicare hospice program is the primary payor.

“Medicare patient days” means patient days reported on the Nursing Care Institution UAR as Skilled Medicare Patient Days or Part C/Advantage/Medicare Replacement Days.

“Nursing Care Institution UAR” means the Nursing Care Institution Uniform Accounting Report described by R9-11-204.

- B. Subject to Centers for Medicare and Medicaid Services (CMS) approval, effective October 1, 2012, nursing facilities shall be subject to a provider assessment payable on a quarterly basis.
- C. All nursing facilities licensed in the state of Arizona shall be subject to the provider assessment except for:
  1. A continuing care retirement community,
  2. A facility with 58 or fewer beds, according to the Arizona Department of Health Services, Division of Licensing Services, Provider & Facility Database,
  3. A facility designated by the Arizona Department of Health Services as an Intermediate Care Facility for the Intellectually Disabled,
  4. A tribally owned or operated facility located on a reservation, or
  5. Arizona Veteran’s Homes.
- D. The Administration shall calculate the prospective nursing facility provider assessment for qualifying nursing facilities as follows:
  1. In September of each year, the Administration shall obtain from the Arizona Department of Health Services the most recently published Nursing Care Institution UAR and the information required in subsection (C)(2). At the request of the Administration, a nursing facility shall provide the Administration with any additional information necessary to determine the assessment.
  2. The Administration shall use the information obtained under subsection (D)(1) to determine:
    - a. Each nursing facility’s total annual Medicaid patient days,
    - b. Each nursing facility’s total annual Medicare patient days,
    - c. Each nursing facility’s total annual patient days,
    - d. The aggregate net patient service revenue of all assessed providers, and
    - e. The slope described under 42 CFR 433.68(e)(2).
  3. For each nursing facility, other than a nursing facility exempted in subsection (C) or described in subsection (D)(4), the provider assessment is calculated by multiplying the nursing facility’s total annual patient days, other than Medicare patient days, by \$15.63.
  4. For a nursing facility, other than a nursing facility exempted in subsection (C), with a number of total annual Medicaid patient days greater than or equal to the number required to achieve a slope of at least 1 applying the uniformity tax waiver test described in 42 CFR 433.68(e)(2), the provider assessment is calculated by

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- multiplying the nursing facility's total annual patient days, other than Medicare patient days, by \$1.80.
5. For each assessment year the slope described under 42 CFR 433.68(e)(2) shall be recalculated.
  6. The total annual assessment calculated under subsections (D)(3), (D)(4) and (D)(5), shall not exceed 3.5 percent of the aggregate net patient service revenue of all assessed providers as reported on the Nursing Care Institution UAR obtained under subsection (D)(1).
  7. All calculations and determinations necessary for the provider assessment shall be based on information possessed by the Administration on or before November 1 of the assessment year.
  8. The Administration shall forward the provider assessments for all assessed facilities to the Arizona Department of Revenue on or before December 1 of the assessment year.
  9. In the event a nursing facility closes during the assessment year, the nursing facility shall cease to be responsible for the portion of the assessment applied to the dates the nursing facility is not operating.
  10. In the event a nursing facility begins operation during the assessment year, that facility will have no responsibility for the assessment until such time as the facility has submitted to the Arizona Department of Health Services the report required by R9-11-204(A) covering a full year of operation.
  11. In the event a nursing facility has a change of ownership such that the facility remains open and the ownership of the facility changes, the assessment liability transfers with the change in ownership.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 3244, effective October 1, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 19 A.A.R. 137, effective January 8, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 4168, effective February 1, 2014 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 1989, effective September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 3332, effective January 3, 2017 (Supp. 16-4).

**R9-28-703. Nursing Facility Supplemental Payments****A. Nursing Facility Supplemental Payments**

1. Using Medicaid resident bed day information from the most recent and complete twelve months of adjudicated claims and encounter data, for every combination of contractor and every facility eligible for a supplemental payment, the Administration shall determine annually a ratio equal to the number of bed days for the facility paid by each contractor divided by the total number of bed days paid to all facilities by all contractors and the Administration.
2. Using the same information as used in (A)(1), for every facility eligible for a supplemental payment, the Administration shall determine annually a ratio equal to the number of bed days for the facility paid by the Administration divided by the total number of bed days paid to all facilities by all contractors and the Administration.
3. Quarterly, each contractor shall make payments to each facility in an amount equal to 98% of the amounts identi-

fied as Nursing Facility Enhanced Payments in the 820 transaction sent from AHCCCS to the contractor for the quarter multiplied by the percentage determined in subsection (A)(1) applicable to the contractor and to each facility.

4. Quarterly, the Administration shall make payments to each facility in an amount equal to 99% of the amounts collected during the preceding quarter under R9-28-702, less amounts collected and used to fund the Nursing Facility Enhanced Payments included in the capitation paid to contractors and the corresponding federal financial participation, multiplied by the percentage determined in subsection (A)(2) applicable to the Administration and to each facility. The Administration shall make the supplemental payments to the nursing facilities within 20 calendar days of the determination of the quarterly supplemental payment.
  5. Neither the Administration nor its contractors shall be required to make quarterly payments to facilities otherwise required by subsections (A)(3) or (A)(4) until the amount available in the nursing facility assessment fund established by A.R.S. § 36-2999.53, plus the corresponding federal financial participation, is equal to or greater than 101% of the amount necessary to make such payments in full.
  6. Contractors shall not be required to make quarterly payments to a facility otherwise required by subsection (A)(3) until the Administration has made a retroactive adjustment to the capitation rates paid to contractors to correct the Nursing Facility Enhanced Payments based on actual member months for the specified quarter.
- B.** Each contractor must pay each facility the amount computed within 20 calendar days of receiving the Nursing Facility Enhanced Payment from the Administration. The contractors must confirm each payment and payment date to the Administration within 20 calendar days from receipt of the funds.
- C.** After each assessment year, the Administration shall reconcile the payments made by contractors under subsections (A)(3) and (B) to the portion of the annual collections under R9-28-702 attributable to Medicaid resident bed days paid for by contractors for the same year, less one percent, plus available federal financial participation. The proportion of each nursing facility's Medicaid resident bed days as described in subsection (A)(1) shall be used to calculate the reconciliation amounts. Contractors shall make additional payments to or recoup payments from nursing facilities based on the reconciliation in compliance with the requirements of subsection (B).
- D.** General requirements for all payments.
1. A facility must be open on the date the supplemental payment is made in order to receive a payment. In the event a nursing facility closes during the assessment year, the nursing facility shall cease to be eligible for supplemental payments.
  2. In the event a nursing facility begins operation during the assessment year, that facility shall not receive a supplemental payment until such time as the facility has claims and encounter data that falls within the collection period for the payment calculation.
  3. In the event a nursing facility has a change of ownership, payments shall be made to the owner of the facility as of the date of the supplemental payment.
  4. Subsection (E)(3) shall not be interpreted to prohibit the current and prior owner from agreeing to a transfer of the payment from the current owner to the prior owner.
- E.** The Arizona Veterans' Homes are not eligible for supplemental payments.

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**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 19 A.A.R. 137, effective January 8, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 4168, effective February 1, 2014 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 1989, effective September 6, 2014 (Supp. 14-3).

**R9-28-704. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-705. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 25, 1990 (Supp. 90-2). 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 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. 3165, effective October 1, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-706. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsections (A) and (B) effective June 6, 1989 (Supp. 89-2). Amended effective April 25, 1990 (Supp. 90-2). Amended effective November 5, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 10 A.A.R. 4658, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 3852, effective November 12, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-707. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective September 22, 1997 (Supp. 97-3). Amended 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).

*Editor's Note: The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that the amendment was not reviewed by the Governor's Regulatory Review Council; the agency did not sub-*

*mit a notice of proposed rulemaking for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rulemaking; and the Attorney General has not certified the rule. This Section was subsequently amended through the regular rulemaking process.*

**R9-28-708. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 26, 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 by final rulemaking at 11 A.A.R. 3852, effective November 12, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-709. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsection (B) effective June 6, 1989 (Supp. 89-2). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-710. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsections (C) and (D) effective June 6, 1989 (Supp. 89-2). Amended effective September 22, 1997 (Supp. 97-3). Section repealed by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

**R9-28-711. Repealed****Historical Note**

Adopted effective November 5, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-712. County of Fiscal Responsibility****A. General requirements.**

1. The Administration shall determine the county of fiscal responsibility under A.R.S. § 36-2913 for an applicant or member who is elderly or physically disabled.
2. A program contractor shall cover services and provisions specified in 9 A.A.C. 22, Articles 2 and 7 and Article 11 of this Chapter.

**B. Criteria for determining county of fiscal responsibility for an applicant.**

1. If the applicant resides in the applicant's own home, the county of fiscal responsibility is the county where the applicant currently resides.
2. This applies only if subsection (B)(3) does not apply. If the applicant is residing in a NF or alternative HCBS setting, the county of fiscal responsibility is the county in which the applicant last resided in the applicant's own home.

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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.

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.

36-2932. 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.

**36-2943. Provider subcontracts: hospital reimbursement**

A. Subcontracts for services rendered by providers pursuant to section 36-2940 shall be awarded through competitive statewide proposals in as nearly the same manner as that provided in section 41-2534. If there is not a sufficient number of qualified proposals, a subcontract may be negotiated with a provider and shall be awarded pursuant to section 41-2536. In order to deliver covered services to members enrolled or expected to be enrolled in the system within a county, the program contractor may negotiate and award without bid a provider subcontract if during the contract year there is an insufficient number of subcontracts awarded to providers. The term of the subcontract shall not extend beyond the next bid and subcontract award process as provided in this section, and the subcontract shall be at rates no greater than the weighted average rates for the appropriate level of care paid to similar providers in the same county. This section does not allow a program contractor to forego the competitive bid process pursuant to section 41-2534 unless there is an unanticipated increase in members enrolled in the system or a decrease in available beds brought about by the closure of a facility operated by a provider that is unable to be absorbed by current contracting providers located in the same general area. Before soliciting subcontracts without the competitive bid process, the program contractor shall receive approval from the director.

B. Hospitals that render care to members shall be paid by the program contractor as prescribed in section 36-2903.01, or such lower rate as may be negotiated by the program contractor.

C. The director may ensure through the subcontracts pursuant to subsection A of this section that at least ten per cent of the members are provided services pursuant to this article on a capitation basis.

D. A claim for an authorized service submitted by a licensed skilled nursing facility, an assisted living Arizona long-term care system provider or a home and community based Arizona long-term care system provider that renders care to members pursuant to this article shall be adjudicated within thirty calendar days after receipt by the program contractor. Any clean claim for an authorized service provided to a member that is not paid within thirty calendar days after the claim is received accrues interest at the rate of one per cent per month from the date the claim is submitted. The interest is prorated on a daily basis and must be paid by the program contractor at the time the clean claim is paid.

36-2959. Reimbursement rates; capitation rates; annual review

A. The department shall contract with an independent consulting firm for an annual study of the adequacy and appropriateness of title XIX reimbursement rates to service providers for the persons with developmental disabilities program of both the Arizona long-term care system and the state only program. The consultant shall also include a recommendation for annual inflationary costs. Unless modified in response to federal or state law, the independent consulting firm shall include, in its recommendation, costs arising from amendments to existing contracts. The department may require, and the department's contracted providers shall provide, financial data to the department in the format prescribed by the department to assist in the study. A complete study of reimbursement rates shall be completed no less than once every five years.

B. Capitation rate adjustments shall be limited to utilization of existing services and inflation unless policy changes, including creation or expansion of programs, have been approved by the legislature or are specifically required by federal law or court mandate.

C. The administration shall contract with an independent consulting firm for an annual study of the adequacy and appropriateness of title XIX reimbursement rates to service providers for the elderly and physical disability program of the Arizona long-term care system. The administration may require, and the administration's contracted providers shall provide, financial data to the administration in the format prescribed by the administration to assist in the study. A complete study of reimbursement rates shall be completed no less than once every five years. In determining the adequacy of the rates in the five year study, the consulting firm shall examine in detail the costs associated with the delivery of services, including programmatic, administrative and indirect costs in providing services in rural and urban Arizona.

D. The department and the administration shall provide each of their reports to the joint legislative budget committee and the administration by October 1 of each year.

E. The department shall include the results of the study in its yearly capitation rate request to the administration.

F. If results of the study are not completely incorporated into the capitation rate, the administration shall provide a report to the joint legislative budget committee within thirty days of setting the final capitation rate, including reasons for differences between the rate and the study.

36-2999.51. Definitions

(Rpld. 10/1/23)

In this article, unless the context otherwise requires:

1. "Continuing care retirement community" means an entity that provides nursing facility services and assisted living or independent living services on a contiguous campus that is either registered as a life care facility with the department of insurance or has assisted living and independent living beds in the aggregate that equal at least twice the number of nursing facility beds. For the purposes of this paragraph, "contiguous" means land that adjoins or touches the other property held by the same or a related organization and land divided by a public road.
2. "Fiscal year" means the period beginning on October 1 and ending on September 30.
3. "Medicare resident days" means resident days that are funded by the medicare program, a medicare advantage or special needs plan or the medicare hospice program.
4. "Net patient service revenue" means gross inpatient revenues from services that are provided to nursing facility patients minus reductions from gross inpatient revenue. For the purposes of this paragraph, inpatient revenues from services do not include nonpatient care revenues such as beauty and barber income, vending income, interest and contributions, revenues from the sale of meals and all outpatient revenues.
5. "Nursing facility" means a health care institution that provides inpatient beds or resident beds and nursing services to persons who need nursing services on a continuing basis but who do not require hospital care or direct daily care from a physician. Nursing facility does not include the Arizona veterans' homes.
6. "Reductions from gross inpatient revenue" includes bad debts, contractual adjustments, uncompensated care, administrative, courtesy and policy discounts, adjustments and other similar revenue deductions.
7. "Resident day" means a calendar day of care provided to a nursing facility resident, including the day of admission and excluding the day of discharge. Resident day includes a day on which a bed is held for a patient and for which the facility receives compensation for holding the bed.
8. "Upper payment limit" means the limitation established pursuant to 42 Code of Federal Regulations section 447.272 that disallows federal matching funds if a state medicaid agency pays certain classes of nursing facilities an aggregate amount for services that would exceed the amount that would be paid for the same services furnished by that class of nursing facilities under medicare payment principles.

36-2999.52. Nursing facility quality assessments; calculation; limitation; exceptions

(Rpld. 10/1/23)

- A. Beginning October 1, 2012, the administration shall charge a quality assessment on health care items and services provided by nursing facilities in order to obtain federal financial participation in the services provided pursuant to this chapter. The administration shall use these monies for supplemental payments to nursing facilities for covered medicaid expenditures, not to exceed the medicare upper payment limit program requirements.
- B. Each nursing facility shall pay the assessment prescribed pursuant to this section to the department of revenue for deposit on a quarterly basis in the nursing facility assessment fund established by section 36-2999.53.

C. Unless otherwise required by law, title 42, chapter 5, article 1 governs the administration of the assessment prescribed pursuant to this section except that:

1. A separate license is not required for the assessment.
2. If a nursing facility does not have a transaction privilege tax license, it shall obtain one pursuant to section 42-5005.
3. Each facility shall report and pay the assessment on forms prescribed by the department of revenue.
4. A separate bond is not required of employees of the department of revenue who administer the assessment.
5. The assessment may be included without segregation in any notice and lien filed for unpaid transaction privilege taxes.

D. The administration shall calculate the quality assessment on the net patient service revenue of all nursing facilities that are subject to the quality assessment. The quality assessment may not exceed three and one-half per cent of net patient service revenue and shall be calculated and paid on a per resident day basis exclusive of medicare resident days. Except as prescribed in this section, the per resident day assessment is the same amount for each affected facility.

E. Pursuant to 42 Code of Federal Regulations section 433.68(e)(1) and (2), the administration shall request a waiver of the broad-based and uniform provider assessment requirements of federal law to exclude certain nursing facilities from the quality assessment and to permit certain high volume medicaid nursing facilities or facilities with a high number of total annual patient days to pay the quality assessment at a lesser amount per nonmedicare resident day.

F. Subject to federal approval pursuant to 42 Code of Federal Regulations section 433.68(e)(2), the following nursing facility providers are exempt from the quality assessment:

1. Continuing care retirement communities.
2. Nursing facilities with fifty-eight or fewer beds.

G. The administration shall lower the quality assessment for either certain high volume medicaid nursing facilities or certain facilities with high patient volumes to meet the redistributive test of 42 Code of Federal Regulations section 433.68(e)(2).

#### 36-2999.53. Nursing facility assessment fund

(Rpld. 10/1/23)

A. The nursing facility assessment fund is established consisting of the following:

1. Monies received by the administration from nursing facility assessments pursuant to this article.
2. Federal monies and federal matching monies received by the administration as a result of expenditures made by the administration that are attributable to monies deposited in the fund.
3. Interest or penalties collected pursuant to this article.

4. Legislative appropriations.

5. Private grants, gifts, contributions and devises from any source received to assist in carrying out the purposes of this article.

B. The administration shall administer the fund. Monies in the fund are continuously appropriated.

C. The administration shall use fund monies only for the following:

1. To qualify for federal matching funds for supplemental payments for nursing facility services within medicare upper payment limit program requirements.

2. To pay administrative expenses incurred by the administration or its agents in performing the activities authorized by this chapter, provided that these expenses may not exceed one per cent of the aggregate assessment funds collected for the fiscal year.

3. To reimburse the medicaid sharer of the quality assessment.

4. To provide medicaid supplemental payments to fund covered services to nursing facility medicaid beneficiaries within medicare upper payment limits.

D. On notice from the administration, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

36-2999.54. Assessments; failure to pay; suspension or revocation

(Rpld. 10/1/23)

A. Each nursing facility shall pay a quality assessment as prescribed pursuant to this article. The administration shall determine the assessment rate prospectively for the applicable fiscal year on a per resident day basis, exclusive of medicare resident days. The administration shall adopt rules for facility reporting of nonmedicare resident days and for payment of the assessment.

B. A nursing facility may increase its charges to other payors to incorporate the assessment but may not establish a separate line-item charge on the bill reflecting the assessment.

C. If an entity conducts, operates or maintains more than one nursing facility, the entity must pay a quality assessment for each nursing facility separately.

D. If a nursing facility does not pay the full amount of the assessment when due, the director of the Arizona health care cost containment system administration may suspend or revoke the nursing facility's Arizona health care cost containment system provider agreement registration. If the nursing facility does not comply within one hundred eighty days after the director of the Arizona health care cost containment system administration suspends or revokes the nursing facility's provider agreement, the director of the Arizona health care cost containment system administration shall notify the director of the department of health services, who shall suspend or revoke the nursing facility's license pursuant to section 36-427.

36-2999.55. Adjustment of payments: definition

(Rpld. 10/1/23)

A. A nursing facility is eligible for quarterly nursing facility adjustments based on nursing facility days from the most recent cost report before the start of the fiscal year. If cost report data is unavailable for a nursing facility, the administration may use other data sources or request patient day information from the facility to estimate nursing facility days.

B. The administration shall make adjustment payments on a quarterly basis to reimburse the medicaid portion of the assessment and other covered medicaid expenditures in the aggregate within the upper payment limit. Each quarterly payment shall be made not later than thirty days after the end of the calendar quarter with the initial adjustment payment due within thirty days after approval by the centers for medicare and medicaid services of the quality assessment waiver and state plan reflecting the nursing facility adjusted payments.

C. Subject to approval by the centers for medicare and medicaid services, a nursing facility that is located outside of this state may not receive payments pursuant to this article.

D. For the purposes of this section, "nursing facility days" means the days of nursing facility services, including bed hold days, paid for by the Arizona medical assistance program for the applicable state fiscal year.

36-2999.56. Modifications

(Rpld. 10/1/23)

The administration may modify the categories of facilities exempt from the quality assessment and the rate adjustment provisions of this article if this is necessary to obtain and maintain approval by the centers for medicare and medicaid services and if the modification is consistent with purposes of this article.

36-2999.57. Discontinuance of assessments

(Rpld. 10/1/23)

A. The department of revenue shall discontinue collection of all assessments if any of the following applies:

1. The quality assessment waiver or the state plan amendment reflecting the quarterly nursing facility adjustment payments is not approved by the centers for medicare and medicaid services.

2. The administration reduces funding for nursing facility services below the state appropriation in effect on the effective date of this article.

3. The administration or any other state agency attempts to use monies in the nursing facility assessment fund established pursuant to section 36-2999.53 for any use other than those permitted pursuant to this article.

4. Federal financial participation to match the quality assessments made pursuant to this article becomes unavailable under federal law, in which case the administration must terminate the imposition of the assessments beginning on the date the federal statutory, regulatory or interpretive changes take effect.

**B. If the department of revenue discontinues collection of the assessment pursuant to this section, it shall return all monies in the nursing facility assessment fund established by section 36-2999.53 to the nursing facilities from which the assessment was collected on the same basis as the assessments were assessed.**



**DEPARTMENT OF EMERGENCY & MILITARY AFFAIRS (F-17-1008)**

Title 8, Chapter 2, Articles 1 – Search & Rescue, 3 – Governor’s Emergency Fund & 6 – Hazardous Materials Training Program, Student & Instructor Evidence of Completion



**GOVERNOR'S REGULATORY REVIEW COUNCIL  
ANALYSIS OF FIVE-YEAR REVIEW REPORT**

**MEETING DATE:** October 3, 2017

**AGENDA ITEM:** E-6

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

**FROM:** Alissa Mack, Legal Intern

**DATE :** September 19, 2017

**SUBJECT: DEPARTMENT OF EMERGENCY & MILITARY AFFAIRS (F-17-1008)**  
Title 8, Chapter 2, Article 1, Search & Rescue; Article 3, Governor's Emergency Fund; Article 6, Hazardous Materials Training Program, Student & Instructor Evidence of Completion

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**COMMENTS ON THE FIVE-YEAR-REVIEW REPORT**

The Arizona Department of Emergency and Military Affairs (Department or DEMA) is reviewing thirty rules in A.A.C. Title 8, Chapter 2, Articles 1, 3 & 6 regarding search and rescue, the Governor's Emergency Fund, and the hazardous materials training program. The search and rescue rules establish guidelines to support the search and rescue operations of Arizona. The rules pertaining to the Governor's Emergency Fund relate to reimbursement to state agencies and political subdivisions of the state.

In 2015, HB 2274 transferred lead agency status for the Article 6 rules from DEMA to the Arizona Department of Environmental Quality (ADEQ) for "developing and implementing a state hazardous materials emergency management program." (A.R.S. § 49-123(A)). The Article 6 continue to be enforced by DEMA, while ADEQ has authority over the rules pursuant to A.R.S. § 49-123(F) and (I).

**Proposed Action**

The Department plans to submit a rulemaking moratorium exemption request to the Governor's Office by November 2017 for the search and rescue rules in Article 1. It also intends to edit rules in Article 3 to meet procedural changes and make them more clear, concise, and understandable by January 2018. Additionally, the Department intends to address the rules in Article 6 in a rulemaking by October 2020.

## **Substantive or Procedural Concerns**

None.

### **Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:**

**1. Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

Yes. The Department has certified that it is in compliance with A.R.S. § 41-1091.

**2. Has the agency analyzed the rules' effectiveness in achieving their objectives?**

Yes. The Department believes the rules are mostly effective in achieving their objectives, with the following exceptions:

- R8-2-603: The Department finds that certain forms (such as the Participant Application form) are not currently placed on DEMA's website, but that the rule is otherwise effective.
- R8-2-604: The Department finds that the forms for instructor notice mentioned in the rule are not currently placed on DEMA's website.

**3. Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

Yes. The Department has received criticism regarding the following rules:

- Article 1 Rules: The Department indicates that it has received criticism that some of the rules were outdated and did not reflect current practices. The criticisms were addressed and the rules were amended in 2015. However, the Department has indicated that some confusion remains among stakeholders regarding the 60-day claim submission timeline. That issue will be addressed in a future action to amend R8-2-103(A) and R8-2-104(A) to improve rule clarity.
- Article 3 Rules: The Department indicates that it has received criticism that the rules no longer match federal rules governing the Federal Emergency Management Agency (FEMA) Public Assistance Program (44 C.F.R. Part 206 and program guidance). The Department indicates that one stakeholder from an unnamed political subdivision cited R8-2-313 as a concern, but no follow-up was provided. The Department indicates that it plans to address this confusion by further considering the rule to improve the understandability and consistency on behalf of potential applicants.

**4. Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Department cites to both general and specific statutory authority. Particularly for general authority, the Department cites to A.R.S. § 26-306(A) which establishes the Director's general authority to adopt rules and A.R.S. § 35-192.01(A) and (B) which specifically

authorize the Director to reimburse state agencies and political subdivisions of the state. The Department cites to A.R.S. § 49-123(F) as statutory authority for Article 6 rules which transfers authority to ADEQ.

**5. Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes. The Department indicates that its rules are consistent with other statutes and rules, with the following exceptions:

- R8-2-601: The Department finds that the use of “hazardous materials” might be inconsistent with “hazardous substance” definition of A.R.S. § 49-201 and could be improved by referencing the relevant statutory article.
- R8-2-602: The Department finds that the rule is inconsistent with federal Occupation Safety and Health Administration (OSHA) regulation at 29 CFR 1910.120(q)(6) because it omits the last required topic in the federal regulation: “The ability to realize the need for additional resources, and to make appropriate notifications to the communication center.” (29 CFR 1910.120(q)(6)(i)(F)).

**6. Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department indicates that the rules are enforced the rules as written and is not aware of any problems with the enforcement of the rules.

**7. Has the agency analyzed whether the rules are clear, concise, and understandable?**

Yes. The rules are generally clear, concise, and understandable, with the following exceptions:

- R8-2-103: The Department finds that R8-2-103(A) is not clear regarding the 60-day requirement for filing a claim. Additionally, the use of the word “should” instead of “shall” may cause confusion.
- R8-2-104: The Department finds that R8-2-104(A) is not clear regarding the 60-day requirement for filing a claim. Additionally, the use of the word “should” instead of “shall” may cause confusion.
- R8-2-309: The Department finds that the rule currently only speaks to time limits relating to the action of requesting assistance which does not include address requests for damage assessments and other aspects of the program.
- R8-2-313: The Department finds that the allowable claims against fund is not adequately defined under the current rule. Also, the Department indicates that additional language is needed to allow a percentage of volunteer labor or donated resources to count as a portion of the cost match for the applicant.
- R8-2-316: The Department finds that there is no time line requirement for final project cost and documentation submission.
- R8-2-601: The Department finds that the difference between “hazardous materials” and “hazardous substance” may be a source of confusion.

- R8-2-604: The Department finds that subsection (A)(7) requires an instructor to provide the “[n]ame of the agency head” when submitting a “Course Request Form”, but provides no context for which agency head needs to be identified. Additionally, although the text of the rule labels this a notice, use of “Request” on the form implies that DEMA will respond to the notice.
- R8-2-605: The Department finds that the referenced subsections of the OSHA regulation at 29 CFR 1910.120(Q)(6) and (Q)(8)(ii) are from July 1, 2001 and have been updated since then.

**8. Has the agency analyzed whether:**

**a. The rules are more stringent than corresponding federal law?**

The Department indicates that the rules are not more stringent than federal law.

**b. There is statutory authority to exceed the requirements of federal law?**

Not Applicable.

**9. For rules adopted after July 29, 2010, has the agency analyzed whether:**

**a. The rules require issuance of a regulatory permit, license or agency authorization?**

Yes. The Department finds that a general permit for the authorization of Hazardous Materials course instructors would not be technically feasible or appropriate.

**b. It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?**

The Department finds that the procedure created to authorize a Hazardous Materials instructor cannot use a general permit because it would not be technically feasible or appropriate. The Department provides the example that the requirements under R18-2-603(A)(2) for : 1) Evidence of two years’ experience in hazardous materials incident response, 2) a letter of recommendation, and 3) a summary of the applicant’s experience as an instructor, are items that must be evaluated on a case by case basis, rather than by merely checking a box that they are present.

**10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?**

Yes. The Department states that it completed the previous course of action for the Article 1 rules as it updated technical changes to reflect current and future practices in 2015. The Department amended the Article 3 rules in 2013 to improve modernizing and clarifying terms related to claim submission timelines and eligibility. However, the Department has not made any changes to Article 6 rules since 2012.

**11. Has the agency included a proposed course of action?**

Yes. The Department plans to make the following changes:

- R8-2-103: The Department plans to amend R8-2-103(A) to provide clarity regarding the 60-day requirement for filing a claim. Additionally, to avoid confusion, the Department plans to submit a request to the Governor’s Office amend the word “should” to “shall.”
- R8-2-104: The Department plans to amend R8-2-104(A) to provide clarity regarding the 60-day requirement for filing a claim. Additionally, to avoid confusion, the Department plans to submit a request to the Governor’s Office amend the word “should” to “shall.”
- R8-2-309: The Department plans to amend language to enable requests for damage assessments and other aspects of the program.
- R8-2-313: The Department plans to further define allowable claims against the funds to address criticisms received within the last 5 years that the rule is not consistent with FEMA’s Public Assistance Program. Additionally, in R8-2-313(B), the Department plans to add language to allow a percentage of volunteer labor or donated resources to count as a portion of the cost for the applicant.
- R8-2-316: The Department plans to add time line requirements for final project costs and documentation submission.
- R8-2-601: The Department plans to amend the definition of “hazardous materials” to refer to the relevant statutory article.
- R8-2-602: The Department plans to add the last required topic in the OSHA regulation at 29 C.F.R. 1910.120(q)(6): “The ability to realize the need for additional resources, and to make appropriate notifications to the communication center.”
- R8-2-603: The Department plans to add the website to the address provided for forms and clarify required instructor attendance.
- R8-2-604: The Department plans to add the website to the address provided for the forms and clarify “agency head.”
- R8-2-605: The Department plans to update the incorporation reference to the OSHA regulation.

**Conclusion**

This report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends approval.



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

**MEETING DATE:** October 3, 2017

**AGENDA ITEM:** E-6

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

**FROM:** GRRC Economic Team

**DATE :** September 19, 2017

**SUBJECT: DEPARTMENT OF EMERGENCY & MILITARY AFFAIRS (F-17-1008)**  
Title 8, Chapter 2, Article 1, Search & Rescue; Article 3, Governor's Emergency Fund; Article 6, Hazardous Materials Training Program, Student & Instructor Evidence of Completion

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I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

**1. Economic Impact Comparison**

The economic, small business, and consumer impact statement (EIS) from the most recent rulemakings were made available for this review.

The Article 1 rules address the requirements for search and rescue operations. The rules explain provisions such as reimbursement to county governments, reimbursement to state agencies or departments, and claimant procedures. The Article 3 rules address the process of applying for state and federal disaster relief assistance. Governor's emergency fund. The rules explain provisions such as application requirements, time limits, requests for advance of funds, overpayment, allowable claims, and record retention. The Article 6 rules address training programs related to hazardous material. The rules explain provisions such course curriculum, course requirements, instructor authorization, and evidence of completions.

Key stakeholders impacted by the rules are DEMA, Arizona Department of Environmental Quality, political subdivisions, and State agencies.

**2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?**

The Department determines that the rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective.

**3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?**

No analysis was submitted to the Department by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

**4. Conclusion**

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.



Douglas A. Ducey  
GOVERNOR

**STATE OF ARIZONA**  
**DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS**

5636 East McDowell Road  
Phoenix, Arizona 85008-3495  
(602) 267-2700 DSN: 853-2700



Major General Michael T. McGuire  
THE ADJUTANT GENERAL

July 31, 2017

Ms. Michole Ong Colyer, Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 402  
Phoenix, Arizona 85007

RE: Five-Year Regulatory Review for Title 8, Chapter 2, Articles 1, 3, and 6

Dear Ms. Colyer:

Pursuant to A.R.S. § 41-1056, the Arizona Department of Emergency and Military Affairs submits the following Five-Year Regulatory Review to the Governor's Regulatory Review Council for its consideration:

1. DEMA certifies that it is in compliance with A.R.S. § 41-1091 regarding posting of substantive policy statements and rules. DEMA currently has no substantive policy statements.
2. DEMA has no current action on any of its rules in A.A.C. Title 8, Chapter 2.

Included in this Five-Year Review Report are one paper copy and one electronic copy of the required Analysis of Individual Rules, current Arizona Administrative Code, Title 8, Chapter 2, Articles 1, 3, and 6, and the general and specific statutory rule making authority for each Rule.

For further information regarding this report, please contact Travis Schulte, DEMA Legislative Liaison, at (602) 267-2732 or [travis.schulte@azdema.gov](mailto:travis.schulte@azdema.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Michael T. McGuire".

MICHAEL T. McGUIRE  
Major General, Arizona Air National Guard  
The Adjutant General

cc: Dr. Joseph Cuffari, DEMA Policy Advisor



State of Arizona  
Department of Emergency & Military Affairs

Governor's Regulatory Review Council  
Five-Year Regulatory Review

Arizona Administrative Code  
Title 8. Emergency and Military Affairs  
Chapter 2. Department of Emergency and Military Affairs –  
Division of Emergency Management  
Articles 1, 3, and 6

Submitted July 31, 2017  
Revised September 14, 2017

The Arizona Department of Emergency and Military Affairs has published rules that appear in Arizona Administrative Code Title 8, Chapter 2, Articles 1, 3, and 6.

Pursuant to A.R.S. § 41-1056, the Arizona Department of Emergency and Military Affairs (DEMA) submits the following five-year review report.

**Arizona Department of Emergency and Military Affairs**  
**Title 8. Emergency and Military Affairs**  
**Chapter 2. Department of Emergency and Military Affairs –**  
**Division of Emergency Management**  
**Article 1. Search and Rescue**

**OVERVIEW OF ARTICLE 1 RULES**

The Arizona Department of Emergency and Military Affairs (DEMA) is a cabinet level agency that includes the Arizona National Guard (Army, Air, and Joint Task Force), the Arizona Division of Emergency Management (ADEM), and Division of Administrative Services. DEMA has authority to make rules necessary for operation of these divisions.

DEMA has published a set of rules which appear in the Arizona Administrative Code at R8-2-101 et seq. (Search and Rescue Rules) that were amended as early as July 18, 1977, and likely originally drafted following the creation of A.R.S. § 35-192.01 and the combining of the Arizona Division of Emergency Services (later renamed Arizona Division of Emergency Management) with the Arizona Department of Military Affairs to create the Arizona Department of Emergency and Military Affairs in 1972.

The Search and Rescue Rules establish guidance to support search and rescue operations of the state, coordinating the use of state resources – including reimbursement from the Governor’s Emergency Fund – or the resources of one or more political subdivisions in support of any other political subdivision in the conduct of search and rescue operations, and for providing the services of a state search and rescue coordinator. The Search and Rescue Rules were last amended in 2015 while working in conjunction with the State’s County Sheriffs to improve the reimbursement process during Search and Rescue (SAR) activities.

## ARTICLE 1. SEARCH AND RESCUE

R8-2-101	Definitions
R8-2-102	Support of Search and Rescue Operations
R8-2-103	Reimbursement to County Governments
R8-2-104	Reimbursement to a Department or Agency of the State
R8-2-105	Claimant Procedures and Supporting Documentation

### INFORMATION THAT IS IDENTICAL FOR ALL RULES

3. **Effectiveness:** The objectives of these rules are effectively met.
4. **Consistency:** These rules are consistent with other rules promulgated by this agency and with A.R.S. § 26-306 (A)(3), which establishes the Division's general authority to adopt rules, A.R.S. § 26-306 (A)(8), which authorizes coordination of search and rescue activities, and § 35-192.01(A) and (B) which specifically authorizes the Director to reimburse state agencies and political subdivisions of the state for search and rescue activities.
5. **Enforcement:** These rules are consistently and fairly enforced.
6. **Clarity and Conciseness:** Although these rules are generally understandable, R8-2-103 (A) and R8-2-104(A) need to be updated to provide clarity regarding to 60 day requirement for filing a claim. Prior to amendments in 2015, the rules required that "Claims should be submitted within 21 calendar days..." The 2015 amendment changed that to time limit to 60 days, however, the auxiliary verb "should" was not amended at that time and that has lead to confusion. To improve the clarity of the rules, a request to amend "should" to "shall" in both R8-2-103 (A) and R8-2-104 (A) will be submitted to the Governor's Office for consideration.
7. **Criticisms Received within the Last 5 Years:** The Division had received criticism during the past five years that some of the rules used dated language and did not reflect current practices, including the aforementioned reimbursement timelines. These criticisms were referred to in the course of action indicated in the previous five-year review report, and are further addressed in paragraph 10. In 2015, the rules were amended to address these criticisms. Following those amendments, some confusion remained regarding the extended 60-day claim submission timeline which will be addressed in a future amendment action as discussed in paragraph 14.
8. **Economic Impact:** As found in previous Economic Impact assessments, these rules provide a positive economic impact to state agencies and political subdivisions by reimbursing political subdivisions and state agencies for time invested and eligible expenses incurred during a search and rescue mission. Negligible expense is incurred for claim submissions and to maintain paperwork evidence as required by State Library record retention guidance.
9. **Any analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states:** None

10. **If applicable, whether the agency completed the course of action indicated in the agency's previous five-year review report:** In 2015, at the request of Arizona's county sheriffs, a rule making exemption was approved and the rules were updated with simple technical and conforming changes that updated rule language to reflect current and future practices, such as how to obtain a mission identifier number, and further clarified eligible and ineligible expenses, improved reimbursement processes following Search and Rescue (SAR) activities, and extended the reimbursement claim submission timeline.
11. **Cost benefit determination; least burden and cost:** With the changes made in 2015, DEMA believes these rules impose the least burdensome administrative costs associated with financial disclosure for Search and Rescue mission Reimbursement by extending the claim submission time from 21 days to 60 days to provide additional time for invoice and procurement receipts to be received, and by providing further clarity on eligible and ineligible expenses by requiring adherence to claimant's overtime policy and specifically stating that reimbursement is only available for equipment specifically required to conduct the search and rescue mission. These changes improved claim development and reduced the number of rejected or questionable claims or items; thus reducing time and cost.
12. **Stringency compared to corresponding federal law:** There is no corresponding federal law.
13. **Compliance with A.R.S. § 41-1037:** No permits, licenses, or agency authorizations are created by this rule.
14. **Proposed Course of Action:** The Division anticipates submitting a rulemaking moratorium exemption request to the Governor's Office by November 2017 to amend R8-2-103 (A) and R8-2-104(A) to improve rule clarity regarding the 60 day requirement for filing a claim by amending "should" to "shall." Pending receipt of approval, DEMA will immediately begin the rulemaking process.

## ANALYSIS OF INDIVIDUAL RULES

### R8-2-101      Definitions

1. **Authorization:** The Director of the Division of Emergency Management has general authority under A.R.S. § 26-306(A)(3), to make rules and regulations for the operation of the Division and specific authority under A.R.S. § 26-306(A)(8) to coordinate search and rescue activities.
2. **Objective:** Clearly define positions and actions involved in Search and Rescue or Recover missions and to provide uniformity and understanding throughout the state, which are necessary to effectively administer the Search and Rescue Program.

#### **R8-2-102 Support of Search and Rescue Operations**

1. **Authorization:** The Director of the Division of Emergency Management has general authority under A.R.S. § 26-306(A)(3), to make rules and regulations for the operation of the Division and specific authority under A.R.S. § 26-306(A)(8) to coordinate search and rescue activities.
2. **Objective:** Outline and define the support available for search and rescue operations from the state, including the variety of equipment and personnel available upon request, to support public safety and Search and Rescue mission planning by an agency or political subdivision.

#### **R8-2-103 Reimbursement to County Governments**

1. **Authorization:** A.R.S. § 35-192(G) provides specific authority for reimbursement of eligible expenses incurred on a search and rescue operation on behalf of political subdivisions from the Governor's Emergency fund.
2. **Objective:** Set guidelines and define procedures on expenses that may be reimbursed, define ineligible expenses, and establish procedures for obtaining reimbursement for specialized equipment and services needed in an operation to help applicants understand how to track and submit their costs and to protect state taxpayers against any fraud, waste, or abuse.

#### **R8-2-104 Reimbursement to a Department or Agency of the State**

1. **Authorization:** A.R.S. § 35-192.01(B) provides specific authority for reimbursement of eligible expenses incurred on a search and rescue operation on behalf of state agencies or departments from the Governor's Emergency fund.
2. **Objective:** Set guidelines and define procedures on expenses that may be reimbursed, define ineligible expenses, and establish procedures for obtaining reimbursement for specialized equipment and services needed in an operation to help applicants understand how to track and submit their costs and to protect state taxpayers against any fraud, waste, or abuse.

#### **R8-2-105 Claimant Procedures and Supporting Documentation**

1. **Authorization:** Under A.R.S. § 35-192(G) the Director shall promulgate, with the approval of the Governor, rules concerning reimbursement.
2. **Objective:** Set the requirements needed for competent certification by the claimants for reimbursements submitted on a Search and Rescue mission, and allow the Director to prescribe the appropriate documents that support the claim and substantiate the disbursement of taxpayer dollars from the Governor's Emergency Fund.

## RULE TEXT

### A.A.C. TITLE 8, CHAPTER 2

#### ARTICLE 1. SEARCH AND RESCUE

##### **R8-2-101. Definitions**

In this Article, for purposes of these rules, and unless the text requires otherwise:

1. "Claim" means documentation of eligible expenses associated with the conduct of a search and rescue mission.
2. "Claimant" means a department of the state or a political subdivision eligible to receive state reimbursement for search or rescue operations.
3. "Emergency Operations Center for Search and Rescue" means the State Emergency Operations Center provides coordination, communications, , administrative and support assistance. The center is located in the offices of the State Division of Emergency Management.
4. "Mission" means any action required to accomplish that portion of Title 26, Arizona Revised Statutes, relating to the preparation for and conduct of search and rescue operations.
5. "Mission coordinator" means the county sheriff, or sheriff's designee, excluding federal reservations, where agreements are nonexistent.
6. "Mission identifier" means a number assigned by the State Division of Emergency Management to identify a search and rescue mission.
7. "On-scene coordinator" means the individual Search and Rescue (SAR) Coordinator designated by the sheriff as the on-scene person in charge of a particular search and rescue mission.
8. "Political subdivision" means, within the context of this Article, a county sheriff.
9. "Recovery" means to relocate, under direction of the statutory authority, a deceased person from the site of his demise to an appropriate location.
10. "Reimbursement" means the payment of state funds in accordance with A.R.S. § 35-192.01(A) and (B).
11. "Rescue" means to render aid, under the direction of the county sheriff, to persons whose life or health is threatened by circumstances beyond their control and return them to a place of safety.
12. "Search" means to seek out and locate, by the use of air, surface, and/or subsurface equipment and qualified registered personnel, live persons known or thought to be, by the county sheriff, in a distress situation and unable to reach a place of safety by their own efforts.

##### **Historical Note**

Former Rule Part 3; Amended effective July 18, 1977 (Supp. 77-4). Amended paragraphs (1), (3) and (8) effective June 30, 1986 (Supp. 86-3). Editorial correction, paragraph (2) (Supp. 88-4). Former R8-2-01 amended and renumbered effective March 7, 1990 (Supp. 90-1). Amended by final rulemaking at 21 A.A.R. 3021, effective January 11, 2016 (Supp. 15-4).

##### **R8-2-102. Support of Search and Rescue Operations**

- A. The Director of the Division of Emergency Management, in accordance with A.R.S. Title 26, is responsible for supporting search or rescue operations of the state, coordinating the use of state resources or the resources of one or more political subdivisions in support of any other political subdivision in the conduct of search and rescue operations and for providing the services of a state search or rescue coordinator.
- B. The Division of Emergency Management shall coordinate activities to include the following:
  1. Mission identifiers for search and rescue operations.  
Authorized county sheriff search and rescue coordinators may obtain Mission Numbers through the Division of Emergency Management's Search and Rescue (SAR) data collection system.
  2. State government personnel and/or equipment, including the Arizona National Guard.
  3. United States military personnel and/or equipment.
  4. Resources not readily available locally.
  5. Resources to support responsible authorities on federal reservations.
  6. Specialized personnel and/or equipment from other states.
  7. Reimbursement of eligible claims.
  8. Prescribing forms and/or procedures for acquiring mission identifiers, reporting search or rescue mission activities, claiming reimbursement of eligible expenses and similar administrative matters.

##### **Historical Note**

Former Rule Part 4A Attachment B; Former Rule Part 4 Attachment C; Former Rule Part 4 Attachment D; Amended effective June 30, 1986 (Supp. 86-3). Former R8-2-02 amended and renumbered effective March 7, 1990 (Supp. 90-1). Amended by final rulemaking at 21 A.A.R. 3021, effective January 11, 2016 (Supp. 15-4).

##### **R8-2-103. Reimbursement to County Governments**

- A. Reimbursement to county governments from the Governor's Emergency Fund is authorized for eligible expenses incurred during the conduct of search and rescue operations. A search and rescue mission, in order to qualify for reimbursement must fall within the purview of A.R.S. § 35-192(C). Claims should be submitted within 60 calendar days after the close or suspension of the mission. Eligible and ineligible expenses are itemized below:
  1. Eligible:

- a. Salaries or contracts for the services of specialized personnel, provided that prior approval has been obtained from the Director, Division of Emergency Management.
  - b. Overtime pay for eligible government employees. The claimant's overtime policy must be adhered to when submitting for overtime.
  - c. Telephone and data charges directly related to search or rescue missions.
  - d. Reimbursement of recovery expenses should the subject of an eligible search and rescue mission be found deceased. Reimbursement of recovery expenses for a suspected decedent may be authorized with the prior approval of the Director, Division of Emergency Management.
  - e. Cost of materials and supplies procured with public funds or taken from government stocks and consumed, lost, damaged or destroyed during an eligible search and rescue mission.
  - f. Rental costs of specialized equipment or aircraft, provided that the rates do not exceed the lowest rates available for the same or similar equipment. The prior approval of the Director, Division of Emergency Management is required.
  - g. Actual costs of fuel or lubricants paid by a county government for the operation of vehicles, equipment, or aircraft.
  - h. Repairs to surface/subsurface vehicles and equipment damaged during search and rescue missions. Costs are limited to the restoration of the immediate pre-mission condition.
  - i. Reimbursements will be made only for equipment specifically required for the conduct of the search and rescue mission.
2. Ineligible:
- a. Regular salaries or wages of government employees,
  - b. Salaries or wages of elected or appointed officials and employees ineligible for overtime pay,
  - c. Office supplies and equipment,
  - d. Rental of administrative office space,
  - e. Purchase of equipment or facilities,
  - f. Cost of items of personal wearing apparel,
  - g. Firearms.
- B.** The eligibility of other expenses shall be determined by the Director, Division of Emergency Management, within the scope of this guidance, on a case-by-case basis.

#### **Historical Note**

Former Rule Part 5; Amended subsections (B) and (C) effective June 30, 1986 (Supp. 86-3). Former R8-2-03 amended and renumbered effective March 7, 1990 (Supp. 90-1). Amended by final rulemaking at 21 A.A.R. 3021, effective January 11, 2016 (Supp. 15-4).

#### **R8-2-104. Reimbursement to a Department or Agency of the State**

- A.** Expenses incurred, resulting from participation in search and rescue missions, shall be borne initially by the state department or agency. Reimbursement shall be governed by A.R.S. § 35-192.01(B). Claims should be submitted within 60 calendar days after the close or suspension of a mission. Eligible and ineligible expenses are itemized below:
1. Eligible:
- a. Salaries or wages of employees directly engaged in search or rescue work.
  - b. Salaries or wages of regular employees who are diverted from their normal duties to engage in search or rescue work.
  - c. Overtime pay for eligible regular employees.
  - d. Communications charges directly related to search or rescue operations.
  - e. Travel directly related to search or rescue operations.
  - f. Reimbursement of recovery expenses should the subject of an eligible search and rescue mission be found deceased. Reimbursement of recovery expenses for a suspected decedent may be authorized with the prior approval of the Director, Division of Emergency Management.
  - g. Cost of materials and supplies procured with public funds or taken from government stocks and consumed, lost, damaged or destroyed during an eligible search and rescue mission.
  - h. Rental costs of specialized equipment or aircraft, provided that the rates do not exceed the lowest rates available for the same or similar equipment. Sole source providers will be considered. The prior approval of the Director, Division of Emergency Management is required.
  - i. Actual cost of fuel or lubricants paid by a state department or agency for the operation of vehicles, equipment or aircraft.
  - j. Repairs to surface/subsurface vehicles and equipment damaged during search or rescue mission. Costs are limited to the restoration of the immediate pre-mission condition.
  - k. Reimbursements will be made only for equipment specifically required for the conduct of the search and rescue mission.
2. Ineligible:
- a. Salaries or wages of elected or appointed officials ,
  - b. Office supplies and equipment,
  - c. Rental of administrative office space,
  - d. Costs of items of personal apparel,
  - e. Firearms.
- B.** The eligibility of other expenses shall be determined by the director, Division of Emergency Management, within the scope of this guidance, on a case-by-case basis.

**Historical Note**

Former Rule Part 6; Amended subsections (B) and (C) effective June 30, 1986 (Supp. 86-3). Former R8-2-04 amended and renumbered effective March 7, 1990 (Supp. 90-1). Amended by final rulemaking at 21 A.A.R. 3021, effective January 11, 2016 (Supp. 15-4).

**R8-2-105. Claimant Procedures and Supporting Documentation**

- A.** Claims for reimbursement require certification by competent authority. Certification must include:
1. The name of the agency.
  2. The date of the claim and the search and rescue mission identifier.
  3. The name of each payee and the date the claimant paid each.
  4. The item or service for which each payee received payment.
  5. The amount paid each payee.
  6. A statement that the documents supporting the claim are available in the claimant agency for review by the State Auditor General and/or the auditor from the Division of Emergency Management.
  7. The signature of the individual authorized to file claims for the claimant agency.
- B.** The amounts claimed for reimbursement from the Governor's Emergency Fund must be based on eligible expenditures for a search and rescue mission to which a mission identifier has been assigned.
- C.** Appropriate documents, as prescribed by the Director, Division of Emergency Management, supporting each claim must be retained by the claimant pending audit by the State Auditor General and/or the Division of Emergency Management Auditor. These documents shall be retained following the reimbursement of a claim in accordance with retention schedules established by the Arizona State Library, Archives and Public Records pursuant to A.R.S. § 41-151 *et seq.*

**Historical Note**

Former Rule Part 7 Attachment F; Amended effective July 18, 1977 (Supp. 77-4). Amended effective June 30, 1986 (Supp. 86-3). Former R8-2-05 amended and renumbered effective March 7, 1990 (Supp. 90-1). Amended by final rulemaking at 21 A.A.R. 3021, effective January 11, 2016 (Supp. 15-4).

**R8-2-106. Repealed**

**Historical Note**

Former Rule Part 8; Amended subsection (A) effective June 30, 1986 (Supp. 86-3). Repealed effective March 7, 1990 (Supp. 90-1).

**R8-2-107. Repealed**

**Historical Note**

Former Rule Part 2. Repealed effective March 7, 1990 (Supp. 90-1).

## STATUTORY AUTHORITY

### A.A.C. Title 8, Chapter 2, Article 1 Search and Rescue

#### 26-306. Powers and duties of the director of emergency management

A. The director, subject to the approval of the adjutant general, shall:

3. Make rules necessary for the operation of the division.
4. Develop and test plans for meeting any condition constituting a state of emergency or state of war emergency, except those emergency plans specifically assigned by the governor to other state agencies. Such plans shall provide for the effective mobilization and management of personnel and equipment of the state.
5. During a state of war emergency, coordinate the emergency activities of all state agencies except the national guard.
6. During a state of emergency or a local emergency, coordinate the emergency activities of all state agencies and the national guard.
7. Coordinate the use of state personnel, equipment, services and facilities, including communication services, if requested by political subdivisions in support of emergency management activities.
8. Coordinate the use of personnel, equipment, services and facilities, including communication services, of one or more political subdivisions in support of any other political subdivision in meeting emergency needs, including search or rescue operations, on the request of the using political subdivision.
9. Develop, test and maintain a plan pursuant to section 26-305.01 for response by agencies of this state and its political subdivisions to an accident at a commercial nuclear generating station.
10. Every two years, submit a recommendation to the legislature in connection with the assessment prescribed by section 26-306.01 with supporting documentation and information.
11. Collaborate with the state forester in presentations to legislative committees on issues associated with forest management, wildfire prevention and suppression and wildfire emergency response and management as provided by section 37-1302, subsection B.
12. Develop, implement and maintain a state hazardous materials emergency response and recovery plan as part of the hazardous materials emergency management program pursuant to section 49-123.
13. Coordinate the development, implementation and maintenance of standardized curricula for hazardous materials training and education.

B. The director, subject to the approval of the adjutant general, may:

1. Propose, develop, negotiate and consummate contractual arrangements with the federal government, state agencies and political subdivisions for technical, administrative and financial support from the federal, state and local government in connection with the emergency management activities of the state.
2. Represent the state at conferences in the development and promotion of the emergency management capability of the state.
3. Establish a disaster prevention council to plan for disaster prevention. The council shall consist of the members of the state emergency council and other members as determined by the director. The disaster prevention council shall coordinate the disaster prevention expertise of representatives of federal, state and local business and industry and promote partnerships to substantially reduce property loss from natural and technological disasters.

35-192. Authorization for declaration of disaster; authorization for liabilities and expenses; priorities and limitations; review and report of expenditures

A. The governor may declare an emergency arising from major disasters as provided in this section and incur liabilities therefor, regardless of whether or not the legislature is in session.

B. When the governor, or the director of the division of emergency management in the department of emergency and military affairs pursuant to section 26-303, subsection H, determines that a contingency or disaster so justifies, and declares an emergency, specific liabilities and expenses provided for in this section are authorized to be incurred against and to be paid as claims against the state from unrestricted monies from the general fund to mitigate and meet contingencies and emergencies arising from:

1. Invasions, hostile attacks, riots or insurrections.
2. Epidemics of disease or plagues of insects.
3. Floods or floodwaters.
4. Acts of God or any major disaster.
5. Wildland fires, but only after all necessary authorizations under section 37-1305 are exhausted.

C. When authorized by the governor, specific liabilities and expenses provided for in this section may be incurred against and may be paid as claims against the state from unrestricted monies from the general fund to meet contingencies and emergencies arising from incidents relating to hazardous materials as defined in section 26-301 and search or rescue operations conducted pursuant to section 11-251.02, section 11-441, subsection C or section 26-306 subject to the limitations provided in section 35-192.01.

Within ninety days after monies are awarded under this section, the department of emergency and military affairs shall post in a prominent location on the department's official website the amount of monies awarded under this section, who received the monies and how the monies were spent.

D. Liabilities and expenses authorized under subsection B of this section may be incurred for any of the emergencies or contingencies prescribed in subsection B of this section in the following order of priority:

1. Reimbursement for expenses incurred to combat a menace to the health, lives or property of any considerable number of persons of the state, or to property of the state or its political subdivisions.
2. Reimbursement for expenses incurred to repair damage to any property of the state.
3. Reimbursement for expenses incurred to repair damage to any property of the political subdivisions of the state.
4. Reimbursement for expenses incurred in search or rescue operations.
5. Reimbursement for expenses incurred in emergency or disaster recovery activities or in matching federal disaster recovery programs.
6. Reimbursement for expenses for property loss mitigation measures or to match federal property loss mitigation programs.

E. The auditor of the department of emergency and military affairs shall review liabilities incurred and expenditures made under this section and report to the state emergency council at ninety-day intervals during the emergency and conduct a final review of each emergency within ninety days after the termination of the emergency. The state emergency council shall make a written report not later than September 1 of each year to the legislature of the actions of the state emergency council during the preceding fiscal year, including an itemized statement of expenditures for each emergency during the year. The department of emergency and military affairs shall post the report in a prominent location on the department's official website.

F. All liabilities incurred under this section shall be subject to the following limitations:

1. No liability shall be incurred against the monies authorized without the approval of the governor, or the adjutant general pursuant to section 26-303, subsection H, for each contingency or emergency.
2. Incurring of liabilities in excess of two hundred thousand dollars in any single disaster or emergency shall not be made without consent of a majority of the members of the state emergency council.
3. The aggregate amount of all liabilities incurred under this section shall not exceed four million dollars for any fiscal year beginning July 1 through June 30. Monies authorized for disasters and emergencies in prior fiscal years may be used in subsequent fiscal years only for the disaster or emergency for which they were authorized. Monies authorized for disasters and emergencies in prior fiscal years, and expended in subsequent fiscal years for the disaster or emergency for which they were authorized, apply toward the four million dollar liability limit for the fiscal year in which they were authorized.
4. Notwithstanding the limitations in paragraph 3 of this subsection, monies that were previously obligated but not used for a declared emergency or disaster may be reallocated to an outstanding obligation for another declared emergency or disaster and shall remain available for expenditure for the outstanding obligation. The reallocation of monies pursuant to this paragraph does not apply toward the four million dollar liability limit of the fiscal year to which the monies were reallocated or in which the monies are spent.
5. An obligation of monies under this section may be made only when one or more of the following conditions exist:
  - (a) No appropriation or other authorization is available to meet the contingency or emergency.
  - (b) An appropriation is insufficient to meet the contingency or emergency.
  - (c) Federal monies available for such contingency or emergency require the use of state or other public monies.
- G. The director of the division of emergency management in the department of emergency and military affairs shall develop rules for administering the monies authorized for liabilities under this section, subject to approval by the governor.

#### 35-192.01. [Reimbursement procedures](#)

- A. Political subdivisions may apply to the state director of emergency management for reimbursement of necessary expenses incurred in search or rescue operations, not including purchase of equipment or facilities, under section 35-192, subsection C subject to the following limitations:
  1. Not to exceed fifty per cent of the first one thousand dollars or less of such expenditures in any fiscal year.
  2. Not to exceed seventy-five per cent of all such expenditures in excess of one thousand dollars up to twenty-one thousand dollars in any fiscal year.
  3. One hundred per cent of expenditures in excess of twenty-one thousand dollars in any fiscal year.
- B. A department of the state which expends funds for search or rescue operations in an amount in excess of that provided for in the regular appropriation and when directed to do so by the governor or state director of emergency management may apply for reimbursement of such excess expenditures to the state director of emergency management under the provisions of section 35-192.
- C. The director of emergency management shall adopt with the approval of the governor rules concerning such reimbursement.

**Arizona Department of Emergency and Military Affairs**  
**Title 8. Emergency and Military Affairs**  
**Chapter 2. Department of Emergency and Military Affairs –**  
**Division of Emergency Management**  
**Article 3. Governor’s Emergency Fund**

**OVERVIEW OF ARTICLE 3 RULES**

The Arizona Department of Emergency and Military Affairs (DEMA) is a cabinet level agency that includes the Arizona National Guard (Army, Air, and Joint Task Force), the Arizona Division of Emergency Management (ADEM), and Division of Administrative Services. DEMA has authority to make rules necessary for operation of these divisions.

DEMA has published a set of rules which appear in the Arizona Administrative Code at R8-2-301 et seq. (Governor’s Emergency Fund Rules) that were amended as early as June 11, 1980, and likely originally drafted following the creation of A.R.S. § 35-192 and the combining in 1972 of the Arizona Division of Emergency Services (later renamed Arizona Division of Emergency Management) with the Arizona Department of Military Affairs to create the Arizona Department of Emergency and Military Affairs.

The Governor’s Emergency Fund Rules support political subdivisions and state agencies experiencing an emergency or disaster by establishing a clear, concise process for requesting state assistance through a Governor’s state of emergency declaration, thus becoming eligible for state financial assistance from the Governor’s Emergency Fund to respond to and recover from the event with reasonable provisions that balance protection for state taxpayers.

### ARTICLE 3. GOVERNOR'S EMERGENCY FUND

R8-2-301	Definitions
R8-2-302	Applications for Emergency Assistance
R8-2-303	Contents of an Application
R8-2-304	Application by a Political Subdivision
R8-2-305	Application by a State Agency
R8-2-306	Action on an Application
R8-2-307	Proclamation File Number
R8-2-308	Limitation of Fund Expenditure
R8-2-309	Time Limit for Filing Claims
R8-2-310	Retention of Records
R8-2-311	Establishment of the Incident Period and Termination of the Proclamation
R8-2-312	Duplication of Benefits
R8-2-313	Allowable Claims Against the Fund
R8-2-314	Mitigation of Future Damages or Improvements by the Applicant
R8-2-315	Advance of Funds
R8-2-316	Final Inspection and Audit
R8-2-317	Procurement Requirements
R8-2-318	Inspection and Audit of Contract Provisions
R8-2-319	Overpayment
R8-2-320	Appeal of a Director's Decision

#### INFORMATION THAT IS IDENTICAL FOR RULES IN ARTICLE 3

1. **Authorization:** The Director of the Arizona Division of Emergency Management derives general authority to develop rules under A.R.S. § 26-306(A)(3). The Director of the Arizona Division of Emergency Management derives specific authority to develop rules for administering the monies authorized for liabilities under A.R.S. § 35-192(G).
3. **Effectiveness:** The objectives of these rules are effectively met.
4. **Consistency:** These rules are consistent with other rules promulgated by this agency and with A.R.S. § 26-306(A), which establish the Division's general authority to adopt rules and § 35-192.01(A) and (B), which specifically authorize the Director to reimburse state agencies and political subdivisions of the state.
5. **Enforcement:** These rules are consistently and fairly enforced.
6. **Clarity and Conciseness:** Although these rules are generally understandable, DEMA is undertaking a full review of Title 8 to align with FEMA's Public Assistance Program (44 C.F.R. Part 206 and program guidance) to provide greater efficiency and consistency to political

subdivisions. The Division aligns rules with FEMA's Public Assistance Program in order to expedite applications for federal assistance in the event a state declared disaster grows beyond the state's ability to respond, enabling one application for multiple sources of assistance. Some of the rules currently under consideration include:

- R8-2-309: Time extension requests. Currently this only speaks to time limits relating to the action of requesting assistance. There is a need to add language to enable requests for damage assessments and other aspect of the program.
- R8-2-313: Further define allowable claims against the funds to address criticisms received within the last 5 years, which is expanded upon in paragraph 7.
- R8-2-313(B): Add language to allow a percentage of volunteer labor or donated resources to count as a portion of the cost match for the applicant.
- R8-2-316: Need time line requirements for final project cost and documentation submission.

Other areas for general consideration that align with FEMA guidance include a small versus large project threshold to reduce administrative burden for low dollar projects, a minimum dollar amount to request state assistance, and clarification on when/if/how the state reviews local contingency funds.

7. **Criticisms Received within the Last 5 Years:** The Division has received complaints that the rules no longer match federal rules governing FEMA's Public Assistance Program (44 C.F.R. Part 206 and program guidance). The FEMA Public Assistance Program has a document to expand on 44 C.F.R. entitled "Public Assistance Program and Policy Guide" that goes into depth about program eligibility. While Arizona Administrative Code Title 8, Chapter 2, Article 3 is based on the FEMA Public Assistance program, it does not contain enough detail to address all eligibility concerns that often arise in a disaster. This gap leads the state into a "grey" area where the Division is forced to make eligibility determinations without formal state guidance, and can lead to additional incurred cost to the state that would not otherwise be eligible for reimbursement. The need for further refinement of allowable claims is cited in paragraph 6 to improve the clarity, conciseness, and understandability of the rule.

An example to illustrate this occurred in 2015 during a state declared disaster. An applicant was attempting to claim potholes in a roadway as damage that was caused by the declared incident. Roadways are not designed to last forever; they require maintenance and periodic full replacement to function as designed and to ensure public safety. This is true with all infrastructure. As such, both the FEMA and state programs require facilities to have been maintained prior to the declared disaster event. The intent of the program is pay for damages caused by a disaster; not failing infrastructure. Potholes are an example of deferred maintenance that gradually develops over time due to intrusions to the roadway foundation and cracking of roadway surfaces that go unaddressed, not a disaster caused impact as a result of a flash flooding event. While a flood can attribute to potholes, new or old, the issue for the

pothole is lack of maintenance to that roadway. The Division initially deemed the pothole claim as ineligible because the Division attempts to mirror FEMA's program for consistency, and which potholes are ineligible for the reasons outlined above. The applicant appealed this decision, and the Director was ultimately forced to grant eligibility because A.A.C. Title 8 does not specifically reference potholes. Additionally, to illustrate the confusion two different eligibility criteria causes an applicant, the applicant cited FEMA policy and not A.A.C. Title 8 in several instances in their appeal request.

During DEMA's stakeholder engagement over the summer of 2017 in support of Executive Order 2017-02, one stakeholder from a political subdivision cited R8-2-313 in their submission, but provided no further statement or response to follow-up inquiries if or how they found this rule to be over burdensome and/or not necessary to protect taxpayers, public health, or safety.

In order to address criticisms of the rule, improve understandability and consistency on behalf of potential applicants, as well as to protect taxpayers, public health, and safety, the Division is undertaking further consideration of this rule.

8. **Economic Impact:** As found in previous economic impact assessments, these rules provide a positive economic impact by reimbursing state agencies and political subdivisions for eligible costs following a state declared emergency. A negligible economic burden is incurred for claim submissions and to maintain paperwork evidence as required by State Library record retention guidance. This small economic impact is more than offset by the economic benefit of receiving reimbursement from the Governor's Emergency Fund for 75% of the costs incurred during a state declared emergency.
9. **Any analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states:** None
10. **If applicable, whether the agency completed the course of action indicated in the agency's previous five-year review report:** In 2013, the rules were amended to improve reimbursement processes by modernizing and clarifying terms and language related to claim submission timelines and eligibility, specifically expanding the scope of eligible reimbursement costs and activities to reflect current operating and accepted practices, such as mutual aid costs, overtime costs incurred during emergency work, emergency communication costs, and snow removal.
11. **Cost benefit determination; least burden and cost:** With the changes made in 2013, DEMA believes these rules impose the least administrative burden associated with a political subdivision or state agency requesting assistance from a state declared disaster. Specifically, the claim submission deadlines for reimbursement were extended and no longer tied to the expiration of a Governor's declaration – reducing the burden and enabling greater development of claim submission that further reduce disaster costs to a community – as well as establishing timelines intended to encourage recovery of a community to its pre-disaster condition within

twelve months which reduces future costs to the community. Additionally, the amendments reduced the regulatory burden and cost by better enabling mitigation activities that help a community restore pre-disaster public infrastructure and allow it to be improved to be resilient to future disasters.

12. **Stringency compared to corresponding federal law:** There is no corresponding federal law as each state is able to manage disaster response as it sees fit. The Division aligns rules with FEMA's Public Assistance Program (44 C.F.R. Part 206) in order to expedite applications for federal assistance in the event a state declared disaster grows beyond the state's ability to respond, enabling one application for multiple sources of assistance.
13. **Compliance with A.R.S. § 41-1037:** No permits, licenses, or agency authorizations are created by this rule.
14. **Proposed course of action:** The Division of Emergency Management intends to submit a rulemaking moratorium exemption request to the Governor's Office by January 2018 to update the rules to meet procedural changes and make them more clear, concise, and understandable. Pending receipt of approval, DEMA will immediately begin the rulemaking process. Rules administering public assistance monies from the Governor's Emergency Fund are exempt from A.R.S. Title 41, Chapter 6 (A.R.S. § 41-1005(A)(29)).

## ANALYSIS OF INDIVIDUAL RULES

### R8-2-301 Definitions

2. **Objective:** Establish common definitions for terms used by political subdivisions of disaster-affected communities and state agencies affected by the disaster that are applying for state and federal disaster assistance, which are necessary to effectively administer the Governor's Emergency Fund Program.

### R8-2-302 Applications for Emergency Assistance

2. **Objective:** Establish who is authorized to request emergency assistance on behalf of a political subdivision or state agency affected by disaster in order to prevent confusion or questions of legit requests, and standardize the forms required for submission so as to ensure all applications contain the relevant information needed by the state to take action.

### R8-2-303 Contents of an Application

2. **Objective:** Identify the basic information that must be included in a request for emergency assistance from a political subdivision or state agency to ensure all relevant information is

included, as well as reinforce the responsibility that all political subdivisions and state agencies have to prepare for and be able to respond to localized emergencies.

**R8-2-304      Application by a Political Subdivision**

2. **Objective:** Define the application process used by a political subdivision of a disaster-affected community to receive assistance in order to maintain consistency with the requirements set by state law, as well as ensure timely submissions that help to meet federal disaster declaration guidelines if the emergency grows beyond the state's ability to respond.

**R8-2-305      Application by a State Agency**

2. **Objective:** Allow for and define the application process used by a state agency affected by disaster to receive assistance, and ensure timely submissions to meet federal disaster declaration guidelines if the emergency grows beyond the state's ability to respond.

**R8-2-306      Action on an Application**

2. **Objective:** Define the actions required of the Director and Governor when an application for assistance is received, and establish the maximum liability of the state for claims submitted following an emergency declaration by the Governor.

**R8-2-307      Proclamation File Number**

2. **Objective:** Reduce confusion for claims and declarations by requiring all correspondence regarding an application to be referenced using an assigned file number.

**R8-2-308      Limitation of Fund Expenditures**

2. **Objective:** Reinforce that expenditures from the Governor's Emergency Fund are limited to the amounts authorized by the Governor for a particular proclamation, as the Governor only has statutory authority to provide up to \$200,000 per disaster and further assistance must be approved by the State Emergency Council.

**R8-2-309      Time Limit for Filing Claims**

2. **Objective:** Establish reasonable time frames that align with FEMA guidelines for submission of all records relating to claims in order to properly document all related disaster damage while supporting the recovery of a community to its pre-disaster condition and ensuring proper stewardship of taxpayer funds.

**R8-2-310      Retention of Records**

2.     **Objective:** To inform applicants of the requirement to retain their claim-related records and to align those requirements with the retention schedules adopted by the State Library.

**R8-2-311      Establishment of the Incident Period and Termination of the Proclamation**

2.     **Objective:** Define how the incident period and termination of the proclamation are determined and potential to be amended, as this informs the establishment of other time frames regarding claim eligibility and community recovery following the emergency.

**R8-2-312      Duplication of Benefits**

2.     **Objective:** To protect state taxpayers by establishing that the state is not liable for any claim for which the applicant receives funds from another source, and has sought out other available sources (and been denied access to such sources) before submitting a claim for assistance to the state. Additionally, the rule establishes that the applicant must refund money if the Division later determines that duplicate funds were received.

**R8-2-313      Allowable Claims Against the Fund**

2.     **Objective:** To define reasonable and allowable claims against the fund arising from an emergency to protect taxpayers and eliminate the opportunity for an applicant to financially benefit from a disaster by including the upgrade or restoration of infrastructure that was not maintained by the applicant.

**R8-2-314      Mitigation of Future Damages or Improvements by the Applicant**

2.     **Objective:** To allow for mitigation projects to take place following a disaster to reduce the risk for future damage to infrastructure subject to repeated damage, but to clearly explain that the applicant shall comply with any mitigation requirements specified by the Director and to establish the limits to claims against the fund for such projects.

**R8-2-315      Advance of Funds**

2.     **Objective:** Define authorization procedures for an advance of funds to support applicants that require an advance of funds to continue work on projects related to repairing and restoring infrastructure damaged by a declared disaster and assist with the timely recovery of the applicant.

**R8-2-316 Final Inspection and Audit**

2. **Objective:** Define requirements for final payment of funds, which include a final inspection of work and audit of applicant's claims, to ensure all claims are complete and the community has fully recovered from the disaster.

**R8-2-317 Procurement Requirements**

2. **Objective:** To establish that procurement requirements must comply with Arizona procurement laws and provide a citation to those laws to prevent potential fraud, waste, or abuse of taxpayer dollars.

**R8-2-318 Inspection and Audit of Contract Provisions**

2. **Objective:** To require a contract or subcontract provision stating that records are subject to inspection and audit by the state for five years if an applicant's contractor or subcontractor submits a claim for reimbursement against the fund in order to prevent potential fraud, waste, or abuse of taxpayer dollars.

**R8-2-319 Overpayment**

2. **Objective:** Define the conditions and procedures the Director will take for obtaining a refund from an applicant and to inform procedures for applicants to challenge those determinations in order to prevent potential fraud, waste, or abuse of taxpayer dollars.

**R8-2-320 Appeal of a Director's Decision**

2. **Objective:** Provide an opportunity for an aggrieved party to appeal a decision by the Director as allowable by state law, and to define that process.

## RULE TEXT

### A.A.C. TITLE 8, CHAPTER 2

#### ARTICLE 3. GOVERNOR'S EMERGENCY FUND

**R8-2-33. Repealed**

**Historical Note**

Former Rules 1 and 2; Former Section R8-2-33 repealed, new Section R8-2-33 adopted effective June 11, 1980 (Supp. 80-3). Repealed effective September 18, 1996 (Supp. 96-3).

**R8-2-34. Repealed**

**Historical Note**

Former Rules 2a and 2b; Former Section R8-2-34 repealed, new Section R8-2-34 adopted effective June 11, 1980 (Supp. 80-3). Repealed effective September 18, 1996 (Supp. 96-3).

**R8-2-35. Repealed**

**Historical Note**

Former Rules 3, 4, 5 and 6; Former Section R8-2-35 repealed, new Section R8-2-35 adopted effective June 11, 1980 (Supp. 80-3). Repealed effective September 18, 1996 (Supp. 96-3).

**R8-2-36. Repealed**

**Historical Note**

Former Rule 7; Former Section R8-2-36 repealed, new Section R8-2-36 adopted effective June 11, 1980 (Supp. 80-3). Repealed effective September 18, 1996 (Supp. 96-3).

**R8-2-37. Repealed**

**Historical Note**

Former Section R8-2-37 repealed, new Section R8-2-37 adopted effective June 11, 1980 (Supp. 80-3). Repealed effective September 18, 1996 (Supp. 96-3).

**R8-2-38. Repealed**

**Historical Note**

Former Sections A1, A2, B1, B2, C1, C2, D, E Attachment; Former Section R8-2-38 repealed, new Section R8-2-38 adopted effective June 11, 1980 (Supp. 80-3). Repealed effective September 18, 1996 (Supp. 96-3).

**R8-2-39. Repealed**

**Historical Note**

R8-2-39 and Attachments 1 and 2 adopted effective June 11, 1980 (Supp. 80-3). R8-2-39 and Attachments 1 and 2 repealed effective September 18, 1996 (Supp. 96-3).

**R8-2-301. Definitions**

In addition to the definitions provided in A.R.S. § 26-301, the following definitions apply to this Article, unless specified otherwise:

1. "Administrative Costs" covers direct and indirect costs incurred, in administering the public assistance grant. Direct costs can be identified separately by project and indirect costs are incurred for common or joint purposes. Examples of the activities that the allowance is intended to cover include: establishing project files, providing copies of documentation, collecting cost data and developing cost estimates, working with the State during project monitoring, final inspection, audits and audit preparation.
2. "Applicant" means any state agency or political subdivision of the state that requests emergency assistance from the state.
3. "Applicant's authorized representative" means the person authorized by the governing body of a political subdivision to request funds, time extensions, and attend to other recovery matters related to a specific emergency proclamation.
4. "Application for Assistance" means a written request by an applicant to the Director for assistance in responding to and/or recovering from an emergency.
5. "Contingency proclamation" means the document in which the governor authorizes the Director to pay expenses incurred by political subdivisions or state agencies that respond to frequently occurring emergencies that pose a significant and constant threat such as search or rescue, and hazardous materials spills.
6. "County" means the county or counties where an emergency is located.
7. "Department" means the Department of Emergency and Military Affairs provided in A.R.S. § 26-101.

8. "Director" means the Director of the Arizona Division of Emergency Management within the Department of Emergency and Military Affairs.
9. "Division" means Arizona Division of Emergency Management.
10. "Eligible work" means actions taken and work performed by an applicant in response to an emergency that are consistent with the intent and purposes set forth in A.R.S. § 35-192 and these rules.
11. "Emergency" means any occasion or instance for which, in the determination of the Governor, state assistance is needed to supplement state agencies' and political subdivisions' efforts and capabilities to save lives, protect property and public health and safety, or to lessen or avert the threat of a disaster in Arizona.
12. "Emergency resolution" means a document by which the governing body of a political subdivision declares an emergency.
13. "Facility" means any building, works, system or equipment, built or manufactured, or an improved and maintained natural feature. Land used for agricultural purposes is not a facility.
14. "Fund" means the portion of the general fund used to pay incurred liabilities and expenses authorized as claims against the state to meet contingencies and emergencies when the Governor declares that a state of emergency exists.
15. "Incident period" means the time interval of an emergency during which damage occurs as documented in the Governor's Declaration of Emergency.
16. "Political subdivision" means any county, incorporated city or town, or school, community college, or other tax levying public improvement district.
17. "Proclamation" means the document in which the Governor declares that a state of emergency exists pursuant to A.R.S. § 35-192(A) and authorizes an expenditure from the fund.
18. "Reimbursement" means the payment of state funds in accordance with A.R.S. § 35-192.
19. "State" means the state of Arizona.
20. "State agency" means any department, commission, board, agency, or division of the state, including the Department of Emergency and Military Affairs.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

**R8-2-302. Applications for Emergency Assistance**

- A. An applicant shall act for the purpose of this Article through its chief executive officer or body, or the applicant's authorized representative.
- B. An applicant shall use forms that are available on the Division's website.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

**R8-2-303. Contents of an Application**

- A. An applicant shall set forth in an application the cause, location, and beginning date of the emergency, a description of the damage caused by the emergency and potential health hazards arising from the emergency, the costs incurred for emergency response, and an estimate of the number of people affected by the emergency and costs for recovery.
- B. Before submitting an application to the Director, the applicant shall use its available resources to respond to the emergency and request assistance from other political subdivisions that might respond to the emergency.
- C. The "emergency" must also be clearly demonstrated to be above and beyond the jurisdiction's ability to recover from without state assistance. Examples as to how to demonstrate this element would be: use of mutual aid, documenting multiple events, lack of physical or personnel resources, depleted contingency funds or redirection of operating funds; which must be attested to in writing by the jurisdiction's chief financial officer.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

**R8-2-304. Application by a Political Subdivision**

- A. A county shall issue an emergency resolution before submitting an application to the Director.
- B. A political subdivision other than a county shall submit an emergency resolution to the county and request that, if necessary, the county issue an emergency resolution and make application to the Director. If the county fails to issue an emergency resolution expeditiously, a political subdivision may apply directly to the Director for assistance.
- C. A political subdivision shall submit an application to the Director using the most expeditious means.
- D. The Director shall reject an application that is not received within 15 days from the start of the emergency unless the political subdivision shows good cause for the delay or that the emergency is of a type that the date the emergency started is difficult to establish.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3).

**R8-2-305. Application by a State Agency**

- A. An applicant that is a state agency shall submit an application directly to the Director using the most expeditious means.
- B. The Director shall reject an application that is not received within 15 days from the start of the emergency unless the state agency shows good cause for the delay or that the emergency is of a type that the date the emergency started is difficult to establish.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3).

**R8-2-306. Action on an Application**

- A. The Director shall make a recommendation to the Governor whether to issue a proclamation.
- B. The Director shall notify the applicant in writing, of the Governor's decision to issue or not to issue a proclamation. If the Governor issues a proclamation, the Division shall forward a copy to the applicant.
- C. State payment of claims submitted by a political subdivision pursuant to a proclamation shall not exceed 75% of eligible costs or such lesser amount established by the Director. In no event should the aggregate amount of payments exceed the amount set forth in the Governor's proclamation, unless such amount is authorized pursuant to R8-2-308.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

**R8-2-307. Proclamation File Number**

- A. The Division shall assign a file number to each emergency that is the subject of a proclamation.
- B. All correspondence regarding an emergency to which a file number is assigned shall reference the file number.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3).

**R8-2-308. Limitation of Fund Expenditure**

Expenditure from the fund, as a result of a particular proclamation, shall not exceed the amount authorized in the proclamation unless an additional amount is authorized by the Governor's Emergency Council as prescribed in A.R.S. § 35-192.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

**R8-2-309. Time Limit for Filing Claims**

- A. Following the Governor's proclamation reasonable work completion time limits shall be established by the Division. If the applicant feels, an extension of time is needed to complete work and submit claims arising from an emergency, a request for time extension, stating good cause for request, shall be submitted to the Division prior to identified time limit. If it is determined that good cause exists, an extension of time will be granted and the applicant will be notified of the decision in writing. Time limits are as follows:
  - B. Six months for temporary measures and emergency work and 12 months for permanent measures. If no effort has been made to begin work within this timeline, the project can be cancelled and funding withdrawn. If work has begun, a request for time extension should be submitted, as per subsection (A), and needs to include a timeline for project completion. A second extension request will be considered if there are extenuating circumstances outside the applicant's ability to control and/or work is near completion.
  - C. All damages attributed to a declared disaster must be identified by the eligible applicant within 60 days of the date of the Governor's Declaration. A final list of projects will be documented for concurrence and signature by both the applicant and a Division representative at the end of that 60 day period. Any damages identified after the 60 days will not be considered for reimbursement under the declared event.
  - D. All required information pertaining to the accurate development, review and approval of Project Worksheets identified under subsection (B) must be provided to the Division by the eligible applicant within six months from the date of declaration. Any information not received within that time-frame will not be considered as eligible costs reimbursable under the declared event; with the exception of hidden damages discovered after construction begins.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

**R8-2-310. Retention of Records**

The applicant shall maintain for three years all records relating to claims submitted by the applicant in accordance with A.R.S. § 41-151 and shall make the records available for inspection and audit by the Department auditor and the auditor general.

#### Historical Note

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

#### **R8-2-311. Establishment of the Incident Period and Termination of the Proclamation**

- A. The Director shall recommend to the Governor, for inclusion in the Governor's proclamation, the beginning and ending dates of the incident period. If the Director determines that the incident period has a beginning or ending date different from that stated in the proclamation, the Director shall recommend to the Governor that the proclamation be amended to reflect the correct dates.
- B. At the Director's recommendation, the Governor shall terminate the proclamation when the following occur:
  - 1. The recovery work is complete,
  - 2. The Division completes a final inspection of all work for which the applicant submits a claim,
  - 3. The applicant submits a claim to the Director for all work which the applicant seeks reimbursement,
  - 4. The Division pays all authorized claims,
  - 5. The required audits are complete, and
  - 6. The applicant receives amount due or pays amount owed.
- C. After the audit and final payment of all eligible applicant's claims, the Governor shall issue a termination proclamation.

#### Historical Note

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

#### **R8-2-312. Duplication of Benefits**

- A. The state is not liable for any claim arising from an emergency for which the applicant receives funds from another source.
- B. The state is not liable for any claim arising from an emergency unless the applicant applies for and is denied funding from other available sources before submitting the claim to the state.
- C. If an applicant is within the Designated Disaster area of a Presidential Major Disaster Declaration, the state is not liable for any claim deemed ineligible by the Federal Emergency Management Agency (FEMA) under a Presidential Major Disaster Declaration. Claims denied by FEMA will not be considered eligible under the corresponding State Declaration unless otherwise outlined under R8-2-313(B).
- D. If the Director or an applicant determines that the applicant received duplicate funds for a claim from the state and from another source, the applicant shall refund the amount received from the state within 60 days of written notification.

#### Historical Note

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

#### **R8-2-313. Allowable Claims Against the Fund**

- A. The Director shall allow expenditures from the fund for a claim arising from an emergency only if:
  - 1. The amount claimed is a direct result of response or recovery operations to the emergency,
  - 2. The applicant is legally and financially responsible for providing response or recovery operations in the emergency, and
  - 3. The facility is other than a residential structure, and
  - 4. The amount claimed is authorized under the provisions of subsection (B) or (D).
  - 5. Once remediation is complete, projects will comply with appropriate state or federal environmental requirements, building, safety or other appropriate regulatory requirements.
- B. The Director shall allow the following costs to be paid as claims against the fund:
  - 1. Overtime salaries or wages and benefits of the applicant's budgeted personnel directly engaged in eligible emergency work;
  - 2. Salaries or wages and benefits of the applicant's budgeted personnel directly engaged in eligible permanent work;
  - 3. Salaries or wages and benefits of non-budgeted employees directly engaged in eligible emergency or permanent work;
  - 4. Communication costs directly related to the emergency and directly requested by an eligible applicant;
  - 5. Travel and per diem costs directly related to the emergency for personnel requested by an eligible applicant;
  - 6. Materials and supplies consumed directly requested by an eligible applicant, except those listed under subsection (C)(2);
  - 7. Rental of privately owned equipment at documented contractual rates directly requested by an eligible applicant;
  - 8. Contributions toward the purchase of equipment if the necessary equipment is not available from federal, state, or local sources, and if the contribution does not exceed the cost of renting the item at prevailing local rates. Contribution will be reduced by the fair market value when the item is no longer needed for the declared disaster;

9. Owning and operating the applicant's equipment using rates established by the applicant or FEMA, whichever is less;
  10. Work performed by private contractors. Contracts must be of reasonable cost and competitively bid and adhere to all jurisdictional procurement procedures. Jurisdictions may not enter into contracts with any private entity that has been debarred or suspended. Emergency Procurement, as defined in A.A.C. R2-7-E302, means "any condition creating an immediate and serious need for materials, services, or construction in which the state's best interests are not met through the use of other source-selection methods. The condition must seriously threaten the functioning of state government, the preservation or protection of property, or the health or safety of a person". Any procurement need that does not meet this definition would require following standard procurement process/procedures.
  11. Work performed under a mutual-aid agreement between local governments or between a local government and a state agency is eligible for reimbursement by the requesting agency. The providing entity shall submit documented costs to the requesting agency for reimbursement. Eligible work must be paid to the responding jurisdiction by the requesting jurisdiction, and the requesting jurisdiction is then eligible for a cost-share reimbursement by the State; and
  12. Prison labor including amounts paid to prisoners in accordance with established rates, guards (required number based on guard/prisoner ratio) and costs of transporting and feeding prisoners.
  13. Snow Removal: a political subdivision could make Application for State Assistance if they had met the following condition: If a winter storm event pushes the jurisdiction's cumulative snowfall total for a winter season above the average of the last five season's annual snowfall, then the jurisdiction could be eligible for assistance providing the event that pushes the cumulative total above the threshold is above and beyond the capability of the affected jurisdiction. (see R8-2-303) (Snowfall measurement data source will be the National Weather Service and historical snowfall data source will be the National Climatic Data Center.)
- C. The Director shall not allow the following costs to be paid as claims against the fund:
1. Salaries or wages and benefits of elected or appointed officials responsible for directing governmental activities;
  2. Administrative Costs, office supplies and equipment;
  3. Rental of administrative office space;
  4. Depreciation, insurance, storage, and similar fixed overhead costs;
  5. Repairs and fuel for privately owned rented equipment, except where the rental agreement provides that the applicant will be responsible for repairs and fuel in addition to the rental fee;
  6. Work performed under agreement between a state agency or local government and a federal agency where the work is paid for by federal funds;
  7. Costs incurred under contracts based on cost plus a percentage of costs, unless the Director determines that the performance of immediate emergency work would be unduly delayed and would likely result in an imminent hazard to health or safety, in which case the Director may authorize an exception; and
  8. Prison labor costs for lodging.
- D. To submit a claim for a cost that cannot be classified under subsection (B), an applicant shall make a written request to the Director for an exception. The Director shall grant a request for an exception if the request explains the nature of the exception justifies why it is needed, and meets all other program guidelines as outlined in R8-2-301 through R8-2-320. The Director shall immediately inform the applicant in writing of the decision to grant or deny the request for an exception.
- E. When a facility damaged as a result of an emergency is repaired or replaced, the Director shall allow only the costs required to return the facility to the condition it was before the emergency, incorporating current standards and design requirements.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

**R8-2-314. Mitigation of Future Damages or Improvements by the Applicant**

- A. The applicant shall comply with any mitigation requirements specified by the Director for repair or replacement projects subject to repeated damage from flooding or other threats to life or property.
- B. The applicant shall identify and request cost effective mitigation opportunities for the damaged element of the facility that would mitigate future impact from a similar event.
- C. With approval by the Director, the applicant may restore pre-disaster function and make improvements for which the applicant is financially responsible. Claims against the Fund are limited to the State share for the project estimate for the repairs necessary to return the facility to the condition it was before the emergency. A written request for improvements is to be submitted as soon as possible following receipt of approved project which will include a statement recognizing financial responsibility for the improvements.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

**R8-2-315. Advance of Funds**

All requests for an advance of funds must be made in writing and shall be signed by the applicant's authorized representative and forwarded to the Director. The Director shall assess a request for an advance to determine whether the request is reasonable and for eligible work that has been completed. The Director shall grant a request for an advance for work not completed only if an

applicant has demonstrated that the work cannot be completed without an advance. The amount of an advance will be based upon damage assessment, eligible expenditures to date and the estimated eligible expenditures for the next 60-day period.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

**R8-2-316. Final Inspection and Audit**

Upon completion of all work by an applicant, the Division shall inspect all the work that the applicant claims. The applicant shall provide the Division with access to all claimed work and shall permit review of all records relating to the work. After completion of the final inspection, the Department's chief auditor shall conduct an audit of the applicant's claims. The Director shall use this audit to determine the eligibility of claimed costs and final payment due to the applicant or overpayment due to the Division.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

**R8-2-317. Procurement Requirements**

The Director shall not allow a claim arising from a procurement unless the applicant complies with the Arizona procurement laws set forth in A.R.S. § 41-2501, et seq., and A.A.C. R2-7-101 et seq.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3).

**R8-2-318. Inspection and Audit of Contract Provisions**

If a contract or subcontract for the furnishing of goods, equipment, labor, materials, or services to the applicant may result in a claim, the applicant shall include in the contract or subcontract a provision that all books, accounts, reports, and other records relating to the contract or subcontract shall be subject to inspection and audit by the state for five years after completion of the contract or subcontract.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3).

**R8-2-319. Overpayment**

- A. If the Director determines that an applicant is required to refund an overpayment, as demonstrated by the audit outlined in R8-2-316, the Director shall provide the applicant written notice of the amount owed. The applicant shall reimburse the Division within two months of the date of notification.
- B. An applicant may request a review, as set forth in R8-2-320, of a determination under subsection (A) that an amount must be refunded. If the review results in a decision that the applicant is required to reimburse the Division, the applicant shall refund the amount required within two months of the decision.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

**R8-2-320. Appeal of the Director's Decision**

- A. Any party aggrieved by a decision rendered by the Director may appeal the decision, in writing, not later than 15 days after receipt of notice of the Director's decision.
- B. When an appeal is filed, the Director shall contact the Office of Administrative Hearings to schedule the case with the office in accordance with A.R.S. § 41-1092.02.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3).

**R8-2-321. Repealed**

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Repealed by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

## STATUTORY AUTHORITY

### A.A.C. Title 8, Chapter 2, Article 3 Governor's Emergency Fund

#### 26-306. [Powers and duties of the director of emergency management](#)

A. The director, subject to the approval of the adjutant general, shall:

3. Make rules necessary for the operation of the division.
4. Develop and test plans for meeting any condition constituting a state of emergency or state of war emergency, except those emergency plans specifically assigned by the governor to other state agencies. Such plans shall provide for the effective mobilization and management of personnel and equipment of the state.
5. During a state of war emergency, coordinate the emergency activities of all state agencies except the national guard.
6. During a state of emergency or a local emergency, coordinate the emergency activities of all state agencies and the national guard.
7. Coordinate the use of state personnel, equipment, services and facilities, including communication services, if requested by political subdivisions in support of emergency management activities.
8. Coordinate the use of personnel, equipment, services and facilities, including communication services, of one or more political subdivisions in support of any other political subdivision in meeting emergency needs, including search or rescue operations, on the request of the using political subdivision.
9. Develop, test and maintain a plan pursuant to section 26-305.01 for response by agencies of this state and its political subdivisions to an accident at a commercial nuclear generating station.
10. Every two years, submit a recommendation to the legislature in connection with the assessment prescribed by section 26-306.01 with supporting documentation and information.
11. Collaborate with the state forester in presentations to legislative committees on issues associated with forest management, wildfire prevention and suppression and wildfire emergency response and management as provided by section 37-1302, subsection B.
12. Develop, implement and maintain a state hazardous materials emergency response and recovery plan as part of the hazardous materials emergency management program pursuant to section 49-123.
13. Coordinate the development, implementation and maintenance of standardized curricula for hazardous materials training and education.

B. The director, subject to the approval of the adjutant general, may:

1. Propose, develop, negotiate and consummate contractual arrangements with the federal government, state agencies and political subdivisions for technical, administrative and financial support from the federal, state and local government in connection with the emergency management activities of the state.
2. Represent the state at conferences in the development and promotion of the emergency management capability of the state.
3. Establish a disaster prevention council to plan for disaster prevention. The council shall consist of the members of the state emergency council and other members as determined by the director. The disaster prevention council shall coordinate the disaster prevention expertise of representatives of federal, state and local business and industry and promote partnerships to substantially reduce property loss from natural and technological disasters.

35-192. Authorization for declaration of disaster; authorization for liabilities and expenses; priorities and limitations; review and report of expenditures

A. The governor may declare an emergency arising from major disasters as provided in this section and incur liabilities therefor, regardless of whether or not the legislature is in session.

B. When the governor, or the director of the division of emergency management in the department of emergency and military affairs pursuant to section 26-303, subsection H, determines that a contingency or disaster so justifies, and declares an emergency, specific liabilities and expenses provided for in this section are authorized to be incurred against and to be paid as claims against the state from unrestricted monies from the general fund to mitigate and meet contingencies and emergencies arising from:

1. Invasions, hostile attacks, riots or insurrections.
2. Epidemics of disease or plagues of insects.
3. Floods or floodwaters.
4. Acts of God or any major disaster.
5. Wildland fires, but only after all necessary authorizations under section 37-1305 are exhausted.

C. When authorized by the governor, specific liabilities and expenses provided for in this section may be incurred against and may be paid as claims against the state from unrestricted monies from the general fund to meet contingencies and emergencies arising from incidents relating to hazardous materials as defined in section 26-301 and search or rescue operations conducted pursuant to section 11-251.02, section 11-441, subsection C or section 26-306 subject to the limitations provided in section 35-192.01.

Within ninety days after monies are awarded under this section, the department of emergency and military affairs shall post in a prominent location on the department's official website the amount of monies awarded under this section, who received the monies and how the monies were spent.

D. Liabilities and expenses authorized under subsection B of this section may be incurred for any of the emergencies or contingencies prescribed in subsection B of this section in the following order of priority:

1. Reimbursement for expenses incurred to combat a menace to the health, lives or property of any considerable number of persons of the state, or to property of the state or its political subdivisions.
2. Reimbursement for expenses incurred to repair damage to any property of the state.
3. Reimbursement for expenses incurred to repair damage to any property of the political subdivisions of the state.
4. Reimbursement for expenses incurred in search or rescue operations.
5. Reimbursement for expenses incurred in emergency or disaster recovery activities or in matching federal disaster recovery programs.
6. Reimbursement for expenses for property loss mitigation measures or to match federal property loss mitigation programs.

E. The auditor of the department of emergency and military affairs shall review liabilities incurred and expenditures made under this section and report to the state emergency council at ninety-day intervals during the emergency and conduct a final review of each emergency within ninety days after the termination of the emergency. The state emergency council shall make a written report not later than September 1 of each year to the legislature of the actions of the state emergency council during the preceding fiscal year, including an itemized statement of expenditures for each emergency during the year. The department of emergency and military affairs shall post the report in a prominent location on the department's official website.

F. All liabilities incurred under this section shall be subject to the following limitations:

1. No liability shall be incurred against the monies authorized without the approval of the governor, or the adjutant general pursuant to section 26-303, subsection H, for each contingency or emergency.
2. Incurring of liabilities in excess of two hundred thousand dollars in any single disaster or emergency shall not be made without consent of a majority of the members of the state emergency council.
3. The aggregate amount of all liabilities incurred under this section shall not exceed four million dollars for any fiscal year beginning July 1 through June 30. Monies authorized for disasters and emergencies in prior fiscal years may be used in subsequent fiscal years only for the disaster or emergency for which they were authorized. Monies authorized for disasters and emergencies in prior fiscal years, and expended in subsequent fiscal years for the disaster or emergency for which they were authorized, apply toward the four million dollar liability limit for the fiscal year in which they were authorized.
4. Notwithstanding the limitations in paragraph 3 of this subsection, monies that were previously obligated but not used for a declared emergency or disaster may be reallocated to an outstanding obligation for another declared emergency or disaster and shall remain available for expenditure for the outstanding obligation. The reallocation of monies pursuant to this paragraph does not apply toward the four million dollar liability limit of the fiscal year to which the monies were reallocated or in which the monies are spent.
5. An obligation of monies under this section may be made only when one or more of the following conditions exist:
  - (a) No appropriation or other authorization is available to meet the contingency or emergency.
  - (b) An appropriation is insufficient to meet the contingency or emergency.
  - (c) Federal monies available for such contingency or emergency require the use of state or other public monies.
- G. The director of the division of emergency management in the department of emergency and military affairs shall develop rules for administering the monies authorized for liabilities under this section, subject to approval by the governor.

**Arizona Department of Emergency and Military Affairs**  
**Title 8. Emergency and Military Affairs**  
**Chapter 2. Department of Emergency and Military Affairs –**  
**Division of Emergency Management**  
**Article 6. Hazardous Materials Training Program, Student**  
**And Instructor Evidence Of Completion**

**OVERVIEW OF ARTICLE 6 RULES**

The Arizona Department of Emergency and Military Affairs (DEMA) is a cabinet level agency that includes the Arizona National Guard (Army, Air, and Joint Task Force), the Arizona Division of Emergency Management (DEMA-EM), and Division of Administrative Services. DEMA has authority to make rules necessary for operation of these divisions.

In 1988, legislation created the Arizona Emergency Response Commission (AZSERC) as a part of DEMA under former A.R.S. § 26-343. In that same legislation, ADEQ was given hazardous material responsibility in A.R.S. § 49-108. Since 1988, as part of its mission, the Arizona Emergency Response Commission (AZSERC) has implemented and made available hazardous materials first responder training through DEMA for various personnel across the state and promulgated rules covering training content and instructors. For convenience, AZSERC has modeled its course and curriculum after the federal OSHA requirements at 29 CFR 1910.120. DEMA's Haz Mat First Responder training as approved and provided by AZSERC is distinguishable from the medical First Responder course that the Director of DPS is responsible for under A.R.S. § 41-1841.

In 2015, HB2274 transferred AZSERC and related statutes from DEMA to ADEQ, and established ADEQ as the lead agency for implementing the Emergency Planning and Community Right-to-Know Act (EPCRA) [See A.R.S. § 49-123(E)]. The bill also transferred lead agency status to ADEQ for "developing and implementing a state hazardous materials emergency management program." [A.R.S. § 49-123(A)]

DEMA's EPCRA rules are in 8 A.A.C. 4, Article 1 and pass to AZSERC and ADEQ under specific session law language in Section 34 of HB2274. As the new lead agency for the hazardous materials emergency management program, ADEQ also inherits responsibility for the 8 A.A.C. 2, Article 6 rules relative to hazardous materials training, curriculum and instructors, including this five-year review report. Although divorced from the lead agency position, DEMA will continue to implement Haz Mat training at the direction of ADEQ by hiring the instructor(s) and coordinating and occasionally hosting the training as it does for other state agencies.

DEMA and ADEQ collaborated on the development and submission of this report, and DEMA concurs to the proposed courses of action ADEQ plans to take to amend these rules when they are ultimately transferred from Arizona Administrative Code Title 8 (DEMA) to Title 18 (ADEQ).

The five rules in this Article have not been amended since 2003.

**ARTICLE 6. HAZARDOUS MATERIALS TRAINING PROGRAM, STUDENT  
AND INSTRUCTOR EVIDENCE OF COMPLETION**

- R8-2-601. Definitions
- R8-2-602. Hazmat First Responder Awareness Level Course and Hazmat First Responder Operation Level Course Curriculum
- R8-2-603. Instructor Authorization and Renewal
- R8-2-604. Hazmat First Responder Awareness Level Course and Hazmat First Responder Operations Level Course Division Requirements
- R8-2-605. Hazmat First Responder Awareness Level Personnel and Hazmat First Responder Operations Level Operatives Evidence of Completion

**INFORMATION THAT IS IDENTICAL FOR RULES IN ARTICLE 6**

1. **Authorization:** Until July 3, 2015, the Arizona Division of Emergency Management's (DEMA-EM) rulemaking authority under A.R.S § 26-306(A)(3) extended to the rules in this Article. After the effective date of HB2247 (2015), this authority was transferred to ADEQ now under A.R.S. § 49-123(F).
5. **Enforcement:** These rules are consistently and fairly enforced.
7. **Criticisms Received within the Last 5 Years:** Neither DEMA-EM, ADEQ, or AZSERC have received any written criticism during the past five years of any of these rules.
8. **Economic Impact:** As found in previous economic impact assessments, these rules have a positive economic impact to the state by enabling federally-funded hazardous material courses and certifications to be provided to state agencies, political subdivisions and individuals at no cost. There is no negative economic impact incurred by receiving this instruction.
9. **Any analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states:** None
10. **If applicable, whether the agency completed the course of action indicated in the agency's previous five-year review report:** DEMA-EM's previous five-year review report proposed changes "due to procedure changes in how classes are conducted," however, no record exists that identifies what those proposed or procedural changes were or what amendments were considered, and no staff from that time remain with the agency. Ultimately, no changes were made to the Article since 2012.
12. **Stringency compared to corresponding federal law:** There is no corresponding federal law. Each state may manage its hazardous materials training program as it sees fit.

## ANALYSIS OF INDIVIDUAL RULES

### R8-2-601 Definitions

2. **Objective:** To define terms necessary to describe and implement a Hazardous Materials Training Program, which are necessary to effectively administer the training program.
3. **Effectiveness:** The definitions are necessary for the Article to meet its objectives.
4. **Consistency:** The definition of “hazardous materials” in this rule includes “hazardous substance” as defined A.R.S. § 49-201, but could reference the “hazardous substance” definition in the relevant statutory article instead (A.R.S. § 49-121, as transferred from A.R.S. § 26-341 in 2015). However, it appears that the term “hazardous substance” is not used in the new Title 49, Chapter 1, Article 2 and doesn’t have to be defined there.

This rule is otherwise consistent with other rules promulgated by ADEQ and DEMA.

6. **Clarity and Conciseness:** Although this rule is generally understandable, the difference between the hazardous substance definitions noted in paragraph 4 above is a potential source of confusion.
11. **Cost benefit determination; least burden and cost:** All classes are offered free and funded through the federal resources. The only burden is registering online. DEMA-EM will continue to manage the online student registration process as necessary to build classes, control enrollment numbers, identify specific instructors, and communicate to the student base other important details. This online system is maintained at DEMA-EM expense for all statewide training, and DEMA-EM does not seek reimbursement from ADEQ, or any other agency for this service.
13. **Compliance with A.R.S. § 41-1037:** No permits, licenses, or agency authorizations are created by this rule.
14. **Proposed course of action:** ADEQ intends to fix the hazardous substance definition as described above in a rulemaking it will submit to GRRC by October 2020.

### R8-2-602 Hazmat First Responder Awareness Level Course and Hazmat First Responder Operations Level Course Curriculum

2. **Objective:** The rule directs DEMA-EM to maintain standardized curriculum for these two courses as approved and procured by ADEQ, and sets minimum standards for the awareness and operations level training that are necessary to maintain consistency between courses.
3. **Effectiveness:** The rule effectively describes the general categories of training that need to be covered.

4. **Consistency:** Although consistency is not required, R8-2-602(B) is consistent with the federal OSHA regulation at 29 C.F.R. 1910.120(q)(6) except that the rule omits the last required topic in the federal regulation: “The ability to realize the need for additional resources, and to make appropriate notifications to the communication center.”

The OSHA regulation describes the training “employers” must maintain under OSHA. “Employers” is defined to exclude a state and political subdivisions of the state. See 29 C.F.R. 1910.2.

6. **Clarity and Conciseness:** Subsection (A) should be clarified with language that the courses are approved and procured by ADEQ. Otherwise, the rule is clear, concise and understandable.
11. **Cost benefit determination; least burden and cost:** This rule makes the course content requirements similar to those that exist under OSHA for employers, and avoids special requirements for government responders that would have little or no basis for successful incident response. The relatively low costs to implement this training along with its being offered at no cost to participants ensure that the benefits exceed the cost.
13. **Compliance with A.R.S. § 41-1037:** No permits, licenses, or agency authorizations are created by this rule.
14. **Proposed course of action:** Add the language discussed under consistency and clarity above in a rulemaking to be submitted to GRRC in October 2020.

## R8-2-603      Instructor Authorization and Renewal

2. **Objective:** To provide requirements regarding instructor authorization and authorization renewal to ensure proficiency and consistency in course instruction.
3. **Effectiveness:** The rule lists the DEMA address for the source of required forms for instructor authorization. These forms could be placed on the DEMA website. Otherwise, the rule effectively establishes a clear and simple procedure for obtaining and maintaining instructor authorization.
4. **Consistency:** Although consistency is not required, the rule is consistent with a federal regulation that describes in general requirements for employer instructors under OSHA. (29 CFR 1910.120(e)(5)).
6. **Clarity and Conciseness:** The rule is clear, concise and understandable.
11. **Cost benefit determination; least burden and cost:** This rule has instructor requirements that hypothetically could be made less burdensome by reducing the number of hours required from previous related training. However, hazardous materials incident response can be a life and

death matter, and the number of hours required has been deemed reasonable in proportion to the risks involved. The relatively low costs to implement this training along with its being offered at no cost to participants, ensure that the benefits exceed the cost.

13. **Compliance with A.R.S. § 41-1037:** This rule creates a procedure for an instructor to be authorized as a Hazardous Materials course instructor. ADEQ and DEMA-EM have determined that a general permit for this authorization would not be technically feasible or appropriate. As an example, the requirements under R18-2-603(A)(2) for: 1) evidence of two years' experience in hazardous materials incident response, 2) a letter of recommendation, and 3) a summary of the applicant's experience as an instructor; are items that must be evaluated on a case by case basis, rather than by merely checking a box that they are present.
14. **Proposed course of action:** Add the website to the address provided for forms and clarify required instructor attendance in a rulemaking to be submitted to GRRC by October, 2020.

**R8-2-604      Hazmat First Responder Awareness Level Course and Hazmat First Responder Operations Level Course Division Requirements**

2. **Objective:** The rule requires that authorized instructors teach the courses and provides for instructors to notify DEMA-EM before each course taught and to provide DEMA-EM with course records afterwards in order to enable DEMA-EM to certify attendees and maintain accounting for course materials and compensation to instructors.
3. **Effectiveness:** The rule allows DEMA-EM to keep track of expenditures and other records in order to continue with its role in administration of the courses. The rule lists the DEMA-EM address for the source of required forms for instructor notices. These forms could be placed on the DEMA-EM website.
4. **Consistency:** Although consistency is not required, this section is consistent with 29 C.F.R. 1910.120(e)(6), "Training certification".
6. **Clarity and Conciseness:** Subsection (A)(7) requires an instructor to provide the "[n]ame of the agency head" when submitting a "Course Request Form", but provides no context for which agency head needs to be identified. In addition, although the text of the rule labels this a notice, use of "Request" on the form implies that DEMA-EM will respond to the notice.
11. **Cost benefit determination; least burden and cost:** The recordkeeping and paperwork requirements of this section are not very burdensome and are necessary for DEMA-EM to maintain oversight of courses given and individuals completing those courses. The benefit, preventing unqualified individuals from delivering hazardous materials emergency management services, is greater than the cost.

13. **Compliance with A.R.S. § 41-1037:** No permits, licenses, or agency authorizations are created by this rule.
14. **Proposed course of action:** Add the website to the address provided for forms, and clarify “agency head” in a rulemaking to be submitted to GRRC by October, 2020.

**R8-2-605      Hazmat First Responder Awareness Level Personnel and Hazmat First Responder Operations Level Operatives Evidence of Completion**

2. **Objective:** The rule sets minimum standards for what constitutes successful completion of written exams associated with this program and requires DEMA-EM to issue, and employers to maintain, Evidence of Completion.
3. **Effectiveness:** The rule effectively provides for evidence of completion of the training.
4. **Consistency:** This rule incorporates by reference two subsections of an OSHA regulation as of July 1, 2001. The two subsections incorporated have not been updated since then. The rule is still consistent with the federal regulation. Additional information is discussed in paragraph 6.
6. **Clarity and Conciseness:** Subsection (B) of the rule references the 2001 version of a large OSHA regulation. Parts of this regulation not relevant to this rule have been updated several times since 2001. It impedes understanding to reference a 16 year old version of this regulation, which in most cases, is difficult to obtain.
11. **Cost benefit determination; least burden and cost:** In the agencies’ judgment, the applicant information required and the minimum required score of 75% are the least burdensome necessary. The cost of recordkeeping is minimal, and the benefits easily exceed the costs.
13. **Compliance with A.R.S. § 41-1037:** No permits, licenses, or agency authorizations are created by this rule.
14. **Proposed course of action:** Update the incorporation by reference to the most recent version in a rulemaking to be submitted to GRRC by October, 2020.

## RULE TEXT

### A.A.C. TITLE 8, CHAPTER 2

#### ARTICLE 6. HAZARDOUS MATERIALS TRAINING PROGRAM, STUDENT AND INSTRUCTOR EVIDENCE OF COMPLETION

##### **R8-2-601. Definitions**

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

1. "Authorized instructor" means an individual who the Division determines meets the criteria at R8-2-602.
2. "Director" means the director of the Division.
3. "Division" means the Arizona Division of Emergency Management.
4. "Evidence of Completion" means a document issued by the Division to an individual who successfully completes a standardized course of instruction.
5. "Hazmat First Responder Awareness Level personnel" means individuals who are likely to witness or discover a hazardous material release and who are trained to initiate an emergency response sequence by notifying the proper authorities of the release.
6. "Hazmat First Responder Operations Level operatives" means individuals who are trained to respond in a defensive fashion without actually trying to stop a hazardous material release.
7. "Hazardous materials" means:
  - a. Any material designated under the hazardous materials transportation act of 1974 (49 U.S.C. 1801);
  - b. Any element, compound, mixture, solution, or substance designated under the comprehensive environmental response, compensation, and liability act of 1980 (42 U.S.C. 9602);
  - c. Any substance designated in the emergency planning and community right-to-know act of 1986 (42 U.S.C. 11002).
  - d. Any substance designated in the water pollution control act (33 U.S.C. 1317(a) and 1321(b)(2)(A));
  - e. Any hazardous waste having the characteristics identified under or listed under A.R.S. § 49-922;
  - f. Any imminently hazardous chemical substance or mixture with respect to which action is taken under the toxic substances control act (15 U.S.C. 2606);
  - g. Any material or substance determined to be radioactive under the atomic energy act of 1954 (42 U.S.C. 2011);
  - h. Any substance designated as a hazardous substance under A.R.S. § 49-201; and
  - i. Any highly hazardous chemical or regulated substance as listed in the clean air act of 1963 (42 U.S.C. 7401-7671).
8. "Hazardous materials incident" means an uncontrolled, unpermitted release or potential release of hazardous materials that presents an imminent and substantial danger to the public health or welfare or to the environment.
9. "Hazardous materials response experience" means knowledge and skills gained by responding to hazardous materials incidents.
10. "Instructor requirements" means the criteria listed at R8-2-602 for authorization as an instructor by the Division.
11. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes:
  - a. Release that results in exposure to persons solely within a workplace, with respect to a claim that the persons may assert against their employer;
  - b. Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;
  - c. Release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if the release is subject to financial protection requirements established by the Nuclear Regulatory Commission under section 170 of the Act, or for the purposes of section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act or any other response action, any release of source, byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and
  - d. Normal application of fertilizer.

##### **Historical Note**

Adopted effective March 29, 1988 (Supp. 88-1). Amended by final rulemaking at 9 A.A.R. 309, effective March 18, 2003 (Supp. 03-1).

##### **R8-2-602. Hazmat First Responder Awareness Level Course and Hazmat First Responder Operations Level Course Curriculum**

- A. An authorized instructor shall conduct a Hazmat First Responder Awareness Level course or a Hazmat First Responder Operations Level course in accordance with the standardized curriculum maintained by the Division. The Division shall promptly notify all authorized instructors of any change in the curriculum.
- B. Topics covered in the Hazmat First Responder Awareness Level course are:
  1. What hazardous materials are and the risks associated with a hazardous materials incident;
  2. Potential outcomes associated with an emergency created when hazardous materials are present;
  3. How to recognize the presence of hazardous materials in an emergency;
  4. How to identify different hazardous materials, and
  5. Role of a first responder awareness individual in an employer's emergency response plan, including site security and control, and use of current resource materials.

- C. Topics covered in the Hazmat First Responder Operations Level course are:
1. Basic hazard and risk assessment techniques;
  2. How to select and use proper protective equipment;
  3. Basic hazardous materials terms;
  4. How to perform basic control, containment, or confinement operations with the resources and personal protective equipment available;
  5. How to implement basic decontaminating procedures; and
  6. Standard operating and terminating procedures.

**Historical Note**

Adopted effective March 29, 1988 (Supp. 88-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 309, effective March 18, 2003 (Supp. 03-1).

**R8-2-603. Instructor Authorization and Renewal**

- A. Instructor authorization:
1. An instructor authorized by the Division shall teach each Hazmat First Responder Awareness Level and Hazmat First Responder Operations Level course.
  2. To be authorized as an instructor, an individual shall submit the following to the Division:
    - a. A "Participant Application" form obtained from the Division, located at the Department of Emergency and Military Affairs, 5636 E. McDowell Road, Bldg. 101, Phoenix, Arizona 85008. The applicant shall provide the following information to take an instructor workshop:
      - i. Course number;
      - ii. Course date;
      - iii. Course title;
      - iv. Applicant's name;
      - v. SSN;
      - vi. Applicant's employer;
      - vii. Applicant's position or title;
      - viii. Phone number;
      - ix. Fax number, if any;
      - x. Work mailing address, city, state, zip code, and county;
      - xi. Electronic mail address, if any;
      - xii. Brief description of current duties and how training as an instructor will be used;
      - xiii. Applicant's signature and date; and
      - xiv. Supervisor's signature, if applicable, and date;
    - b. Evidence of two years' experience in hazardous materials incident response;
    - c. Evidence of Completion of at least 80 hours for Awareness Level or at least 240 hours for Operations Level of hazardous materials training, and a signed copy of attendance and performance records;
    - d. A letter of recommendation to take instructor training from the applicant's employer, local emergency planning committee chair, county emergency management director, or coordinator; and
    - e. A brief summary of the applicant's experience in hazardous materials response and as an instructor of adult-level courses.
  3. After an applicant submits to the Division the documentation described in subsection (A)(2)(a), the applicant shall:
    - a. Attend the instructor workshop,
    - b. Attain a score of at least 90% on the written exam, and
    - c. Successfully complete a teach back to demonstrate appropriate educational methodology and instructional techniques during an oral presentation.
  4. The Division shall issue Evidence of Completion to an individual who successfully completes the instructor workshop.
  5. The Division shall maintain records of instructor authorization.
  6. Instructor authorization is valid for two calendar years.
- B. To renew instructor authorization obtained from the Division, an authorized instructor shall:
1. Submit a "Participant Application" form as described in subsection (A) to take an instructor refresher workshop;
  2. Attend an instructor refresher workshop sponsored by the Division before expiration of the current instructor authorization; and
  3. Provide evidence of having taught either a Hazmat First Responder Awareness Level course or refresher, or a Hazmat First Responder Operations Level course or refresher, two times in the current authorization period.
- C. An instructor who fails to comply with subsection (B), may obtain instructor authorization by applying and meeting the requirements as a new instructor under subsection (A).

**Historical Note**

Adopted effective March 29, 1988 (Supp. 88-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 309, effective March 18, 2003 (Supp. 03-1).

**R8-2-604. Hazmat First Responder Awareness Level Course and Hazmat First Responder Operations Level Course Division Requirements**

- A. An instructor authorized by the Division shall teach each Hazmat First Responder Awareness Level course and Hazmat First Responder Operations Level course. An instructor shall notify the Division at least 30 days before course delivery by submitting a "Course Request Form" obtained from the Division, located at the Department of Emergency and Military

Affairs, 5636 E. McDowell Road, Bldg. 101, Phoenix, Arizona 85008. The instructor shall provide the following information:

1. Name of requestor;
  2. Date;
  3. Agency of requestor;
  4. Mailing address, city, state, zip code and county;
  5. Phone number;
  6. Fax number, if any;
  7. Name of agency head;
  8. Applicant signature;
  9. Electronic mail address;
  10. Type of course;
  11. Course name;
  12. Course number;
  13. Date course is offered;
  14. Training site address and county;
  15. Intended audience;
  16. Estimated number of participants;
  17. Name and signature of requestor; and
  18. County emergency management director or local emergency planning committee chairperson endorsement: name, signature, title, and date,
- B.** Within two weeks following completion of either the Hazmat First Responder Awareness Level course or refresher, or the Hazmat First Responder Operations Level course or refresher, the instructor shall provide the Division with all course records, including student application forms, course roster, completed pre- and post-exam answer sheets, and instructor and course evaluations. In addition, the instructor shall return all unused course materials to the Division.

#### **Historical Note**

Adopted effective March 29, 1988 (Supp. 88-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 309, effective March 18, 2003 (Supp. 03-1).

#### **R8-2-605. Hazmat First Responder Awareness Level Personnel and Hazmat First Responder Operations Level Operatives Evidence of Completion**

- A.** To receive Evidence of Completion as Hazmat First Responder Awareness Level personnel or as Hazmat First Responder Operations Level operative, an individual shall:
1. Submit a "Participant Application" form as described in R8-2-603(A) for Division-sponsored courses. For non-Division-sponsored courses, the individual shall submit the course application contained in the student manual:
    - a. Course number: U100 (First Responder Awareness Course) or U200 (First Responder Operations Level Course);
    - b. Course date;
    - c. Course name: First Responder Awareness Course or First Responder Operations Level Course;
    - d. Applicant's name;
    - e. SSN;
    - f. Title;
    - g. Phone number;
    - h. Fax number, if any;
    - i. Organization;
    - j. Electronic address; and
    - k. Work mailing address, city, state, zip and county; and
  2. Successfully complete the Hazmat First Responder Awareness Level course, or the Hazmat First Responder Operations Level course, and attain a score of at least 75% on the written exam.
- B.** The Division shall issue Evidence of Completion to an individual who successfully completes the Hazmat First Responder Awareness Level course or the Hazmat First Responder Operations Level course. The employer of an individual issued Evidence of Completion shall maintain evidence of the individual's competency under 29 CFR 1910.120(Q)(6) and (Q)(8)(ii), published by the United States Government Printing Office and revised July 1, 2001, with no later editions or amendments. This regulation is incorporated by reference and on file with the Division and the Office of the Secretary of State.

#### **Historical Note**

Adopted effective March 29, 1988 (Supp. 88-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 309, effective March 18, 2003 (Supp. 03-1).

#### **R8-2-606. Repealed**

#### **Historical Note**

Adopted effective March 29, 1988 (Supp. 88-1). Section repealed by final rulemaking at 9 A.A.R. 309, effective March 18, 2003 (Supp. 03-1).

**R8-2-607. Repealed**

**Historical Note**

Adopted effective March 29, 1988 (Supp. 88-1). Section repealed by final rulemaking at 9 A.A.R. 309, effective March 18, 2003 (Supp. 03-1).

**R8-2-608. Repealed**

**Historical Note**

Adopted effective March 29, 1988 (Supp. 88-1). Section repealed by final rulemaking at 9 A.A.R. 309, effective March 18, 2003 (Supp. 03-1).

**R8-2-609. Repealed**

**Historical Note**

Adopted effective March 29, 1988 (Supp. 88-1). Section repealed by final rulemaking at 9 A.A.R. 309, effective March 18, 2003 (Supp. 03-1).

**R8-2-610. Repealed**

**Historical Note**

Adopted effective March 29, 1988 (Supp. 88-1). Section repealed by final rulemaking at 9 A.A.R. 309, effective March 18, 2003 (Supp. 03-1).

**R8-2-611. Repealed**

**Historical Note**

Adopted effective March 29, 1988 (Supp. 88-1). Section repealed by final rulemaking at 9 A.A.R. 309, effective March 18, 2003 (Supp. 03-1).

**R8-2-612. Repealed**

**Historical Note**

Adopted effective March 29, 1988 (Supp. 88-1). Section repealed by final rulemaking at 9 A.A.R. 309, effective March 18, 2003 (Supp. 03-1).

## STATUTORY AUTHORITY

### A.A.C. Title 8, Chapter 2, Article 6

#### Hazardous Materials Training Program, Student and Instructor Evidence of Completion

##### 26-306. Powers and duties of the director of emergency management

A. The director, subject to the approval of the adjutant general, shall:

1. Be the administrative head of the division.
2. Be the state director for emergency management.
3. Make rules necessary for the operation of the division.
4. Develop and test plans for meeting any condition constituting a state of emergency or state of war emergency, except those emergency plans specifically assigned by the governor to other state agencies. Such plans shall provide for the effective mobilization and management of personnel and equipment of the state.
5. During a state of war emergency, coordinate the emergency activities of all state agencies except the national guard.
6. During a state of emergency or a local emergency, coordinate the emergency activities of all state agencies and the national guard.
7. Coordinate the use of state personnel, equipment, services and facilities, including communication services, if requested by political subdivisions in support of emergency management activities.
8. Coordinate the use of personnel, equipment, services and facilities, including communication services, of one or more political subdivisions in support of any other political subdivision in meeting emergency needs, including search or rescue operations, on the request of the using political subdivision.
9. Develop, test and maintain a plan pursuant to section 26-305.01 for response by agencies of this state and its political subdivisions to an accident at a commercial nuclear generating station.
10. Every two years, submit a recommendation to the legislature in connection with the assessment prescribed by section 26-306.01 with supporting documentation and information.
11. Collaborate with the state forester in presentations to legislative committees on issues associated with forest management, wildfire prevention and suppression and wildfire emergency response and management as provided by section 37-1302, subsection B.
12. Develop, implement and maintain a state hazardous materials emergency response and recovery plan as part of the hazardous materials emergency management program pursuant to section 49-123.
13. Coordinate the development, implementation and maintenance of standardized curricula for hazardous materials training and education.

B. The director, subject to the approval of the adjutant general, may:

1. Propose, develop, negotiate and consummate contractual arrangements with the federal government, state agencies and political subdivisions for technical, administrative and financial support from the federal, state and local government in connection with the emergency management activities of the state.
2. Represent the state at conferences in the development and promotion of the emergency management capability of the state.
3. Establish a disaster prevention council to plan for disaster prevention. The council shall consist of the members of the state emergency council and other members as determined by the director. The disaster prevention council shall coordinate the disaster prevention expertise of representatives of

federal, state and local business and industry and promote partnerships to substantially reduce property loss from natural and technological disasters.

49-123. Hazardous materials emergency management program; Arizona emergency response commission; emergency planning and community right-to-know

- A. The department is designated the lead agency for developing and implementing a state hazardous materials emergency management program.
- B. The director shall appoint a coordinator to work in consultation with the Arizona emergency response commission in the development and implementation of the hazardous materials emergency management program.
- C. The Arizona emergency response commission is established consisting of representatives from the following agencies and departments:
  - 1. The division of emergency management.
  - 2. The department of health services.
  - 3. The department of public safety.
  - 4. The department of transportation.
  - 5. The Arizona department of agriculture.
  - 6. The corporation commission.
  - 7. The industrial commission of Arizona.
  - 8. The office of state fire marshal.
  - 9. The office of state mine inspector.
  - 10. The radiation regulatory agency.
  - 11. Two representatives nominated by the Arizona fire chiefs association or its successor organization, one of whom represents a fire department or a fire district serving a population of less than two hundred fifty thousand persons.
  - 12. Other agencies or offices deemed necessary by the director.
- D. This article does not change or alter the existing regulatory authority or provisions of law relating to the agencies and departments listed in subsection C of this section.
- E. The department is designated as the lead agency for implementing title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499). The director shall administer any monies received under subsection G of this section.
- F. The department shall administer this article and the rules adopted under this article. The department shall administer title III in this state and may conduct whatever activities are necessary to implement this article and title III in this state. The department is granted all the authority and responsibilities of a state emergency response commission for purposes of title III.
- G. The department may procure by contract the temporary or intermittent services of experts or consultants if such services are to be performed on a part-time or fee-for-services basis and do not involve the performance of administrative duties. The department may also enter into agreements with the federal government, Indian tribes, other states and political subdivisions of this state for the purposes of this article. The department may also accept on behalf of this state any reimbursement, grant or gift that may become available for purposes of this article. The department shall deposit, pursuant to sections 35-146 and 35-147, any such monies in the emergency response fund.
- H. The department shall establish a program of financial grants to local governments funded through the department by appropriations to the emergency response fund. The grants shall be dedicated to and

used for local compliance with this article. The department shall include procedures for applying for the grants and qualifying criteria for awarding the grants.

I. The department shall adopt and may modify, suspend or repeal rules pursuant to title 41, chapter 6. The rules may not be more stringent than title III and the federal regulations adopted under title III, except as specifically authorized in this article. These rules shall implement this article and title III in this state. The authority to adopt rules includes establishing:

1. Procedures for handling public information requests.
2. Procedures and implementing programs for chemical emergency planning and preparedness.
3. Community right-to-know program reporting requirements.
4. Fees to implement the community right-to-know program. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the emergency response fund established by section 49-132. The governor's regulatory review council must approve rules adopted pursuant to this paragraph.
5. Release reporting requirements.

J. The department shall ensure that mandatory hazardous materials training programs for on-scene command personnel that are developed, delivered or managed by their respective agencies, departments or divisions address notification procedures, coordination of services and comprehensive management for protection of the public health during and after a chemical or other toxic fire event. The training shall include notification and coordination with the department of public safety, the department of transportation, the radiation regulatory agency, the commission, local emergency planning committees, the department of health services, the division of emergency management, the national response center and the Arizona poison control system. Training shall also include orientation on the state emergency response and recovery plan concerning hazardous materials. The department shall encourage private companies that deliver similar training in this state to include the same curriculum in their programs.

## RULE TEXT

### A.A.C. TITLE 8, CHAPTER 2

#### ARTICLE 1. SEARCH AND RESCUE

##### **R8-2-101. Definitions**

In this Article, for purposes of these rules, and unless the text requires otherwise:

1. "Claim" means documentation of eligible expenses associated with the conduct of a search and rescue mission.
2. "Claimant" means a department of the state or a political subdivision eligible to receive state reimbursement for search or rescue operations.
3. "Emergency Operations Center for Search and Rescue" means the State Emergency Operations Center provides coordination, communications, , administrative and support assistance. The center is located in the offices of the State Division of Emergency Management.
4. "Mission" means any action required to accomplish that portion of Title 26, Arizona Revised Statutes, relating to the preparation for and conduct of search and rescue operations.
5. "Mission coordinator" means the county sheriff, or sheriff's designee, excluding federal reservations, where agreements are nonexistent.
6. "Mission identifier" means a number assigned by the State Division of Emergency Management to identify a search and rescue mission.
7. "On-scene coordinator" means the individual Search and Rescue (SAR) Coordinator designated by the sheriff as the on-scene person in charge of a particular search and rescue mission.
8. "Political subdivision" means, within the context of this Article, a county sheriff.
9. "Recovery" means to relocate, under direction of the statutory authority, a deceased person from the site of his demise to an appropriate location.
10. "Reimbursement" means the payment of state funds in accordance with A.R.S. § 35-192.01(A) and (B).
11. "Rescue" means to render aid, under the direction of the county sheriff, to persons whose life or health is threatened by circumstances beyond their control and return them to a place of safety.
12. "Search" means to seek out and locate, by the use of air, surface, and/or subsurface equipment and qualified registered personnel, live persons known or thought to be, by the county sheriff, in a distress situation and unable to reach a place of safety by their own efforts.

##### **Historical Note**

Former Rule Part 3; Amended effective July 18, 1977 (Supp. 77-4). Amended paragraphs (1), (3) and (8) effective June 30, 1986 (Supp. 86-3). Editorial correction, paragraph (2) (Supp. 88-4). Former R8-2-01 amended and renumbered effective March 7, 1990 (Supp. 90-1). Amended by final rulemaking at 21 A.A.R. 3021, effective January 11, 2016 (Supp. 15-4).

##### **R8-2-102. Support of Search and Rescue Operations**

- A. The Director of the Division of Emergency Management, in accordance with A.R.S. Title 26, is responsible for supporting search or rescue operations of the state, coordinating the use of state resources or the resources of one or more political subdivisions in support of any other political subdivision in the conduct of search and rescue operations and for providing the services of a state search or rescue coordinator.
- B. The Division of Emergency Management shall coordinate activities to include the following:
  1. Mission identifiers for search and rescue operations.  
Authorized county sheriff search and rescue coordinators may obtain Mission Numbers through the Division of Emergency Management's Search and Rescue (SAR) data collection system.
  2. State government personnel and/or equipment, including the Arizona National Guard.
  3. United States military personnel and/or equipment.
  4. Resources not readily available locally.
  5. Resources to support responsible authorities on federal reservations.
  6. Specialized personnel and/or equipment from other states.
  7. Reimbursement of eligible claims.
  8. Prescribing forms and/or procedures for acquiring mission identifiers, reporting search or rescue mission activities, claiming reimbursement of eligible expenses and similar administrative matters.

##### **Historical Note**

Former Rule Part 4A Attachment B; Former Rule Part 4 Attachment C; Former Rule Part 4 Attachment D; Amended effective June 30, 1986 (Supp. 86-3). Former R8-2-02 amended and renumbered effective March 7, 1990 (Supp. 90-1). Amended by final rulemaking at 21 A.A.R. 3021, effective January 11, 2016 (Supp. 15-4).

##### **R8-2-103. Reimbursement to County Governments**

- A. Reimbursement to county governments from the Governor's Emergency Fund is authorized for eligible expenses incurred during the conduct of search and rescue operations. A search and rescue mission, in order to qualify for reimbursement must

fall within the purview of A.R.S. § 35-192(C). Claims should be submitted within 60 calendar days after the close or suspension of the mission. Eligible and ineligible expenses are itemized below:

1. Eligible:
    - a. Salaries or contracts for the services of specialized personnel, provided that prior approval has been obtained from the Director, Division of Emergency Management.
    - b. Overtime pay for eligible government employees. The claimant's overtime policy must be adhered to when submitting for overtime.
    - c. Telephone and data charges directly related to search or rescue missions.
    - d. Reimbursement of recovery expenses should the subject of an eligible search and rescue mission be found deceased. Reimbursement of recovery expenses for a suspected decedent may be authorized with the prior approval of the Director, Division of Emergency Management.
    - e. Cost of materials and supplies procured with public funds or taken from government stocks and consumed, lost, damaged or destroyed during an eligible search and rescue mission.
    - f. Rental costs of specialized equipment or aircraft, provided that the rates do not exceed the lowest rates available for the same or similar equipment. The prior approval of the Director, Division of Emergency Management is required.
    - g. Actual costs of fuel or lubricants paid by a county government for the operation of vehicles, equipment, or aircraft.
    - h. Repairs to surface/subsurface vehicles and equipment damaged during search and rescue missions. Costs are limited to the restoration of the immediate pre-mission condition.
    - i. Reimbursements will be made only for equipment specifically required for the conduct of the search and rescue mission.
  2. Ineligible:
    - a. Regular salaries or wages of government employees,
    - b. Salaries or wages of elected or appointed officials and employees ineligible for overtime pay,
    - c. Office supplies and equipment,
    - d. Rental of administrative office space,
    - e. Purchase of equipment or facilities,
    - f. Cost of items of personal wearing apparel,
    - g. Firearms.
- B.** The eligibility of other expenses shall be determined by the Director, Division of Emergency Management, within the scope of this guidance, on a case-by-case basis.

#### **Historical Note**

Former Rule Part 5; Amended subsections (B) and (C) effective June 30, 1986 (Supp. 86-3). Former R8-2-03 amended and renumbered effective March 7, 1990 (Supp. 90-1). Amended by final rulemaking at 21 A.A.R. 3021, effective January 11, 2016 (Supp. 15-4).

#### **R8-2-104. Reimbursement to a Department or Agency of the State**

- A.** Expenses incurred, resulting from participation in search and rescue missions, shall be borne initially by the state department or agency. Reimbursement shall be governed by A.R.S. § 35-192.01(B). Claims should be submitted within 60 calendar days after the close or suspension of a mission. Eligible and ineligible expenses are itemized below:
1. Eligible:
    - a. Salaries or wages of employees directly engaged in search or rescue work.
    - b. Salaries or wages of regular employees who are diverted from their normal duties to engage in search or rescue work.
    - c. Overtime pay for eligible regular employees.
    - d. Communications charges directly related to search or rescue operations.
    - e. Travel directly related to search or rescue operations.
    - f. Reimbursement of recovery expenses should the subject of an eligible search and rescue mission be found deceased. Reimbursement of recovery expenses for a suspected decedent may be authorized with the prior approval of the Director, Division of Emergency Management.
    - g. Cost of materials and supplies procured with public funds or taken from government stocks and consumed, lost, damaged or destroyed during an eligible search and rescue mission.
    - h. Rental costs of specialized equipment or aircraft, provided that the rates do not exceed the lowest rates available for the same or similar equipment. Sole source providers will be considered. The prior approval of the Director, Division of Emergency Management is required.
    - i. Actual cost of fuel or lubricants paid by a state department or agency for the operation of vehicles, equipment or aircraft.
    - j. Repairs to surface/subsurface vehicles and equipment damaged during search or rescue mission. Costs are limited to the restoration of the immediate pre-mission condition.
    - k. Reimbursements will be made only for equipment specifically required for the conduct of the search and rescue mission.
  2. Ineligible:
    - a. Salaries or wages of elected or appointed officials ,

- b. Office supplies and equipment,
  - c. Rental of administrative office space,
  - d. Costs of items of personal apparel,
  - e. Firearms.
- B.** The eligibility of other expenses shall be determined by the director, Division of Emergency Management, within the scope of this guidance, on a case-by-case basis.

**Historical Note**

Former Rule Part 6; Amended subsections (B) and (C) effective June 30, 1986 (Supp. 86-3). Former R8-2-04 amended and renumbered effective March 7, 1990 (Supp. 90-1). Amended by final rulemaking at 21 A.A.R. 3021, effective January 11, 2016 (Supp. 15-4).

**R8-2-105. Claimant Procedures and Supporting Documentation**

- A.** Claims for reimbursement require certification by competent authority. Certification must include:
1. The name of the agency.
  2. The date of the claim and the search and rescue mission identifier.
  3. The name of each payee and the date the claimant paid each.
  4. The item or service for which each payee received payment.
  5. The amount paid each payee.
  6. A statement that the documents supporting the claim are available in the claimant agency for review by the State Auditor General and/or the auditor from the Division of Emergency Management.
  7. The signature of the individual authorized to file claims for the claimant agency.
- B.** The amounts claimed for reimbursement from the Governor's Emergency Fund must be based on eligible expenditures for a search and rescue mission to which a mission identifier has been assigned.
- C.** Appropriate documents, as prescribed by the Director, Division of Emergency Management, supporting each claim must be retained by the claimant pending audit by the State Auditor General and/or the Division of Emergency Management Auditor. These documents shall be retained following the reimbursement of a claim in accordance with retention schedules established by the Arizona State Library, Archives and Public Records pursuant to A.R.S. § 41-151 *et seq.*

**Historical Note**

Former Rule Part 7 Attachment F; Amended effective July 18, 1977 (Supp. 77-4). Amended effective June 30, 1986 (Supp. 86-3). Former R8-2-05 amended and renumbered effective March 7, 1990 (Supp. 90-1). Amended by final rulemaking at 21 A.A.R. 3021, effective January 11, 2016 (Supp. 15-4).

**R8-2-106. Repealed**

**Historical Note**

Former Rule Part 8; Amended subsection (A) effective June 30, 1986 (Supp. 86-3). Repealed effective March 7, 1990 (Supp. 90-1).

**R8-2-107. Repealed**

**Historical Note**

Former Rule Part 2. Repealed effective March 7, 1990 (Supp. 90-1).

## A.A.C. TITLE 8, CHAPTER 2

### ARTICLE 3. GOVERNOR'S EMERGENCY FUND

#### **R8-2-33. Repealed**

##### **Historical Note**

Former Rules 1 and 2; Former Section R8-2-33 repealed, new Section R8-2-33 adopted effective June 11, 1980 (Supp. 80-3). Repealed effective September 18, 1996 (Supp. 96-3).

#### **R8-2-34. Repealed**

##### **Historical Note**

Former Rules 2a and 2b; Former Section R8-2-34 repealed, new Section R8-2-34 adopted effective June 11, 1980 (Supp. 80-3). Repealed effective September 18, 1996 (Supp. 96-3).

#### **R8-2-35. Repealed**

##### **Historical Note**

Former Rules 3, 4, 5 and 6; Former Section R8-2-35 repealed, new Section R8-2-35 adopted effective June 11, 1980 (Supp. 80-3). Repealed effective September 18, 1996 (Supp. 96-3).

#### **R8-2-36. Repealed**

##### **Historical Note**

Former Rule 7; Former Section R8-2-36 repealed, new Section R8-2-36 adopted effective June 11, 1980 (Supp. 80-3). Repealed effective September 18, 1996 (Supp. 96-3).

#### **R8-2-37. Repealed**

##### **Historical Note**

Former Section R8-2-37 repealed, new Section R8-2-37 adopted effective June 11, 1980 (Supp. 80-3). Repealed effective September 18, 1996 (Supp. 96-3).

#### **R8-2-38. Repealed**

##### **Historical Note**

Former Sections A1, A2, B1, B2, C1, C2, D, E Attachment; Former Section R8-2-38 repealed, new Section R8-2-38 adopted effective June 11, 1980 (Supp. 80-3). Repealed effective September 18, 1996 (Supp. 96-3).

#### **R8-2-39. Repealed**

##### **Historical Note**

R8-2-39 and Attachments 1 and 2 adopted effective June 11, 1980 (Supp. 80-3). R8-2-39 and Attachments 1 and 2 repealed effective September 18, 1996 (Supp. 96-3).

#### **R8-2-301. Definitions**

In addition to the definitions provided in A.R.S. § 26-301, the following definitions apply to this Article, unless specified otherwise:

1. "Administrative Costs" covers direct and indirect costs incurred, in administering the public assistance grant. Direct costs can be identified separately by project and indirect costs are incurred for common or joint purposes. Examples of the activities that the allowance is intended to cover include: establishing project files, providing copies of documentation, collecting cost data and developing cost estimates, working with the State during project monitoring, final inspection, audits and audit preparation.
2. "Applicant" means any state agency or political subdivision of the state that requests emergency assistance from the state.
3. "Applicant's authorized representative" means the person authorized by the governing body of a political subdivision to request funds, time extensions, and attend to other recovery matters related to a specific emergency proclamation.
4. "Application for Assistance" means a written request by an applicant to the Director for assistance in responding to and/or recovering from an emergency.
5. "Contingency proclamation" means the document in which the governor authorizes the Director to pay expenses incurred by political subdivisions or state agencies that respond to frequently occurring emergencies that pose a significant and constant threat such as search or rescue, and hazardous materials spills.
6. "County" means the county or counties where an emergency is located.
7. "Department" means the Department of Emergency and Military Affairs provided in A.R.S. § 26-101.
8. "Director" means the Director of the Arizona Division of Emergency Management within the Department of Emergency and Military Affairs.
9. "Division" means Arizona Division of Emergency Management.
10. "Eligible work" means actions taken and work performed by an applicant in response to an emergency that are consistent with the intent and purposes set forth in A.R.S. § 35-192 and these rules.

11. "Emergency" means any occasion or instance for which, in the determination of the Governor, state assistance is needed to supplement state agencies' and political subdivisions' efforts and capabilities to save lives, protect property and public health and safety, or to lessen or avert the threat of a disaster in Arizona.
12. "Emergency resolution" means a document by which the governing body of a political subdivision declares an emergency.
13. "Facility" means any building, works, system or equipment, built or manufactured, or an improved and maintained natural feature. Land used for agricultural purposes is not a facility.
14. "Fund" means the portion of the general fund used to pay incurred liabilities and expenses authorized as claims against the state to meet contingencies and emergencies when the Governor declares that a state of emergency exists.
15. "Incident period" means the time interval of an emergency during which damage occurs as documented in the Governor's Declaration of Emergency.
16. "Political subdivision" means any county, incorporated city or town, or school, community college, or other tax levying public improvement district.
17. "Proclamation" means the document in which the Governor declares that a state of emergency exists pursuant to A.R.S. § 35-192(A) and authorizes an expenditure from the fund.
18. "Reimbursement" means the payment of state funds in accordance with A.R.S. § 35-192.
19. "State" means the state of Arizona.
20. "State agency" means any department, commission, board, agency, or division of the state, including the Department of Emergency and Military Affairs.

#### **Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

#### **R8-2-302. Applications for Emergency Assistance**

- A. An applicant shall act for the purpose of this Article through its chief executive officer or body, or the applicant's authorized representative.
- B. An applicant shall use forms that are available on the Division's website.

#### **Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

#### **R8-2-303. Contents of an Application**

- A. An applicant shall set forth in an application the cause, location, and beginning date of the emergency, a description of the damage caused by the emergency and potential health hazards arising from the emergency, the costs incurred for emergency response, and an estimate of the number of people affected by the emergency and costs for recovery.
- B. Before submitting an application to the Director, the applicant shall use its available resources to respond to the emergency and request assistance from other political subdivisions that might respond to the emergency.
- C. The "emergency" must also be clearly demonstrated to be above and beyond the jurisdiction's ability to recover from without state assistance. Examples as to how to demonstrate this element would be: use of mutual aid, documenting multiple events, lack of physical or personnel resources, depleted contingency funds or redirection of operating funds; which must be attested to in writing by the jurisdiction's chief financial officer.

#### **Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

#### **R8-2-304. Application by a Political Subdivision**

- A. A county shall issue an emergency resolution before submitting an application to the Director.
- B. A political subdivision other than a county shall submit an emergency resolution to the county and request that, if necessary, the county issue an emergency resolution and make application to the Director. If the county fails to issue an emergency resolution expeditiously, a political subdivision may apply directly to the Director for assistance.
- C. A political subdivision shall submit an application to the Director using the most expeditious means.
- D. The Director shall reject an application that is not received within 15 days from the start of the emergency unless the political subdivision shows good cause for the delay or that the emergency is of a type that the date the emergency started is difficult to establish.

#### **Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3).

#### **R8-2-305. Application by a State Agency**

- A. An applicant that is a state agency shall submit an application directly to the Director using the most expeditious means.

- B. The Director shall reject an application that is not received within 15 days from the start of the emergency unless the state agency shows good cause for the delay or that the emergency is of a type that the date the emergency started is difficult to establish.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3).

**R8-2-306. Action on an Application**

- A. The Director shall make a recommendation to the Governor whether to issue a proclamation.
- B. The Director shall notify the applicant in writing, of the Governor's decision to issue or not to issue a proclamation. If the Governor issues a proclamation, the Division shall forward a copy to the applicant.
- C. State payment of claims submitted by a political subdivision pursuant to a proclamation shall not exceed 75% of eligible costs or such lesser amount established by the Director. In no event should the aggregate amount of payments exceed the amount set forth in the Governor's proclamation, unless such amount is authorized pursuant to R8-2-308.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

**R8-2-307. Proclamation File Number**

- A. The Division shall assign a file number to each emergency that is the subject of a proclamation.
- B. All correspondence regarding an emergency to which a file number is assigned shall reference the file number.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3).

**R8-2-308. Limitation of Fund Expenditure**

Expenditure from the fund, as a result of a particular proclamation, shall not exceed the amount authorized in the proclamation unless an additional amount is authorized by the Governor's Emergency Council as prescribed in A.R.S. § 35-192.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

**R8-2-309. Time Limit for Filing Claims**

- A. Following the Governor's proclamation reasonable work completion time limits shall be established by the Division. If the applicant feels, an extension of time is needed to complete work and submit claims arising from an emergency, a request for time extension, stating good cause for request, shall be submitted to the Division prior to identified time limit. If it is determined that good cause exists, an extension of time will be granted and the applicant will be notified of the decision in writing. Time limits are as follows:
  - B. Six months for temporary measures and emergency work and 12 months for permanent measures. If no effort has been made to begin work within this timeline, the project can be cancelled and funding withdrawn. If work has begun, a request for time extension should be submitted, as per subsection (A), and needs to include a timeline for project completion. A second extension request will be considered if there are extenuating circumstances outside the applicant's ability to control and/or work is near completion.
  - C. All damages attributed to a declared disaster must be identified by the eligible applicant within 60 days of the date of the Governor's Declaration. A final list of projects will be documented for concurrence and signature by both the applicant and a Division representative at the end of that 60 day period. Any damages identified after the 60 days will not be considered for reimbursement under the declared event.
  - D. All required information pertaining to the accurate development, review and approval of Project Worksheets identified under subsection (B) must be provided to the Division by the eligible applicant within six months from the date of declaration. Any information not received within that time-frame will not be considered as eligible costs reimbursable under the declared event; with the exception of hidden damages discovered after construction begins.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

**R8-2-310. Retention of Records**

The applicant shall maintain for three years all records relating to claims submitted by the applicant in accordance with A.R.S. § 41-151 and shall make the records available for inspection and audit by the Department auditor and the auditor general.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

**R8-2-311. Establishment of the Incident Period and Termination of the Proclamation**

- A. The Director shall recommend to the Governor, for inclusion in the Governor's proclamation, the beginning and ending dates of the incident period. If the Director determines that the incident period has a beginning or ending date different from that stated in the proclamation, the Director shall recommend to the Governor that the proclamation be amended to reflect the correct dates.
- B. At the Director's recommendation, the Governor shall terminate the proclamation when the following occur:
  - 1. The recovery work is complete,
  - 2. The Division completes a final inspection of all work for which the applicant submits a claim,
  - 3. The applicant submits a claim to the Director for all work which the applicant seeks reimbursement,
  - 4. The Division pays all authorized claims,
  - 5. The required audits are complete, and
  - 6. The applicant receives amount due or pays amount owed.
- C. After the audit and final payment of all eligible applicant's claims, the Governor shall issue a termination proclamation.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

**R8-2-312. Duplication of Benefits**

- A. The state is not liable for any claim arising from an emergency for which the applicant receives funds from another source.
- B. The state is not liable for any claim arising from an emergency unless the applicant applies for and is denied funding from other available sources before submitting the claim to the state.
- C. If an applicant is within the Designated Disaster area of a Presidential Major Disaster Declaration, the state is not liable for any claim deemed ineligible by the Federal Emergency Management Agency (FEMA) under a Presidential Major Disaster Declaration. Claims denied by FEMA will not be considered eligible under the corresponding State Declaration unless otherwise outlined under R8-2-313(B).
- D. If the Director or an applicant determines that the applicant received duplicate funds for a claim from the state and from another source, the applicant shall refund the amount received from the state within 60 days of written notification.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

**R8-2-313. Allowable Claims Against the Fund**

- A. The Director shall allow expenditures from the fund for a claim arising from an emergency only if:
  - 1. The amount claimed is a direct result of response or recovery operations to the emergency,
  - 2. The applicant is legally and financially responsible for providing response or recovery operations in the emergency, and
  - 3. The facility is other than a residential structure, and
  - 4. The amount claimed is authorized under the provisions of subsection (B) or (D).
  - 5. Once remediation is complete, projects will comply with appropriate state or federal environmental requirements, building, safety or other appropriate regulatory requirements.
- B. The Director shall allow the following costs to be paid as claims against the fund:
  - 1. Overtime salaries or wages and benefits of the applicant's budgeted personnel directly engaged in eligible emergency work;
  - 2. Salaries or wages and benefits of the applicant's budgeted personnel directly engaged in eligible permanent work;
  - 3. Salaries or wages and benefits of non-budgeted employees directly engaged in eligible emergency or permanent work;
  - 4. Communication costs directly related to the emergency and directly requested by an eligible applicant;
  - 5. Travel and per diem costs directly related to the emergency for personnel requested by an eligible applicant;
  - 6. Materials and supplies consumed directly requested by an eligible applicant, except those listed under subsection (C)(2);
  - 7. Rental of privately owned equipment at documented contractual rates directly requested by an eligible applicant;
  - 8. Contributions toward the purchase of equipment if the necessary equipment is not available from federal, state, or local sources, and if the contribution does not exceed the cost of renting the item at prevailing local rates. Contribution will be reduced by the fair market value when the item is no longer needed for the declared disaster;
  - 9. Owning and operating the applicant's equipment using rates established by the applicant or FEMA, whichever is less;
  - 10. Work performed by private contractors. Contracts must be of reasonable cost and competitively bid and adhere to all jurisdictional procurement procedures. Jurisdictions may not enter into contracts with any private entity that has been debarred or suspended. Emergency Procurement, as defined in A.A.C. R2-7-E302, means "any condition creating an

immediate and serious need for materials, services, or construction in which the state's best interests are not met through the use of other source-selection methods. The condition must seriously threaten the functioning of state government, the preservation or protection of property, or the health or safety of a person". Any procurement need that does not meet this definition would require following standard procurement process/procedures.

11. Work performed under a mutual-aid agreement between local governments or between a local government and a state agency is eligible for reimbursement by the requesting agency. The providing entity shall submit documented costs to the requesting agency for reimbursement. Eligible work must be paid to the responding jurisdiction by the requesting jurisdiction, and the requesting jurisdiction is then eligible for a cost-share reimbursement by the State; and
  12. Prison labor including amounts paid to prisoners in accordance with established rates, guards (required number based on guard/prisoner ratio) and costs of transporting and feeding prisoners.
  13. Snow Removal: a political subdivision could make Application for State Assistance if they had met the following condition: If a winter storm event pushes the jurisdiction's cumulative snowfall total for a winter season above the average of the last five season's annual snowfall, then the jurisdiction could be eligible for assistance providing the event that pushes the cumulative total above the threshold is above and beyond the capability of the affected jurisdiction. (see R8-2-303) (Snowfall measurement data source will be the National Weather Service and historical snowfall data source will be the National Climatic Data Center.)
- C. The Director shall not allow the following costs to be paid as claims against the fund:
1. Salaries or wages and benefits of elected or appointed officials responsible for directing governmental activities;
  2. Administrative Costs, office supplies and equipment;
  3. Rental of administrative office space;
  4. Depreciation, insurance, storage, and similar fixed overhead costs;
  5. Repairs and fuel for privately owned rented equipment, except where the rental agreement provides that the applicant will be responsible for repairs and fuel in addition to the rental fee;
  6. Work performed under agreement between a state agency or local government and a federal agency where the work is paid for by federal funds;
  7. Costs incurred under contracts based on cost plus a percentage of costs, unless the Director determines that the performance of immediate emergency work would be unduly delayed and would likely result in an imminent hazard to health or safety, in which case the Director may authorize an exception; and
  8. Prison labor costs for lodging.
- D. To submit a claim for a cost that cannot be classified under subsection (B), an applicant shall make a written request to the Director for an exception. The Director shall grant a request for an exception if the request explains the nature of the exception justifies why it is needed, and meets all other program guidelines as outlined in R8-2-301 through R8-2-320. The Director shall immediately inform the applicant in writing of the decision to grant or deny the request for an exception.
- E. When a facility damaged as a result of an emergency is repaired or replaced, the Director shall allow only the costs required to return the facility to the condition it was before the emergency, incorporating current standards and design requirements.

#### **Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

#### **R8-2-314. Mitigation of Future Damages or Improvements by the Applicant**

- A. The applicant shall comply with any mitigation requirements specified by the Director for repair or replacement projects subject to repeated damage from flooding or other threats to life or property.
- B. The applicant shall identify and request cost effective mitigation opportunities for the damaged element of the facility that would mitigate future impact from a similar event.
- C. With approval by the Director, the applicant may restore pre-disaster function and make improvements for which the applicant is financially responsible. Claims against the Fund are limited to the State share for the project estimate for the repairs necessary to return the facility to the condition it was before the emergency. A written request for improvements is to be submitted as soon as possible following receipt of approved project which will include a statement recognizing financial responsibility for the improvements.

#### **Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

#### **R8-2-315. Advance of Funds**

All requests for an advance of funds must be made in writing and shall be signed by the applicant's authorized representative and forwarded to the Director. The Director shall assess a request for an advance to determine whether the request is reasonable and for eligible work that has been completed. The Director shall grant a request for an advance for work not completed only if an applicant has demonstrated that the work cannot be completed without an advance. The amount of an advance will be based upon damage assessment, eligible expenditures to date and the estimated eligible expenditures for the next 60-day period.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

**R8-2-316. Final Inspection and Audit**

Upon completion of all work by an applicant, the Division shall inspect all the work that the applicant claims. The applicant shall provide the Division with access to all claimed work and shall permit review of all records relating to the work. After completion of the final inspection, the Department's chief auditor shall conduct an audit of the applicant's claims. The Director shall use this audit to determine the eligibility of claimed costs and final payment due to the applicant or overpayment due to the Division.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

**R8-2-317. Procurement Requirements**

The Director shall not allow a claim arising from a procurement unless the applicant complies with the Arizona procurement laws set forth in A.R.S. § 41-2501, et seq., and A.A.C. R2-7-101 et seq.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3).

**R8-2-318. Inspection and Audit of Contract Provisions**

If a contract or subcontract for the furnishing of goods, equipment, labor, materials, or services to the applicant may result in a claim, the applicant shall include in the contract or subcontract a provision that all books, accounts, reports, and other records relating to the contract or subcontract shall be subject to inspection and audit by the state for five years after completion of the contract or subcontract.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3).

**R8-2-319. Overpayment**

- A. If the Director determines that an applicant is required to refund an overpayment, as demonstrated by the audit outlined in R8-2-316, the Director shall provide the applicant written notice of the amount owed. The applicant shall reimburse the Division within two months of the date of notification.
- B. An applicant may request a review, as set forth in R8-2-320, of a determination under subsection (A) that an amount must be refunded. If the review results in a decision that the applicant is required to reimburse the Division, the applicant shall refund the amount required within two months of the decision.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

**R8-2-320. Appeal of the Director's Decision**

- A. Any party aggrieved by a decision rendered by the Director may appeal the decision, in writing, not later than 15 days after receipt of notice of the Director's decision.
- B. When an appeal is filed, the Director shall contact the Office of Administrative Hearings to schedule the case with the office in accordance with A.R.S. § 41-1092.02.

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3).

**R8-2-321. Repealed**

**Historical Note**

Adopted effective September 18, 1996 (Supp. 96-3). Repealed by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

## A.A.C. TITLE 8, CHAPTER 2

### ARTICLE 6. HAZARDOUS MATERIALS TRAINING PROGRAM, STUDENT AND INSTRUCTOR EVIDENCE OF COMPLETION

#### R8-2-601. Definitions

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

1. "Authorized instructor" means an individual who the Division determines meets the criteria at R8-2-602.
2. "Director" means the director of the Division.
3. "Division" means the Arizona Division of Emergency Management.
4. "Evidence of Completion" means a document issued by the Division to an individual who successfully completes a standardized course of instruction.
5. "Hazmat First Responder Awareness Level personnel" means individuals who are likely to witness or discover a hazardous material release and who are trained to initiate an emergency response sequence by notifying the proper authorities of the release.
6. "Hazmat First Responder Operations Level operatives" means individuals who are trained to respond in a defensive fashion without actually trying to stop a hazardous material release.
7. "Hazardous materials" means:
  - a. Any material designated under the hazardous materials transportation act of 1974 (49 U.S.C. 1801);
  - b. Any element, compound, mixture, solution, or substance designated under the comprehensive environmental response, compensation, and liability act of 1980 (42 U.S.C. 9602);
  - c. Any substance designated in the emergency planning and community right-to-know act of 1986 (42 U.S.C. 11002).
  - d. Any substance designated in the water pollution control act (33 U.S.C. 1317(a) and 1321(b)(2)(A));
  - e. Any hazardous waste having the characteristics identified under or listed under A.R.S. § 49-922;
  - f. Any imminently hazardous chemical substance or mixture with respect to which action is taken under the toxic substances control act (15 U.S.C. 2606);
  - g. Any material or substance determined to be radioactive under the atomic energy act of 1954 (42 U.S.C. 2011);
  - h. Any substance designated as a hazardous substance under A.R.S. § 49-201; and
  - i. Any highly hazardous chemical or regulated substance as listed in the clean air act of 1963 (42 U.S.C. 7401-7671).
8. "Hazardous materials incident" means an uncontrolled, unpermitted release or potential release of hazardous materials that presents an imminent and substantial danger to the public health or welfare or to the environment.
9. "Hazardous materials response experience" means knowledge and skills gained by responding to hazardous materials incidents.
10. "Instructor requirements" means the criteria listed at R8-2-602 for authorization as an instructor by the Division.
11. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes:
  - a. Release that results in exposure to persons solely within a workplace, with respect to a claim that the persons may assert against their employer;
  - b. Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;
  - c. Release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if the release is subject to financial protection requirements established by the Nuclear Regulatory Commission under section 170 of the Act, or for the purposes of section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act or any other response action, any release of source, byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and
  - d. Normal application of fertilizer.

#### Historical Note

Adopted effective March 29, 1988 (Supp. 88-1). Amended by final rulemaking at 9 A.A.R. 309, effective March 18, 2003 (Supp. 03-1).

#### R8-2-602. Hazmat First Responder Awareness Level Course and Hazmat First Responder Operations Level Course Curriculum

- A. An authorized instructor shall conduct a Hazmat First Responder Awareness Level course or a Hazmat First Responder Operations Level course in accordance with the standardized curriculum maintained by the Division. The Division shall promptly notify all authorized instructors of any change in the curriculum.
- B. Topics covered in the Hazmat First Responder Awareness Level course are:
  1. What hazardous materials are and the risks associated with a hazardous materials incident;
  2. Potential outcomes associated with an emergency created when hazardous materials are present;
  3. How to recognize the presence of hazardous materials in an emergency;
  4. How to identify different hazardous materials, and
  5. Role of a first responder awareness individual in an employer's emergency response plan, including site security and control, and use of current resource materials.

- C. Topics covered in the Hazmat First Responder Operations Level course are:
1. Basic hazard and risk assessment techniques;
  2. How to select and use proper protective equipment;
  3. Basic hazardous materials terms;
  4. How to perform basic control, containment, or confinement operations with the resources and personal protective equipment available;
  5. How to implement basic decontaminating procedures; and
  6. Standard operating and terminating procedures.

**Historical Note**

Adopted effective March 29, 1988 (Supp. 88-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 309, effective March 18, 2003 (Supp. 03-1).

**R8-2-603. Instructor Authorization and Renewal**

- A. Instructor authorization:
1. An instructor authorized by the Division shall teach each Hazmat First Responder Awareness Level and Hazmat First Responder Operations Level course.
  2. To be authorized as an instructor, an individual shall submit the following to the Division:
    - a. A "Participant Application" form obtained from the Division, located at the Department of Emergency and Military Affairs, 5636 E. McDowell Road, Bldg. 101, Phoenix, Arizona 85008. The applicant shall provide the following information to take an instructor workshop:
      - i. Course number;
      - ii. Course date;
      - iii. Course title;
      - iv. Applicant's name;
      - v. SSN;
      - vi. Applicant's employer;
      - vii. Applicant's position or title;
      - viii. Phone number;
      - ix. Fax number, if any;
      - x. Work mailing address, city, state, zip code, and county;
      - xi. Electronic mail address, if any;
      - xii. Brief description of current duties and how training as an instructor will be used;
      - xiii. Applicant's signature and date; and
      - xiv. Supervisor's signature, if applicable, and date;
    - b. Evidence of two years' experience in hazardous materials incident response;
    - c. Evidence of Completion of at least 80 hours for Awareness Level or at least 240 hours for Operations Level of hazardous materials training, and a signed copy of attendance and performance records;
    - d. A letter of recommendation to take instructor training from the applicant's employer, local emergency planning committee chair, county emergency management director, or coordinator; and
    - e. A brief summary of the applicant's experience in hazardous materials response and as an instructor of adult-level courses.
  3. After an applicant submits to the Division the documentation described in subsection (A)(2)(a), the applicant shall:
    - a. Attend the instructor workshop,
    - b. Attain a score of at least 90% on the written exam, and
    - c. Successfully complete a teach back to demonstrate appropriate educational methodology and instructional techniques during an oral presentation.
  4. The Division shall issue Evidence of Completion to an individual who successfully completes the instructor workshop.
  5. The Division shall maintain records of instructor authorization.
  6. Instructor authorization is valid for two calendar years.
- B. To renew instructor authorization obtained from the Division, an authorized instructor shall:
1. Submit a "Participant Application" form as described in subsection (A) to take an instructor refresher workshop;
  2. Attend an instructor refresher workshop sponsored by the Division before expiration of the current instructor authorization; and
  3. Provide evidence of having taught either a Hazmat First Responder Awareness Level course or refresher, or a Hazmat First Responder Operations Level course or refresher, two times in the current authorization period.
- C. An instructor who fails to comply with subsection (B), may obtain instructor authorization by applying and meeting the requirements as a new instructor under subsection (A).

**Historical Note**

Adopted effective March 29, 1988 (Supp. 88-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 309, effective March 18, 2003 (Supp. 03-1).

**R8-2-604. Hazmat First Responder Awareness Level Course and Hazmat First Responder Operations Level Course Division Requirements**

- A. An instructor authorized by the Division shall teach each Hazmat First Responder Awareness Level course and Hazmat First Responder Operations Level course. An instructor shall notify the Division at least 30 days before course delivery by submitting a "Course Request Form" obtained from the Division, located at the Department of Emergency and Military Affairs, 5636 E. McDowell Road, Bldg. 101, Phoenix, Arizona 85008. The instructor shall provide the following information:
1. Name of requestor;
  2. Date;
  3. Agency of requestor;
  4. Mailing address, city, state, zip code and county;
  5. Phone number;
  6. Fax number, if any;
  7. Name of agency head;
  8. Applicant signature;
  9. Electronic mail address;
  10. Type of course;
  11. Course name;
  12. Course number;
  13. Date course is offered;
  14. Training site address and county;
  15. Intended audience;
  16. Estimated number of participants;
  17. Name and signature of requestor; and
  18. County emergency management director or local emergency planning committee chairperson endorsement: name, signature, title, and date,
- B. Within two weeks following completion of either the Hazmat First Responder Awareness Level course or refresher, or the Hazmat First Responder Operations Level course or refresher, the instructor shall provide the Division with all course records, including student application forms, course roster, completed pre- and post-exam answer sheets, and instructor and course evaluations. In addition, the instructor shall return all unused course materials to the Division.

**Historical Note**

Adopted effective March 29, 1988 (Supp. 88-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 309, effective March 18, 2003 (Supp. 03-1).

**R8-2-605. Hazmat First Responder Awareness Level Personnel and Hazmat First Responder Operations Level Operatives Evidence of Completion**

- A. To receive Evidence of Completion as Hazmat First Responder Awareness Level personnel or as Hazmat First Responder Operations Level operative, an individual shall:
1. Submit a "Participant Application" form as described in R8-2-603(A) for Division-sponsored courses. For non-Division-sponsored courses, the individual shall submit the course application contained in the student manual:
    - a. Course number: U100 (First Responder Awareness Course) or U200 (First Responder Operations Level Course);
    - b. Course date;
    - c. Course name: First Responder Awareness Course or First Responder Operations Level Course;
    - d. Applicant's name;
    - e. SSN;
    - f. Title;
    - g. Phone number;
    - h. Fax number, if any;
    - i. Organization;
    - j. Electronic address; and
    - k. Work mailing address, city, state, zip and county; and
  2. Successfully complete the Hazmat First Responder Awareness Level course, or the Hazmat First Responder Operations Level course, and attain a score of at least 75% on the written exam.
- B. The Division shall issue Evidence of Completion to an individual who successfully completes the Hazmat First Responder Awareness Level course or the Hazmat First Responder Operations Level course. The employer of an individual issued Evidence of Completion shall maintain evidence of the individual's competency under 29 CFR 1910.120(Q)(6) and (Q)(8)(ii), published by the United States Government Printing Office and revised July 1, 2001, with no later editions or amendments. This regulation is incorporated by reference and on file with the Division and the Office of the Secretary of State.

**Historical Note**

Adopted effective March 29, 1988 (Supp. 88-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 309, effective March 18, 2003 (Supp. 03-1).

## STATUTORY AUTHORITY

### A.A.C. Title 8, Chapter 2, Article 1 Search and Rescue

#### 26-306. Powers and duties of the director of emergency management

A. The director, subject to the approval of the adjutant general, shall:

3. Make rules necessary for the operation of the division.
4. Develop and test plans for meeting any condition constituting a state of emergency or state of war emergency, except those emergency plans specifically assigned by the governor to other state agencies. Such plans shall provide for the effective mobilization and management of personnel and equipment of the state.
5. During a state of war emergency, coordinate the emergency activities of all state agencies except the national guard.
6. During a state of emergency or a local emergency, coordinate the emergency activities of all state agencies and the national guard.
7. Coordinate the use of state personnel, equipment, services and facilities, including communication services, if requested by political subdivisions in support of emergency management activities.
8. Coordinate the use of personnel, equipment, services and facilities, including communication services, of one or more political subdivisions in support of any other political subdivision in meeting emergency needs, including search or rescue operations, on the request of the using political subdivision.
9. Develop, test and maintain a plan pursuant to section 26-305.01 for response by agencies of this state and its political subdivisions to an accident at a commercial nuclear generating station.
10. Every two years, submit a recommendation to the legislature in connection with the assessment prescribed by section 26-306.01 with supporting documentation and information.
11. Collaborate with the state forester in presentations to legislative committees on issues associated with forest management, wildfire prevention and suppression and wildfire emergency response and management as provided by section 37-1302, subsection B.
12. Develop, implement and maintain a state hazardous materials emergency response and recovery plan as part of the hazardous materials emergency management program pursuant to section 49-123.
13. Coordinate the development, implementation and maintenance of standardized curricula for hazardous materials training and education.

B. The director, subject to the approval of the adjutant general, may:

1. Propose, develop, negotiate and consummate contractual arrangements with the federal government, state agencies and political subdivisions for technical, administrative and financial support from the federal, state and local government in connection with the emergency management activities of the state.
2. Represent the state at conferences in the development and promotion of the emergency management capability of the state.
3. Establish a disaster prevention council to plan for disaster prevention. The council shall consist of the members of the state emergency council and other members as determined by the director. The disaster prevention council shall coordinate the disaster prevention expertise of representatives of

federal, state and local business and industry and promote partnerships to substantially reduce property loss from natural and technological disasters.

35-192. Authorization for declaration of disaster; authorization for liabilities and expenses; priorities and limitations; review and report of expenditures

A. The governor may declare an emergency arising from major disasters as provided in this section and incur liabilities therefor, regardless of whether or not the legislature is in session.

B. When the governor, or the director of the division of emergency management in the department of emergency and military affairs pursuant to section 26-303, subsection H, determines that a contingency or disaster so justifies, and declares an emergency, specific liabilities and expenses provided for in this section are authorized to be incurred against and to be paid as claims against the state from unrestricted monies from the general fund to mitigate and meet contingencies and emergencies arising from:

1. Invasions, hostile attacks, riots or insurrections.
2. Epidemics of disease or plagues of insects.
3. Floods or floodwaters.
4. Acts of God or any major disaster.
5. Wildland fires, but only after all necessary authorizations under section 37-1305 are exhausted.

C. When authorized by the governor, specific liabilities and expenses provided for in this section may be incurred against and may be paid as claims against the state from unrestricted monies from the general fund to meet contingencies and emergencies arising from incidents relating to hazardous materials as defined in section 26-301 and search or rescue operations conducted pursuant to section 11-251.02, section 11-441, subsection C or section 26-306 subject to the limitations provided in section 35-192.01. Within ninety days after monies are awarded under this section, the department of emergency and military affairs shall post in a prominent location on the department's official website the amount of monies awarded under this section, who received the monies and how the monies were spent.

D. Liabilities and expenses authorized under subsection B of this section may be incurred for any of the emergencies or contingencies prescribed in subsection B of this section in the following order of priority:

1. Reimbursement for expenses incurred to combat a menace to the health, lives or property of any considerable number of persons of the state, or to property of the state or its political subdivisions.
2. Reimbursement for expenses incurred to repair damage to any property of the state.
3. Reimbursement for expenses incurred to repair damage to any property of the political subdivisions of the state.
4. Reimbursement for expenses incurred in search or rescue operations.
5. Reimbursement for expenses incurred in emergency or disaster recovery activities or in matching federal disaster recovery programs.
6. Reimbursement for expenses for property loss mitigation measures or to match federal property loss mitigation programs.

E. The auditor of the department of emergency and military affairs shall review liabilities incurred and expenditures made under this section and report to the state emergency council at ninety-day intervals during the emergency and conduct a final review of each emergency within ninety days after the termination of the emergency. The state emergency council shall make a written report not later than September 1 of each year to the legislature of the actions of the state emergency council during the

preceding fiscal year, including an itemized statement of expenditures for each emergency during the year. The department of emergency and military affairs shall post the report in a prominent location on the department's official website.

F. All liabilities incurred under this section shall be subject to the following limitations:

1. No liability shall be incurred against the monies authorized without the approval of the governor, or the adjutant general pursuant to section 26-303, subsection H, for each contingency or emergency.
2. Incurring of liabilities in excess of two hundred thousand dollars in any single disaster or emergency shall not be made without consent of a majority of the members of the state emergency council.
3. The aggregate amount of all liabilities incurred under this section shall not exceed four million dollars for any fiscal year beginning July 1 through June 30. Monies authorized for disasters and emergencies in prior fiscal years may be used in subsequent fiscal years only for the disaster or emergency for which they were authorized. Monies authorized for disasters and emergencies in prior fiscal years, and expended in subsequent fiscal years for the disaster or emergency for which they were authorized, apply toward the four million dollar liability limit for the fiscal year in which they were authorized.
4. Notwithstanding the limitations in paragraph 3 of this subsection, monies that were previously obligated but not used for a declared emergency or disaster may be reallocated to an outstanding obligation for another declared emergency or disaster and shall remain available for expenditure for the outstanding obligation. The reallocation of monies pursuant to this paragraph does not apply toward the four million dollar liability limit of the fiscal year to which the monies were reallocated or in which the monies are spent.
5. An obligation of monies under this section may be made only when one or more of the following conditions exist:
  - (a) No appropriation or other authorization is available to meet the contingency or emergency.
  - (b) An appropriation is insufficient to meet the contingency or emergency.
  - (c) Federal monies available for such contingency or emergency require the use of state or other public monies.

G. The director of the division of emergency management in the department of emergency and military affairs shall develop rules for administering the monies authorized for liabilities under this section, subject to approval by the governor.

### 35-192.01. Reimbursement procedures

A. Political subdivisions may apply to the state director of emergency management for reimbursement of necessary expenses incurred in search or rescue operations, not including purchase of equipment or facilities, under section 35-192, subsection C subject to the following limitations:

1. Not to exceed fifty per cent of the first one thousand dollars or less of such expenditures in any fiscal year.
2. Not to exceed seventy-five per cent of all such expenditures in excess of one thousand dollars up to twenty-one thousand dollars in any fiscal year.
3. One hundred per cent of expenditures in excess of twenty-one thousand dollars in any fiscal year.

B. A department of the state which expends funds for search or rescue operations in an amount in excess of that provided for in the regular appropriation and when directed to do so by the governor or

state director of emergency management may apply for reimbursement of such excess expenditures to the state director of emergency management under the provisions of section 35-192.

C. The director of emergency management shall adopt with the approval of the governor rules concerning such reimbursement.

**A.A.C. Title 8, Chapter 2, Article 3**  
**Governor's Emergency Fund**

**26-306. Powers and duties of the director of emergency management**

A. The director, subject to the approval of the adjutant general, shall:

3. Make rules necessary for the operation of the division.
4. Develop and test plans for meeting any condition constituting a state of emergency or state of war emergency, except those emergency plans specifically assigned by the governor to other state agencies. Such plans shall provide for the effective mobilization and management of personnel and equipment of the state.
5. During a state of war emergency, coordinate the emergency activities of all state agencies except the national guard.
6. During a state of emergency or a local emergency, coordinate the emergency activities of all state agencies and the national guard.
7. Coordinate the use of state personnel, equipment, services and facilities, including communication services, if requested by political subdivisions in support of emergency management activities.
8. Coordinate the use of personnel, equipment, services and facilities, including communication services, of one or more political subdivisions in support of any other political subdivision in meeting emergency needs, including search or rescue operations, on the request of the using political subdivision.
9. Develop, test and maintain a plan pursuant to section 26-305.01 for response by agencies of this state and its political subdivisions to an accident at a commercial nuclear generating station.
10. Every two years, submit a recommendation to the legislature in connection with the assessment prescribed by section 26-306.01 with supporting documentation and information.
11. Collaborate with the state forester in presentations to legislative committees on issues associated with forest management, wildfire prevention and suppression and wildfire emergency response and management as provided by section 37-1302, subsection B.
12. Develop, implement and maintain a state hazardous materials emergency response and recovery plan as part of the hazardous materials emergency management program pursuant to section 49-123.
13. Coordinate the development, implementation and maintenance of standardized curricula for hazardous materials training and education.

B. The director, subject to the approval of the adjutant general, may:

1. Propose, develop, negotiate and consummate contractual arrangements with the federal government, state agencies and political subdivisions for technical, administrative and financial support from the federal, state and local government in connection with the emergency management activities of the state.
2. Represent the state at conferences in the development and promotion of the emergency management capability of the state.
3. Establish a disaster prevention council to plan for disaster prevention. The council shall consist of the members of the state emergency council and other members as determined by the director. The disaster prevention council shall coordinate the disaster prevention expertise of representatives of federal, state and local business and industry and promote partnerships to substantially reduce property loss from natural and technological disasters.

35-192. Authorization for declaration of disaster; authorization for liabilities and expenses; priorities and limitations; review and report of expenditures

A. The governor may declare an emergency arising from major disasters as provided in this section and incur liabilities therefor, regardless of whether or not the legislature is in session.

B. When the governor, or the director of the division of emergency management in the department of emergency and military affairs pursuant to section 26-303, subsection H, determines that a contingency or disaster so justifies, and declares an emergency, specific liabilities and expenses provided for in this section are authorized to be incurred against and to be paid as claims against the state from unrestricted monies from the general fund to mitigate and meet contingencies and emergencies arising from:

1. Invasions, hostile attacks, riots or insurrections.
2. Epidemics of disease or plagues of insects.
3. Floods or floodwaters.
4. Acts of God or any major disaster.
5. Wildland fires, but only after all necessary authorizations under section 37-1305 are exhausted.

C. When authorized by the governor, specific liabilities and expenses provided for in this section may be incurred against and may be paid as claims against the state from unrestricted monies from the general fund to meet contingencies and emergencies arising from incidents relating to hazardous materials as defined in section 26-301 and search or rescue operations conducted pursuant to section 11-251.02, section 11-441, subsection C or section 26-306 subject to the limitations provided in section 35-192.01. Within ninety days after monies are awarded under this section, the department of emergency and military affairs shall post in a prominent location on the department's official website the amount of monies awarded under this section, who received the monies and how the monies were spent.

D. Liabilities and expenses authorized under subsection B of this section may be incurred for any of the emergencies or contingencies prescribed in subsection B of this section in the following order of priority:

1. Reimbursement for expenses incurred to combat a menace to the health, lives or property of any considerable number of persons of the state, or to property of the state or its political subdivisions.
2. Reimbursement for expenses incurred to repair damage to any property of the state.
3. Reimbursement for expenses incurred to repair damage to any property of the political subdivisions of the state.
4. Reimbursement for expenses incurred in search or rescue operations.
5. Reimbursement for expenses incurred in emergency or disaster recovery activities or in matching federal disaster recovery programs.
6. Reimbursement for expenses for property loss mitigation measures or to match federal property loss mitigation programs.

E. The auditor of the department of emergency and military affairs shall review liabilities incurred and expenditures made under this section and report to the state emergency council at ninety-day intervals during the emergency and conduct a final review of each emergency within ninety days after the termination of the emergency. The state emergency council shall make a written report not later than September 1 of each year to the legislature of the actions of the state emergency council during the preceding fiscal year, including an itemized statement of expenditures for each emergency during the

year. The department of emergency and military affairs shall post the report in a prominent location on the department's official website.

F. All liabilities incurred under this section shall be subject to the following limitations:

1. No liability shall be incurred against the monies authorized without the approval of the governor, or the adjutant general pursuant to section 26-303, subsection H, for each contingency or emergency.
2. Incurring of liabilities in excess of two hundred thousand dollars in any single disaster or emergency shall not be made without consent of a majority of the members of the state emergency council.
3. The aggregate amount of all liabilities incurred under this section shall not exceed four million dollars for any fiscal year beginning July 1 through June 30. Monies authorized for disasters and emergencies in prior fiscal years may be used in subsequent fiscal years only for the disaster or emergency for which they were authorized. Monies authorized for disasters and emergencies in prior fiscal years, and expended in subsequent fiscal years for the disaster or emergency for which they were authorized, apply toward the four million dollar liability limit for the fiscal year in which they were authorized.
4. Notwithstanding the limitations in paragraph 3 of this subsection, monies that were previously obligated but not used for a declared emergency or disaster may be reallocated to an outstanding obligation for another declared emergency or disaster and shall remain available for expenditure for the outstanding obligation. The reallocation of monies pursuant to this paragraph does not apply toward the four million dollar liability limit of the fiscal year to which the monies were reallocated or in which the monies are spent.
5. An obligation of monies under this section may be made only when one or more of the following conditions exist:
  - (a) No appropriation or other authorization is available to meet the contingency or emergency.
  - (b) An appropriation is insufficient to meet the contingency or emergency.
  - (c) Federal monies available for such contingency or emergency require the use of state or other public monies.

G. The director of the division of emergency management in the department of emergency and military affairs shall develop rules for administering the monies authorized for liabilities under this section, subject to approval by the governor.

**A.A.C. Title 8, Chapter 2, Article 6**  
**Hazardous Materials Training Program, Student and Instructor Evidence of Completion**

**26-306. Powers and duties of the director of emergency management**

A. The director, subject to the approval of the adjutant general, shall:

1. Be the administrative head of the division.
2. Be the state director for emergency management.
3. Make rules necessary for the operation of the division.
4. Develop and test plans for meeting any condition constituting a state of emergency or state of war emergency, except those emergency plans specifically assigned by the governor to other state agencies. Such plans shall provide for the effective mobilization and management of personnel and equipment of the state.
5. During a state of war emergency, coordinate the emergency activities of all state agencies except the national guard.
6. During a state of emergency or a local emergency, coordinate the emergency activities of all state agencies and the national guard.
7. Coordinate the use of state personnel, equipment, services and facilities, including communication services, if requested by political subdivisions in support of emergency management activities.
8. Coordinate the use of personnel, equipment, services and facilities, including communication services, of one or more political subdivisions in support of any other political subdivision in meeting emergency needs, including search or rescue operations, on the request of the using political subdivision.
9. Develop, test and maintain a plan pursuant to section 26-305.01 for response by agencies of this state and its political subdivisions to an accident at a commercial nuclear generating station.
10. Every two years, submit a recommendation to the legislature in connection with the assessment prescribed by section 26-306.01 with supporting documentation and information.
11. Collaborate with the state forester in presentations to legislative committees on issues associated with forest management, wildfire prevention and suppression and wildfire emergency response and management as provided by section 37-1302, subsection B.
12. Develop, implement and maintain a state hazardous materials emergency response and recovery plan as part of the hazardous materials emergency management program pursuant to section 49-123.
13. Coordinate the development, implementation and maintenance of standardized curricula for hazardous materials training and education.

B. The director, subject to the approval of the adjutant general, may:

1. Propose, develop, negotiate and consummate contractual arrangements with the federal government, state agencies and political subdivisions for technical, administrative and financial support from the federal, state and local government in connection with the emergency management activities of the state.
2. Represent the state at conferences in the development and promotion of the emergency management capability of the state.
3. Establish a disaster prevention council to plan for disaster prevention. The council shall consist of the members of the state emergency council and other members as determined by the director. The disaster prevention council shall coordinate the disaster prevention expertise of representatives of

federal, state and local business and industry and promote partnerships to substantially reduce property loss from natural and technological disasters.

49-123. Hazardous materials emergency management program; Arizona emergency response commission; emergency planning and community right-to-know

- A. The department is designated the lead agency for developing and implementing a state hazardous materials emergency management program.
- B. The director shall appoint a coordinator to work in consultation with the Arizona emergency response commission in the development and implementation of the hazardous materials emergency management program.
- C. The Arizona emergency response commission is established consisting of representatives from the following agencies and departments:
1. The division of emergency management.
  2. The department of health services.
  3. The department of public safety.
  4. The department of transportation.
  5. The Arizona department of agriculture.
  6. The corporation commission.
  7. The industrial commission of Arizona.
  8. The office of state fire marshal.
  9. The office of state mine inspector.
  10. The radiation regulatory agency.
  11. Two representatives nominated by the Arizona fire chiefs association or its successor organization, one of whom represents a fire department or a fire district serving a population of less than two hundred fifty thousand persons.
  12. Other agencies or offices deemed necessary by the director.
- D. This article does not change or alter the existing regulatory authority or provisions of law relating to the agencies and departments listed in subsection C of this section.
- E. The department is designated as the lead agency for implementing title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499). The director shall administer any monies received under subsection G of this section.
- F. The department shall administer this article and the rules adopted under this article. The department shall administer title III in this state and may conduct whatever activities are necessary to implement this article and title III in this state. The department is granted all the authority and responsibilities of a state emergency response commission for purposes of title III.
- G. The department may procure by contract the temporary or intermittent services of experts or consultants if such services are to be performed on a part-time or fee-for-services basis and do not involve the performance of administrative duties. The department may also enter into agreements with the federal government, Indian tribes, other states and political subdivisions of this state for the purposes of this article. The department may also accept on behalf of this state any reimbursement, grant or gift that may become available for purposes of this article. The department shall deposit, pursuant to sections 35-146 and 35-147, any such monies in the emergency response fund.

H. The department shall establish a program of financial grants to local governments funded through the department by appropriations to the emergency response fund. The grants shall be dedicated to and used for local compliance with this article. The department shall include procedures for applying for the grants and qualifying criteria for awarding the grants.

I. The department shall adopt and may modify, suspend or repeal rules pursuant to title 41, chapter 6. The rules may not be more stringent than title III and the federal regulations adopted under title III, except as specifically authorized in this article. These rules shall implement this article and title III in this state. The authority to adopt rules includes establishing:

1. Procedures for handling public information requests.
2. Procedures and implementing programs for chemical emergency planning and preparedness.
3. Community right-to-know program reporting requirements.
4. Fees to implement the community right-to-know program. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the emergency response fund established by section 49-132. The governor's regulatory review council must approve rules adopted pursuant to this paragraph.
5. Release reporting requirements.

J. The department shall ensure that mandatory hazardous materials training programs for on-scene command personnel that are developed, delivered or managed by their respective agencies, departments or divisions address notification procedures, coordination of services and comprehensive management for protection of the public health during and after a chemical or other toxic fire event. The training shall include notification and coordination with the department of public safety, the department of transportation, the radiation regulatory agency, the commission, local emergency planning committees, the department of health services, the division of emergency management, the national response center and the Arizona poison control system. Training shall also include orientation on the state emergency response and recovery plan concerning hazardous materials. The department shall encourage private companies that deliver similar training in this state to include the same curriculum in their programs.

**DEPARTMENT OF ENVIRONMENTAL QUALITY (F-17-1009)**  
Title 18, Chapter 11, Article 6, Impaired Water Identification



**GOVERNOR'S REGULATORY REVIEW COUNCIL  
ANALYSIS OF FIVE-YEAR REVIEW REPORT**

**MEETING DATE: October 3, 2017**

**AGENDA ITEM: E-7**

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**TO:** Members of the Governor's Regulatory Review Council ("Council")  
**FROM:** Daniel Herder, Legal Intern  
**DATE :** September 19, 2017  
**SUBJECT: DEPARTMENT OF ENVIRONMENTAL QUALITY (F-17-1009)**  
Title 18, Chapter 11, Article 6, Impaired Water Identification

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**COMMENTS ON THE FIVE-YEAR-REVIEW REPORT**

**Purpose of the Agency and Number of Rules in the Report**

The purpose of the Department of Environmental Quality (Department) is to "[f]ormulate policies, plans and programs to...protect the environment." A.R.S. § 49-104. This five-year-review covers six rules set forth in A.A.C. Title 18, Chapter 11, Article 6, which contains the Department's rules on establishing surface water quality standards, needed to comply with the Clean Water Act and Arizona's water quality statutes to identify impaired surface waters.

The rules establish several details about the process and methodology of identifying impaired surface water, including minimum data requirements, quality assurance and quality control requirements, appropriate water sampling and analytical techniques, statistical and modeling techniques, and methods for including and removing waters from the 303(d) list of impaired waters.

**Year that Each Rule was Last Amended or Newly Made**

The rules became effective on July 12, 2002.

**Proposed Action**

To address issues identified in the report, the Department plans to amend the rules by July 2018. Importantly, the Department plans to amend Section 605(C)(3) to allow for listing of impaired water based on narrative criteria. The criteria are already in place and used for water quality assessments, and this change will bring the rules in line with Environmental Protection Agency (EPA) guidance. Other proposed changes include minor changes to most of the rules,

updating definitions and incorporations by reference, streamlining requirements, and bringing the rules in line with current data interpretation practices

**Substantive or Procedural Concerns**

None.

**Analysis of the agency’s report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:**

**1. Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

Yes. The Department has certified its compliance with A.R.S. § 41-1091.

**2. Has the agency analyzed the rules’ effectiveness in achieving their objectives?**

Yes. The Department indicates that the rules are generally effective in achieving their objectives, with the exception of Section 605(C)(3) as noted above.

**3. Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

No. The Department has not received any written criticisms of the rules during the last five years. However, the Department indicates that EPA actions taken to add additional waters to the 303(d) are an implicit criticism.

**4. Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Department cites to both general and specific authority. Under A.R.S. § 49-203(A)(1), the Department shall “[a]dopt, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.” Additionally, under A.R.S. § 49-232(C)(1), “[t]he department shall adopt by rule the methodology to be used in identifying waters as impaired.”

**5. Has the agency analyzed the rules’ consistency with other rules and statutes?**

Yes. The Department indicates that the rules are generally consistent with other rules and statutes, however the rules deviate from EPA guidance for implementation of narrative water quality measures, resulting in EPA’s overruling the Department’s impaired water identification decisions.

**6. Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department indicates the rules are generally enforced, however the inconsistencies with EPA guidance lead to implementation problems, because the EPA is unilaterally making impaired water identifications.

7. **Has the agency analyzed whether the rules are clear, concise, and understandable?**

Yes. The Department indicates the rules are generally clear, concise, and understandable, but could be updated to be more transparent and consistent with current practices.

8. **Has the agency analyzed whether:**

a. **The rules are more stringent than corresponding federal law?**

Yes. The Department indicates that the rules are not more stringent than corresponding federal law.

b. **There is statutory authority to exceed the requirements of federal law?**

Not applicable.

9. **For rules adopted after July 29, 2010, has the agency analyzed whether:**

a. **The rules require issuance of a regulatory permit, license or agency authorization?**

Not applicable. The rules were adopted prior to July 29, 2010.

b. **It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?**

Not applicable.

10. **Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?**

Yes. The Department indicates that in the previous five-year-review report, approved by the Council on October 2, 2012, the Department proposed to update the rules to reflect EPA guidance and submit a Notice of Final Rulemaking by July 2016. However, the Department was unable to make the proposed changes due to limited resources.

**Conclusion**

The Department plans to submit a Notice of Final Rulemaking to the Council by July 2018. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends the report be approved.



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

**MEETING DATE: October 3, 2017**

**AGENDA ITEM: E-7**

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**TO:** Members of the Governor's Regulatory Review Council ("Council")  
**FROM:** GRRC Economic Team  
**DATE :** September 19, 2017  
**SUBJECT: DEPARTMENT OF ENVIRONMENTAL QUALITY (F-17-1009)**  
Title 18, Chapter 11, Article 6, Impaired Water Identification

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I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

**1. Economic Impact Comparison**

The economic, small business, and consumer impact statement (EIS) from the most recent rulemakings were made available for this review.

The Article 6 rules address the process and methodology for identifying impaired surface waters. The rules explain provisions such as appropriate water sampling and analytics techniques, quality assurance and quality control requirements, statistical and modeling techniques, and methods for including and removing waters from the list of impaired waters.

Key stakeholders impacted by the rules are the Department and agencies or entities that monitor state surface waters who choose to submit the data to the Department for use in assessing and in identifying impaired surface waters. The rules improve clarity to make a more useful reference for retailers and Commission staff.

**2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?**

The Department determines that the rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective. In order to be consistent with changes in other rule sections, the Department anticipates it will submit a Notice of Final Rulemaking by July 2018.

**3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?**

No analysis was submitted to the Commission by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

**4. Conclusion**

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.



Douglas A. Ducey  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera  
Director

July 28, 2017

Ms. Nicole Ong Colyer, Chair  
Governor's Regulatory Review Council  
100 N. 15<sup>th</sup> Avenue, Suite 305  
Phoenix, AZ 85007

Re: Five Year Rule Review Report, Title 18, Chapter 11, Article 6 (Impaired Water Identification)

*Nicole*

Dear Ms. Colyer:

The Arizona Department of Environmental Quality has reviewed Title 18, Chapter 11, Article 6, Impaired Water Identification, pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301. One hard copy of the report is enclosed. An electronic copy of the report will be sent via email, along with electronic copies of the rules being reviewed, the general and specific statutes authorizing the rules, and the applicable economic, small business, and consumer impact statement. ADEQ anticipates submitting rulemakings to the Council for certain sections in this article, as described in the enclosed report.

I certify that this agency is in compliance with A.R.S. § 41-1091.

You may contact Heidi Haggerty Welborn with questions on the report at (602) 771-4815 or email at [hh4@azdeq.gov](mailto:hh4@azdeq.gov).

Sincerely,

Bret Parke  
Deputy Director

Enclosures: Five-Year Review Report  
Current Rule  
General and Specific Authorizing Statutes  
2002 Economic Impact Statement

**FIVE-YEAR REVIEW REPORT**  
**TITLE. 18 ENVIRONMENTAL QUALITY**  
**CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY**  
**STANDARDS**  
**ARTICLE 6. IMPAIRED WATER IDENTIFICATION**

**I. INFORMATION THAT IS IDENTICAL FOR ALL RULES IN TITLE 18, CHAPTER 11, ARTICLE 6, UNLESS OTHERWISE STATED IN PART II**

1. Authorization of rules by existing statutes:

A.R.S. §§ 49-203(A)(1), 49-232(C), 49-233(C), 49-235

2. Objective of the rules:

Arizona's water quality statutes and the Clean Water Act require establishing water quality standards for surface waters that will protect the public health, and the health of fish and wildlife, and to set appropriate standards for recreational, agricultural, industrial and other purposes. Part of the process of maintaining water quality standards is monitoring and reviewing current water quality.

Section 305(b) of the Clean Water Act requires states to prepare and submit to the U.S. Environmental Protection Agency (EPA) a biennial report that describes the water quality of all surface waters in the state. Each state must monitor water quality and review available data and information from various sources to determine if water quality standards are being met. From this 305(b) Report and other sources of information, the 303(d) List is created.

The 303(d) list identifies those streams that do not meet one or more of the stream's designated uses. These waters are known as "impaired waters." Also, A.R.S. § 49-232(A) requires that at least every five years, the Arizona Department of Environmental Quality (ADEQ) prepare a list of waters that are impaired. Identifying a surface water as impaired may be based on evaluation of physical, chemical, or biological data demonstrating evidence of a numeric standard exceedance, a narrative standard exceedance, a designated use impairment, or a declining trend in water quality that indicates the surface water would exceed a water quality standard before the next listing period.

These rules establish a process and methodology, required under A.R.S. § 49-232(C), for identifying impaired surface waters, including:

- Minimum data requirements,
- Quality assurance and quality control requirements,
- Appropriate water sampling and analytical techniques,
- Statistical and modeling techniques, and
- Methods for including and removing waters from the 303(d) list of impaired waters.

The rules also specify the factors required under A.R.S. § 49-233(C) for prioritizing impaired surface waters that require development of Total Maximum Daily Loads (TMDLs).

3. Effectiveness of the rules in achieving the objectives:

The rules are effective in achieving their objective, except as otherwise stated in Part II below.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a

listing of the statutes or rules used in determining the consistency.

The rules are consistent with the administrative rules, statutes, and constitutions of Arizona and the United States. However, the rules are not consistent with EPA guidance, and EPA has the authority to override ADEQ’s impaired water identification decisions made under state rules that do not align with EPA guidance.

A.R.S. §§ 49-203(A)(1), 49-232(C), 49-233(C), 49-235	State statutes and sections authorizing adoption of these rules and standards
A.R.S. §§ 49-232, 49-233, 49-234	Statutes prescribing the impaired waters and total maximum daily load implementation programs
A.R.S. § 49-104(A)(17)	State regulations adopted under Title 49 are “to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter” unless authorized by the legislature
33 U.S.C. 1313(d)	Federal statute mandating that states identify impaired waters for which and also mandating EPA to either approve or disapprove such identification and if disapproved, the EPA shall identify waters EPA determines necessary to implement the water quality standards
33 U.S.C. 1315(b)	Federal statute requiring each state to periodically assess and report on the water quality of all navigable waters in the state
40 C.F.R. § 130.7	Implementing federal rule prescribing the impaired waters identification process

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The impaired water identification rules are enforced primarily through the form of gathering data and preparing the biennial reports for EPA and the public. These rules work in conjunction with other rules in Title 18, Chapter 11 to create Arizona’s Integrated 305(b) Assessment and 303(d) Listing Report (Integrated Report), which describes the status of surface water in Arizona in relation to state water quality standards. The report also contains a list of Arizona’s impaired surface waters, including a list of surface waters requiring the development of a TMDL (the 303(d) List). The report fulfills requirements of the federal Clean Water Act sections 305(b) (assessments), 303(d) (impaired water identification), and 314 (status of lake water quality). Under these rules, ADEQ finalized 2016 report.

Currently, there are problems implementing these rules because they are not consistent with EPA

guidance. Under Clean Water Act section 303(d)(2), EPA may disapprove a state's impaired water list and reasonably identify additional impaired waters based on EPA guidance. See also 40 C.F.R. § 130.7(b)(6)(iv). This has caused the EPA to unilaterally make impaired water identifications.

6. Analysis of clarity, conciseness, and understandability:

ADEQ believes that the rules are generally clear, concise, and understandable. However, processes could be more transparent and consistent with current practices. Also, some obsolete incorporations by reference should be updated to enhance clarity.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings:

ADEQ has received no written criticisms of the rules within the past five years.

However, EPA does in effect criticize the rules when it makes impaired water identifications in Arizona based on EPA guidance. ADEQ intends to modify the implementation of narrative water quality criteria to clarify how exceedances of narrative standards may be used to identify an impaired water.

8. Comparison of economic, small business, and consumer impact with economic impact statement:

The costs for implementing these rules falls primarily to ADEQ and affects only those agencies or entities that monitor state surface waters and choose to submit the data to ADEQ for use in assessing and in identifying impaired surface waters. The rules do not directly regulate businesses, farms, or any other sectors of the economy. ADEQ has not amended the rules since they were adopted, nor has undertaken a study to determine the accuracy of the economic impact predicted at the time of the rules' adoption. The only changes since the last economic impact statement would be to adjust dollar values for inflation.

9. Any analysis submitted to ADEQ by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states:

ADEQ has not received any analysis submitted by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report:

The Governor's Regulatory Review Council approved the last Five-Year Review report at its October 2, 2012 meeting. ADEQ proposed to amend some of the Article 6 rules, mostly to reflect updates to EPA's guidance documents. ADEQ proposed to submit a Notice of Final Rulemaking to Council by July 2016. ADEQ has not yet completed this action because of resource constraints.

11. A determination after analysis that the probable benefits of the rule within this state outweigh 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.

ADEQ believes that these rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

The rules are consistent with and are no more stringent than corresponding federal law. However, because EPA has the authority to make impaired water identifications based on its own guidance, the rules are essentially less stringent than federal law, which causes uncertainty as to what waters will or will not ultimately be identified as impaired. If ADEQ aligns its rules with EPA guidance, EPA could not claim a reasonable basis to override state decisions.

13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037.

Not applicable. This Article does not require a permit, license, or agency authorization.

14. Proposed course of action:

The rules are inconsistent with recent EPA published guidance documents as to how states should prepare and submit an integrated report of all the required Clean Water Act reports. In past Integrated Reports, EPA has conducted its own evaluation and added waters to Arizona's §303(d) list, due in part to its interpretation of ADEQ's narrative standards. ADEQ also recognizes the rules could be improved, specifically to clarify language on sampling and data interpretation and to update obsolete incorporations by references. ADEQ anticipates amending most sections in the impaired water identification rules to address these issues.

ADEQ anticipates it will submit a Notice of Final Rulemaking to the Council by July 2018.

## II. SECTION-BY-SECTION ANALYSIS OF RULES

### R18-11-601. Definitions

2. Objective of the rules:

The objectives of the definition section are to define:

- Important terms used in the impaired water identification rules so that the rules are understandable to members of the general public;
- Legal terms of art, words with uncommon meanings, and scientific terms; and
- Acronyms and abbreviations used in the rules.

3. Analysis of effectiveness of the rules in achieving the objective:

The rule effectively defines important terms used in the rules.

5. Status of the enforcement of the rule:

Definitions are not enforceable on their own, but provide context for other sections.

14. Proposed course of action:

ADEQ intends to update certain definitions to be consistent with changes in other rule sections. ADEQ anticipates it will submit a Notice of Final Rulemaking to the Council by July 2018.

### R18-11-602. Credible Data

2. Objective of the rules:

R18-11-602 provides the minimum quality assurance/quality control requirements for data to be

considered credible and relevant for assessment and listing purposes. The monitoring entity must:

- Develop and submit a Quality Assurance Plan (QAP) that includes certain required elements, including the methods used for sample collection, field and laboratory analysis, and data management, and provide assurances that field and laboratory personnel are adequately trained and supervised;
- Develop and submit a site-specific or project-specific Sampling and Analysis Plan (SAP) containing required elements, including data quality objectives of the project and a sound rationale for the selection of sampling sites, water quality parameters, sampling frequency and methods that assure the samples are spatially and temporally representative of the surface water, representative of conditions within the targeted segment at the time of sampling, and are reproducible;
- Ensure that data collection, preservation, and analytical procedures are those established in A.A.C. R9-14-610 by the Arizona Department of Health Services;
- Ensure that laboratory analyses are performed by a laboratory licensed by Arizona Department of Health Services, a laboratory exempted by the Arizona Department of Health Services for specific analyses under A.R.S. § 36-495.02, or a federal or academic laboratory that can demonstrate proper quality assurance/quality control equal to the requirements for state licensure; and
- Provide other information necessary to assist ADEQ in interpreting or validating the data.

3. Analysis of effectiveness of the rules in achieving the objective:

The concept of credible data ensures that only those surface waters are included on the 303(d) List for which there is adequate documentation that water quality standards are not attaining or will not be attaining based on modeling. The rule effectively informs third parties that the data needs to be of high quality and must accurately reflect the surface water conditions. However, the rule requirements could be more streamlined to achieve this objective. This rule currently requires more data than is necessary for ADEQ to use in making an impairment determination (e.g. monitoring results, dates, latitude and longitude).

14. Proposed course of action:

ADEQ intends to streamline minimum data reporting requirements. ADEQ anticipates it will submit a Notice of Final Rulemaking to the Council by July 2018.

### **R18-11-603. General Data Interpretation Requirements**

2. Objective of the rules:

To determine whether data is credible and scientifically defensible, this rule sets up data conventions for how data will be used. Data conventions determine whether there is sufficient samples and sampling events to support an assessment, or to adjust field measurements or certain analytical methods due to error or method imprecision.

3. Analysis of effectiveness of the rules in achieving the objective:

The rule effectively informs stakeholders on the data conventions that ADEQ uses for interpreting data. However, some of the methodologies in the rule are vague and require explanation or prior knowledge, in part because of obsolete incorporations by reference. While listing technical methodologies are explained and published with impaired waters listings, the impaired identification process would be more transparent if the rules more clearly reflected current practices.

4. Analysis of consistency with state and federal statutes and rules:

There are some inconsistent references to the surface water quality standards in 18 A.A.C. 11, Article 1, which were amended in 2009. See *Notice of Final Rulemaking*, 14 A.A.R. 4708 (Dec. 26, 2008). For example, R18-11-603(A)(4) references water quality standards for outstanding waters in R18-11-112, which were repealed in 2009.

14. Proposed course of action:

ADEQ intends to update outdated incorporations by references in this rule. ADEQ also intends to update the rules to better reflect current and longstanding technical data interpretation practices. ADEQ anticipates it will submit a Notice of Final Rulemaking to the Council by July 2018.

**R18-11-604. Types of Surface Waters Placed on the Planning List and 303(d) List**

2. Objective of the rules:

This rule provides the basis of the two-part consolidated list for assessment and listing decisions. The rule describes what surface waters will go on the Planning List or the 303(d) List, what surface waters will not be listed, and how surface waters are segmented for listing. It also establishes that surface waters or segments can move back and forth between the Planning List and the 303(d) List for individual pollutants based on the criteria in the rule.

3. Analysis of effectiveness of the rules in achieving the objective:

The rule effectively describes what surface waters will go on the Planning List or the 303(d) List. However, the Planning List is an obsolete mechanism that has not been implemented in recent history, if ever. The concept appears to have derived from older federal guidance and from other states' EPA approved rules as of 2002 (e.g. Florida). See *Final Rule for Impaired Waters Identification*, 8 A.A.R. 3380, 3416 (Aug. 9, 2002). However, the Planning List does not serve current practices at ADEQ.

14. Proposed course of action:

ADEQ intends to remove most of the antiquated subsections of this rule in accordance with the Governor's 2017 Rule Moratorium, because the subsections refer to the Planning List, and an obsolete mechanism. ADEQ anticipates it will submit a Notice of Final Rulemaking to the Council by July 2018.

**R18-11-605. Evaluating A Surface Water or Segment For Listing and Delisting**

2. Objective of the rule:

This rule identifies the process ADEQ uses to determine: (1) if a surface water or segment is not attaining or is impaired, and whether it is placed on the Planning List or the 303(d) List; or (2) whether there is water quality evidence or factors to support the removal of a surface water, segment or pollutant from either List.

3. Analysis of effectiveness of the rules in achieving the objective:

The rule effectively identifies the process ADEQ uses to determine listing or delisting a surface water or segment on the Planning List or the 303(d) List.

4. Analysis of consistency with state and federal statutes and rules:

There are some inconsistent references to the surface water quality standards in 18 A.A.C. 11, Article 1, which were amended in 2009. See *Notice of Final Rulemaking*, 14 A.A.R. 4708 (Dec. 26, 2008).

For example, R18-605(C)(2)(c) references R18-11-109(G) standards for radiochemicals, which was repealed in 2009. However, subsection (C) of this rule covers when water segments are placed on a Planning List, an obsolete concept.

14. Proposed course of action:

ADEQ intends to modify this rule to clarify how exceedances of narrative standards may be used to list a water as impaired in certain circumstances under A.R.S. § 49-232(E) & (F). ADEQ also intends to remove all antiquated references to the Planning List, an obsolete mechanism that is not currently used, nor has been used in Arizona in a very long time. ADEQ also intends to update inconsistent incorporations by reference, if not already modified by the above changes. ADEQ anticipates it will submit a Notice of Final Rulemaking to the Council by July 2018.

**R18-11-606. TMDL Priority Criteria for 303(d) Listed Surface Water or Segments**

2. Objective of the rules:

A TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet surface water quality standards. A.R.S. § 49-233 requires ADEQ to prioritize listed surface waters for development of a TMDL and identifies 17 factors that ADEQ must use. These categories take into account factors, such as the severity of the impairment; impacts to designated uses of the receiving water; seriousness of the water quality problems; value of the resource; risk to human health, aquatic life, and wildlife; and the likelihood of success of TMDL implementation. Generally, impaired surface waters are given high priority if the pollutant poses a substantial threat to the health and safety of humans, aquatic life, or wildlife.

3. Analysis of effectiveness of the rules in achieving the objective:

The rule effectively describes the factors ADEQ uses to prioritize listed surface waters for development of a TMDL.

14. Proposed course of action:

ADEQ intends to update the language in this rule to be consistent with other proposed changes in Article 6. ADEQ anticipates it will submit a Notice of Final Rulemaking to the Council by July 2018.



## **Replacement Check List**

For rules filed within the

4th Quarter

October 1 – December 31, 2016

# **THE ARIZONA ADMINISTRATIVE CODE**

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law.

These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information.

Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

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## **Title 18. Environmental Quality**

### **Chapter 11. Department of Environmental Quality - Water Quality Standards**

#### **Supplement 16-4**

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

R18-11-106, R18-11-109, R18-11-110, R18-11-112, R18-11-115, R18-11-121, Appendix A, B and C

REMOVE Supp. 08-4  
Pages: 1 - 77

REPLACE with Supp. 16-4  
Pages: 1 - 63

*The agency's contact person who can answer questions about rules in Supp. 16-4:*

Agency: Department of Environmental Quality, Water Quality Division

Address: 1110 W. Washington St., Phoenix, AZ 85007

Telephone: (602) 771-4836 (Toll-free number in Arizona: (800) 234-5677

Fax: (602) 771-4834

*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

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## **PUBLISHER**

**Arizona Department of State**

**Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
December 31, 2016

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### **RULES**

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### **THE ADMINISTRATIVE CODE**

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### **ADMINISTRATIVE CODE SUPPLEMENTS**

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### **HOW TO USE THE CODE**

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### **ARTICLES AND SECTIONS**

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### **HISTORICAL NOTES AND EFFECTIVE DATES**

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### **ARIZONA REVISED STATUTE REFERENCES**

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### **SESSION LAW REFERENCES**

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### **EXEMPTIONS FROM THE APA**

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### **EXEMPTIONS AND PAPER COLOR**

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### **PERSONAL USE/COMMERCIAL USE**

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

ARTICLE 1. WATER QUALITY STANDARDS FOR SURFACE WATERS

Tables in Article 1, Appendix A have been updated and now include historical notes (Supp. 16-4).

Article 1, consisting of Appendices A through C, repealed April 24, 1996 (Supp. 96-2).

Article 1, consisting of Section R18-11-103, reserved effective April 24, 1996 (Supp. 96-2).

Article 1, consisting of Sections R18-11-105 and R18-11-106, and Appendices A and B, adopted April 24, 1996 (Supp. 96-2).

Article 1, consisting of Sections R18-11-101 and R18-11-102, R18-11-104, R18-11-107 through R18-11-109, R18-11-111 through R18-11-113, R18-11-115, R18-11-117 and R18-11-118, R18-11-120 and R18-11-121, amended effective April 24, 1996 (Supp. 96-2).

Article 1, consisting of Sections R18-11-101 through R18-11-121 and Appendices A through C, adopted effective February 18, 1992 (Supp. 92-1).

Article 1, consisting of Section R18-11-101, repealed effective February 18, 1992 (Supp. 92-1).

Article 1 consisting of Section R9-21-101 renumbered as Article 1, Section R18-11-101 (Supp. 87-3).

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Article 2, consisting of Sections R18-11-201 through R18-11-214 and Appendices A and B, repealed effective February 18, 1992 (Supp. 92-1).

Article 2 consisting of Sections R9-21-201 through R9-21-214 and Appendices A and B renumbered as Article 2, Sections R18-11-201 through R18-11-214 and Appendices A and B (Supp. 87-3).

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**ARTICLE 3. RECLAIMED WATER QUALITY STANDARDS**

Article 3, consisting of Sections R18-11-301 through R18-11-309 and Table A, adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

Article 3 heading repealed effective April 24, 1996 (Supp. 96-2).

Article 3, consisting of Sections R18-11-301 through R18-11-304 repealed effective February 18, 1992 (Supp. 92-1).

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pursuant to A.R.S. §§ 49-224(C) and 49-204, the Director shall make a final decision to grant or deny the petition and shall notify the petitioner of such decision and the reason for such determination in writing.

- C. Upon a decision to grant a petition for aquifer reclassification, the Director shall initiate proceedings for promulgation of aquifer water quality standards and, if applicable, for aquifer boundary designation for the reclassified aquifers.

#### Historical Note

Adopted effective October 22, 1987 (Supp. 87-4).

#### R18-11-505. Public participation

- A. Within 30 days of receipt of a complete petition for reclassification filed pursuant to A.R.S. § 49-224(D), or if the Director deems it necessary to consider a reclassification under A.R.S. § 49-224(C), the Director shall give public notice of the proposed reclassification pursuant to A.A.C. R18-1-401.
- B. The Director shall hold at least one public hearing at a location as near as practicable to the aquifer proposed for reclassification. The Director shall give notice of each public hearing and conduct the public hearing in accordance with the provisions of A.A.C. R18-1-402.

#### Historical Note

Adopted effective June 29, 1989 (Supp. 89-2).

#### R18-11-506. Rescission of reclassification

The Director may, by rule, rescind an aquifer reclassification and return an aquifer to a drinking water protected use if he determines that any of the conditions under which the reclassification was granted are no longer valid. If the Director initiates a change under this Section, he shall consult with the appropriate advisory council pursuant to A.R.S. §§ 49-224(C) and 49-204.

#### Historical Note

Adopted effective October 22, 1987 (Supp. 87-4).

### ARTICLE 6. IMPAIRED WATER IDENTIFICATION

*Article 6, consisting of Sections R18-11-601 through R18-11-606, made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).*

#### R18-11-601. Definitions

In addition to the definitions established in A.R.S. §§ 49-201 and 49-231, and A.A.C. R18-11-101, the following terms apply to this Article:

1. "303(d) List" means the list of surface waters or segments required under section 303(d) of the Clean Water Act and A.R.S. Title 49, Chapter 2, Article 2.1, for which TMDLs are developed and submitted to EPA for approval.
2. "Attaining" means there is sufficient, credible, and scientifically defensible data to assess a surface water or segment and the surface water or segment does not meet the definition of impaired or not attaining.
3. "AZPDES" means the Arizona Pollutant Elimination Discharge System.
4. "Credible and scientifically defensible data" means data submitted, collected, or analyzed using:
  - a. Quality assurance and quality control procedures under A.A.C. R18-11-602;
  - b. Samples or analyses representative of water quality conditions at the time the data were collected;
  - c. Data consisting of an adequate number of samples based on the nature of the water in question and the parameters being analyzed; and
  - d. Methods of sampling and analysis, including analytical, statistical, and modeling methods that are generally accepted and validated by the scientific community as appropriate for use in assessing the condition of the water.
5. "Designated use" means those uses specified in 18 A.A.C. 11, Article 1 for each surface water or segment whether or not they are attaining.
6. "EPA" means the U.S. Environmental Protection Agency.
7. "Impaired water" means a Navigable water for which credible scientific data exists that satisfies the requirements of A.R.S. § 49-232 and that demonstrates that the water should be identified pursuant to 33 United States Code § 1313(d) and the regulations implementing that statute. A.R.S. § 49-231(1).
8. "Laboratory detection limit" means a "Method Reporting Limit" (MRL) or "Reporting Limit" (RL). These analogous terms describe the laboratory reported value, which is the lowest concentration level included on the calibration curve from the analysis of a pollutant that can be quantified in terms of precision and accuracy.
9. "Monitoring entity" means the Department or any person who collects physical, chemical, or biological data used for an impaired water identification or a TMDL decision.
10. "Naturally occurring condition" means the condition of a surface water or segment that would have occurred in the absence of pollutant loadings as a result of human activity.
11. "Not attaining" means a surface water is assessed as impaired, but is not placed on the 303(d) List because:
  - a. A TMDL is prepared and implemented for the surface water;
  - b. An action, which meets the requirements of R18-11-604(D)(2)(h), is occurring and is expected to bring the surface water to attaining before the next 303(d) List submission; or
  - c. The impairment of the surface water is due to pollution but not a pollutant, for which a TMDL load allocation cannot be developed.
12. "NPDES" means National Pollutant Discharge Elimination System.
13. "Planning List" means a list of surface waters and segments that the Department will review and evaluate to determine if the surface water or segment is impaired and whether a TMDL is necessary.
14. "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. 33 U.S.C. 1362(6). Characteristics of water, such as dissolved oxygen, pH, temperature, turbidity, and suspended sediment are considered pollutants if they result or may result in the non-attainment of a water quality standard.
15. "Pollution" means "the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water." 33 U.S.C. 1362(19).
16. "QAP" means a quality assurance plan detailing how environmental data operations are planned, implemented, and assessed for quality during the duration of a project.
17. "Sampling event" means one or more samples taken under consistent conditions on one or more days at a distinct station or location.
18. "SAP" means a site specific sampling and analysis plan that describes the specifics of sample collection to ensure that data quality objectives are met and that samples collected and analyzed are representative of surface water conditions at the time of sampling.

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19. “Spatially independent sample” means a sample that is collected at a distinct station or location. The sample is independent if the sample was collected:
  - a. More than 200 meters apart from other samples, or
  - b. Less than 200 meters apart, and collected to characterize the effect of an intervening tributary, outfall or other pollution source, or significant hydrographic or hydrologic change.
20. “Temporally independent sample” means a sample that is collected at the same station or location more than seven days apart from other samples.
21. “Threatened” means that a surface water or segment is currently attaining its designated use, however, trend analysis, based on credible and scientifically defensible data, indicates that the surface water or segment is likely to be impaired before the next listing cycle.
22. “TMDL” means total maximum daily load.
23. “TMDL decision” means a decision by the Department to:
  - a. Prioritize an impaired water for TMDL development,
  - b. Develop a TMDL for an impaired water, or
  - c. Develop a TMDL implementation plan.
24. “*Total maximum daily load*” means an estimation of the total amount of a pollutant from all sources that may be added to a water while still allowing the water to achieve and maintain applicable surface water quality standards. Each total maximum daily load shall include allocations for sources that contribute the pollutant to the water, as required by section 303(d) of the clean water act (33 United States Code section 1313(d)) and regulations implementing that statute to achieve applicable surface water quality standards. A.R.S. § 49-231(4).
25. “Water quality standard” means a standard composed of designated uses (classification of waters), the numerical and narrative criteria applied to the specific water uses or classification, the antidegradation policy, and moderating provisions, for example, mixing zones, site-specific alternative criteria, and exemptions, in A.A.C. Title 18, Chapter 11, Article 1.
26. “WQARF” means the water quality assurance revolving fund established under A.R.S. § 49-282.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

**R18-11-602. Credible Data**

- A. Data are credible and relevant to an impaired water identification or a TMDL decision when:
  1. Quality Assurance Plan. A monitoring entity, which contribute data for an impaired water identification or a TMDL decision, provides the Department with a QAP that contains, at a minimum, the elements listed in subsections (A)(1)(a) through (A)(1)(f). The Department may accept a QAP containing less than the required elements if the Department determines that an element is not relevant to the sampling activity and that its omission will not impact the quality of the results based upon the type of pollutants to be sampled, the type of surface water, and the purpose of the sampling.
    - a. An approval page that includes the date of approval and the signatures of the approving officials, including the project manager and project quality assurance manager;
    - b. A project organization outline that identifies all key personnel, organizations, and laboratories involved in monitoring, including the specific roles and responsibilities of key personnel in carrying out the procedures identified in the QAP and SAP, if applicable;
  - c. Sampling design and monitoring data quality objectives or a SAP that meets the requirements of subsection (A)(2) to ensure that:
    - i. Samples are spatially and temporally representative of the surface water,
    - ii. Samples are representative of water quality conditions at the time of sampling, and
    - iii. The monitoring is reproducible;
  - d. The following field sampling information to assure that samples meet data quality objectives:
    - i. Sampling and field protocols for each parameter or parametric group, including the sampling methods, equipment and containers, sample preservation, holding times, and any analysis proposed for completion in the field or outside of a laboratory;
    - ii. Field and laboratory methods approved under subsection (A)(5);
    - iii. Handling procedures to identify samples and custody protocols used when samples are brought from the field to the laboratory for analysis;
    - iv. Quality control protocols that describe the number and type of field quality control samples for the project that includes, if appropriate for the type of sampling being conducted, field blanks, travel blanks, equipment blanks, method blanks, split samples, and duplicate samples;
    - v. Procedures for testing, inspecting, and maintaining field equipment;
    - vi. Field instrument calibration procedures that describe how and when field sampling and analytical instruments will be calibrated;
    - vii. Field notes and records that describe the conditions that require documentation in the field, such as weather, stream flow, transect information, distance from water edge, water and sample depth, equipment calibration measurements, field observations of watershed activities, and bank conditions. Indicate the procedures implemented for maintaining field notes and records and the process used for attaching pertinent information to monitoring results to assist in data interpretation;
    - viii. Minimum training and any specialized training necessary to do the monitoring, that includes the proper use and calibration of field equipment used to collect data, sampling protocols, quality assurance/quality control procedures, and how training will be achieved;
  - e. Laboratory analysis methods and quality assurance/quality control procedures that assure that samples meet data quality objectives, including:
    - i. Analytical methods and equipment necessary for analysis of each parameter, including identification of approved laboratory methods described in subsection (A)(5), and laboratory detection limits for each parameter;
    - ii. The name of the designated laboratory, its license number, if licensed by the Arizona Department of Health Services, and the name



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6. Laboratory. The monitoring entity shall ensure that chemical and toxicological samples are analyzed in a state-licensed laboratory, a laboratory exempted by the Arizona Department of Health Services for specific analyses, or a federal or academic laboratory that can demonstrate proper quality assurance/quality control procedures substantially equal to those required by the Arizona Department of Health Services, and shall ensure that the laboratory uses approved methods identified in A.A.C. R9-14-610.
- B. Documentation for data submission.** The monitoring entity shall provide the Department with the following information either before or with data submission:
1. A copy of the QAP or SAP, or both, revisions to a previously submitted QAP or SAP, and any other information necessary for the Department to evaluate the data under subsection (A)(4);
  2. The applicable dates of the QAP and SAP, including any revisions;
  3. Written assurance that the methods and procedures specified in the QAP and SAP were followed;
  4. The name of the laboratory used for sample analyses and its certification number, if the laboratory is licensed by the Arizona Department of Health Services;
  5. The quality assurance/quality control documentation, including the analytical methods used by the laboratory, method number, detection limits, and any blank, duplicate, and spike sample information necessary to properly interpret the data, if different from that stated in the QAP or SAP;
  6. The data reporting unit of measure;
  7. Any field notes, laboratory comments, or laboratory notations concerning a deviation from standard procedures, quality control, or quality assurance that affects data reliability, data interpretation, or data validity; and
  8. Any other information, such as complete field notes, photographs, climate, or other information related to flow, field conditions, or documented sources of pollutants in the watershed, if requested by the Department for interpreting or validating data.
- C. Recordkeeping.** The monitoring entity shall maintain all records, including sample results, for the duration of the listing cycle. If a surface water or segment is added to the Planning List or to the 303(d) List, the Department shall coordinate with the monitoring entity to ensure that records are kept for the duration of the listing.
- Historical Note**
- New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).
- R18-11-603. General Data Interpretation Requirements**
- A.** The Department shall use the following data conventions to interpret data for impaired water identifications and TMDL decisions:
1. Data reported below laboratory detection limits.
    - a. When the analytical result is reported as <X, where X is the laboratory detection limit for the analyte and the laboratory detection limit is less than or equal to the surface water quality standard, consider the result as meeting the water quality standard:
      - i. Use these statistically derived values in trend analysis, descriptive statistics or modeling if there is sufficient data to support the statistical estimation of values reported as less than the laboratory detection limit; or
      - ii. Use one-half of the value of the laboratory detection limit in trend analysis, descriptive statistics, or modeling, if there is insufficient data to support the statistical estimation of values reported as less than the laboratory detection limit.
    - b. When the sample value is less than or equal to the laboratory detection limit but the laboratory detection limit is greater than the surface water quality standard, shall not use the result for impaired water identifications or TMDL decisions;
  2. Identify the field equipment specifications used for each listing cycle or TMDL developed. A field sample measurement within the manufacturer's specification for accuracy meets surface water quality standards;
  3. Resolve a data conflict by considering the factors identified under the weight-of-evidence determination in R18-11-605(B);
  4. When multiple samples from a surface water or segment are not spatially or temporally independent, or when lake samples are from multiple depths, use the following resultant value to represent the specific dataset:
    - a. The appropriate measure of central tendency for the dataset for:
      - i. A pollutant listed in the surface water quality standards 18 A.A.C. 11, Article 1, Appendix A, Table 1, except for nitrate or nitrate/nitrite;
      - ii. A chronic water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 2;
      - iii. A surface water quality standard for a pollutant that is expressed as an annual or geometric mean;
      - iv. The surface water quality standard for temperature or the single sample maximum water quality standard for suspended sediment concentration, nitrogen, and phosphorus in R18-11-109;
      - v. The surface water quality standard for radiochemicals in R18-11-109(G); or
      - vi. Except for chromium, all single sample maximum water quality standards in R18-11-112.
    - b. The maximum value of the dataset for:
      - i. The acute water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 2 and acute water quality standard in R18-11-112;
      - ii. The surface water quality standard for nitrate or nitrate/nitrite in 18 A.A.C. 11, Article 1, Appendix A, Table 1;
      - iii. The single sample maximum water quality standard for bacteria in subsections R18-11-109(A); or
      - iv. The 90th percentile water quality standard for nitrogen and phosphorus in R18-11-109(F) and R18-11-112.
    - c. The worst case measurement of the dataset for:
      - i. Surface water quality standard for dissolved oxygen under R18-11-109(E). For purposes of this subsection, worst case measurement means the minimum value for dissolved oxygen;
      - ii. Surface water quality standard for pH under R18-11-109(B). For purposes of this subsection, "worst case measurement" means both the minimum and maximum value for pH.

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- B.** The Department shall not use the following data for placing a surface water or segment on the Planning List, the 303(d) List, or in making a TMDL decision.
1. Any measurement outside the range of possible physical or chemical measurements for the pollutant or measurement equipment,
  2. Uncorrected data transcription errors or laboratory errors, and
  3. An outlier identified through statistical procedures, where further evaluation determines that the outlier represents a valid measure of water quality but should be excluded from the dataset.
- C.** The Department may employ fundamental statistical tests if appropriate for the collected data and type of surface water when evaluating a surface water or segment for impairment or in making a TMDL decision. The statistical tests include descriptive statistics, frequency distribution, analysis of variance, correlation analysis, regression analysis, significance testing, and time series analysis.
- D.** The Department may employ modeling when evaluating a surface water or segment for impairment or in making a TMDL decision, if the method is appropriate for the type of waterbody and the quantity and quality of available data meet the requirements of R18-11-602. Modeling methods include:
1. Better Assessment Science Integrating Source and Non-point Sources (BASINS),
  2. Fundamental statistics, including regression analysis,
  3. Hydrologic Simulation Program-Fortran (HSPF),
  4. Spreadsheet modeling, and
  5. Hydrologic Engineering Center (HEC) programs developed by the Army Corps of Engineers.
- Historical Note**
- New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).
- R18-11-604. Types of Surface Waters Placed on the Planning List and 303(d) List**
- A.** The Department shall evaluate, at least every five years, Arizona's surface waters by considering all readily available data.
1. The Department shall place a surface water or segment on:
    - a. The Planning List if it meets any of the criteria described in subsection (D), or
    - b. The 303(d) List if it meets the criteria for listing described in subsection (E).
  2. The Department shall remove a surface water or segment from the Planning List based on the requirements in R18-11-605(E)(1) or from the 303(d) List, based on the requirements in R18-11-605(E)(2).
  3. The Department may move surface waters or segments between the Planning List and the 303(d) List based on the criteria established in R18-11-604 and R18-11-605.
- B.** When placing a surface water or segment on the Planning List or the 303(d) List, the Department shall list the stream reach, derived from EPA's Reach File System or National Hydrography Dataset, or the entire lake, unless the data indicate that only a segment of the stream reach or lake is impaired or not attaining its designated use, in which case, the Department shall describe only that segment for listing.
- C.** Exceptions. The Department shall not place a surface water or segment on either the Planning List or the 303(d) List if the non-attainment of a surface water quality standard is due to one of the following:
1. Pollutant loadings from naturally occurring conditions alone are sufficient to cause a violation of applicable water quality standards;
  2. The data were collected within a mixing zone or under a variance or nutrient waiver established in a NPDES or AZPDES permit for the specific parameter and the result does not exceed the alternate discharge limitation established in the permit. The Department may use data collected within these areas for modeling or allocating loads in a TMDL decision; or
  3. An activity exempted under R18-11-117, R18-11-118, or a condition exempted under R18-11-119.
- D.** Planning List.
1. The Department shall:
    - a. Use the Planning List to prioritize surface waters for monitoring and evaluation as part of the Department's watershed management approach;
    - b. Provide the Planning List to EPA; and
    - c. Evaluate each surface water and segment on the Planning List for impairment based on the criteria in R18-11-605(D) to determine the source of the impairment.
  2. The Department shall place a surface water or segment on the Planning List based the criteria in R18-11-605(C). The Department may also include a surface water or segment on the Planning List when:
    - a. A TMDL is completed for the pollutant and approved by EPA;
    - b. The surface water or segment is on the 1998 303(d) List but the dataset used for the listing:
      - i. Does not meet the credible data requirements of R18-11-602, or
      - ii. Contains insufficient samples to meet the data requirements under R18-11-605(D);
    - c. Some monitoring data exist but there are insufficient data to determine whether the surface water or segment is impaired or not attaining, including:
      - i. A numeric surface water quality standard is exceeded, but there are not enough samples or sampling events to fulfill the requirements of R18-11-605(D);
      - ii. Evidence exists of a narrative standard violation, but the amount of evidence is insufficient, based on narrative implementation procedures and the requirements of R18-11-605(D)(3);
      - iii. Existing monitoring data do not meet credible data requirements in R18-11-602; or
      - iv. A numeric surface water quality standard is exceeded, but there are not enough sample results above the laboratory detection limit to support statistical analysis as established in R18-11-603(A)(1).
    - d. The surface water or segment no longer meets the criteria for impairment based on a change in the applicable surface water quality standard or a designated use approved by EPA under section 303(c)(1) of the Clean Water Act, but insufficient current or original monitoring data exist to determine whether the surface water or segment will meet current surface water quality standards;
    - e. Trend analysis using credible and scientifically defensible data indicate that surface water quality standards may be exceeded by the next assessment cycle;
    - f. The exceedance of surface water quality standards is due to pollution, but not a pollutant;
    - g. Existing data were analyzed using methods with laboratory detection limits above the numeric surface

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- water quality standard but analytical methods with lower laboratory detection limits are available;
- h. The surface water or segment is expected to attain its designated use by the next assessment as a result of existing or proposed technology-based effluent limitations or other pollution control requirements under local, state, or federal authority. The appropriate entity shall provide the Department with the following documentation to support placement on the Planning List:
    - i. Verification that discharge controls are required and enforceable;
    - ii. Controls are specific to the surface water or segment, and pollutant of concern;
    - iii. Controls are in place or scheduled for implementation; and
    - iv. There are assurances that the controls are sufficient to bring about attainment of water quality standards by the next 303(d) List submission; or
  - i. The surface water or segment is threatened due to a pollutant and, at the time the Department submits a final 303(d) List to EPA, there are no federal regulations implementing section 303(d) of the Clean Water Act that require threatened waters be included on the list.

**E. 303(d) List.** The Department shall:

1. Place a surface water or segment on the 303(d) List if the Department determines:
  - a. Based on R18-11-605(D), that the surface water or segment is impaired due to a pollutant and that a TMDL decision is necessary; or
  - b. That the surface water or segment is threatened due to a pollutant and, at the time the Department submits a final 303(d) List to EPA, there are federal regulations implementing section 303(d) of the Clean Water Act that require threatened waters be included on the list.
2. Provide public notice of the 303(d) List according to the requirements of A.R.S. § 49-232 and submit the 303(d) List according to section 303(d) of the Clean Water Act.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

**R18-11-605. Evaluating A Surface Water or Segment For Listing and Delisting**

- A.** The Department shall compile and evaluate all reasonably current, credible, and scientifically defensible data to determine whether a surface water or segment is impaired or not attaining.
- B.** Weight-of-evidence approach.
  1. The Department shall consider the following concepts when evaluating data:
    - a. Data or information collected during critical conditions may be considered separately from the complete dataset, when the data show that the surface water or segment is impaired or not attaining its designated use during those critical conditions, but attaining its uses during other periods. Critical conditions may include stream flow, seasonal periods, weather conditions, or anthropogenic activities;
    - b. Whether the data indicate that the impairment is due to persistent, seasonal, or recurring conditions. If the data do not represent persistent, recurring, or sea-

sonal conditions, the Department may place the surface water or segment on the Planning List;

- c. Higher quality data over lower quality data when making a listing decision. Data quality is established by the reliability, precision, accuracy, and representativeness of the data, based on factors identified in R18-11-602(A) and (B), including monitoring methods, analytical methods, quality control procedures, and the documented field and laboratory quality control information submitted with the data. The Department shall consider the following factors when determining higher quality data:
  - i. The age of the measurements. Newer measurements are weighted heavier than older measurements, unless the older measurements are more representative of critical flow conditions;
  - ii. Whether the data provide a direct measure of an impact on a designated use. Direct measurements are weighted heavier than measurements of an indicator or surrogate parameter; or
  - iii. The amount or frequency of the measurements. More frequent data collection are weighted heavier than nominal datasets.
2. The Department shall evaluate the following factors to determine if the water quality evidence supports a finding that the surface water or segment is impaired or not attaining:
  - a. An exceedance of a numeric surface water quality standard based on the criteria in subsections (C)(1), (C)(2), (D)(1), and (D)(2);
  - b. An exceedance of a narrative surface water quality standard based on the criteria in subsections (C)(3) and (D)(3);
  - c. Additional information that determines whether a water quality standard is exceeded due to a pollutant, suspected pollutant, or naturally occurring condition:
    - i. Soil type, geology, hydrology, flow regime, biological community, geomorphology, climate, natural process, and anthropogenic influence in the watershed;
    - ii. The characteristics of the pollutant, such as its solubility in water, bioaccumulation potential, sediment sorption potential, or degradation characteristics, to assist in determining which data more accurately indicate the pollutant's presence and potential for causing impairment; and
    - iii. Available evidence of direct or toxic impacts on aquatic life, wildlife, or human health, such as fish kills and beach closures, where there is sufficient evidence that these impacts occurred due to water quality conditions in the surface water.
  - d. Other available water quality information, such as NPDES or AZPDES water quality discharge data, as applicable.
  - e. If the Department determines that a surface water or segment does not merit listing under numeric water quality standards based on criteria in subsections (C)(1), (C)(2), (D)(1), or (D)(2) for a pollutant, but there is evidence of a narrative standard exceedance in that surface water or segment under subsection (D)(3) as a result of the presence of the same pollutant, the Department shall list the surface water or segment as impaired only when the evidence indi-

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states that the numeric water quality standard is insufficient to protect the designated use of the surface water or segment and the Department justifies the listing based on any of the following:

- i. The narrative standard data provide a more direct indication of impairment as supported by professionally prepared and peer-reviewed publications;
- ii. Sufficient evidence of impairment exists due to synergistic effects of pollutant combinations or site-specific environmental factors; or
- iii. The pollutant is bioaccumulative, relatively insoluble in water, or has other characteristics that indicate it is occurring in the specific surface water or segment at levels below the laboratory detection limits, but at levels sufficient to result in an impairment.

- 3. The Department may consider a single line of water quality evidence when the evidence is sufficient to demonstrate that the surface water or segment is impaired or not attaining.

C. Planning List.

- 1. When evaluating a surface water or segment for placement on the Planning List.
  - a. Consider at least ten spatially or temporally independent samples collected over three or more temporally independent sampling events; and
  - b. Determine numeric water quality standards exceedances. The Department shall:
    - i. Place a surface water or segment on the Planning List following subsection (B), if the number of exceedances of a surface water quality standard is greater than or equal to the number listed in Table 1, which provides the number of exceedances that indicate a minimum of a 10 percent exceedance frequency with a minimum of a 80 percent confidence level using a binomial distribution for a given sample size; or
    - ii. For sample datasets exceeding those shown in Table 1, calculate the number of exceedances using the following equation:  $(X \geq x | n, p)$  where  $n$  = number of samples;  $p$  = exceedance probability of 0.1;  $x$  = smallest number of exceedances required for listing with “ $n$ ” samples; and confidence level  $\geq$  80 percent.

**Table 1. Minimum Number of Samples Exceeding the Numeric Standard**

MINIMUM NUMBER OF SAMPLES EXCEEDING THE NUMERIC STANDARD								
Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard
From	To		From	To		From	To	
10	15	3	173	181	22	349	357	41
16	23	4	182	190	23	358	367	42
24	31	5	191	199	24	368	376	43
32	39	6	200	208	25	377	385	44
40	47	7	209	218	26	386	395	45
48	56	8	219	227	27	396	404	46
57	65	9	228	236	28	405	414	47
66	73	10	237	245	29	415	423	48
74	82	11	246	255	30	424	432	49
83	91	12	256	264	31	433	442	50
92	100	13	265	273	32	443	451	51
101	109	14	274	282	33	452	461	52
110	118	15	283	292	34	462	470	53
119	126	16	293	301	35	471	480	54
127	136	17	302	310	36	481	489	55
137	145	18	311	320	37	490	499	56
146	154	19	321	329	38	500		57
155	163	20	330	338	39			
164	172	21	339	348	40			

- 2. When there are less than ten samples, the Department shall place a surface water or segment on the Planning List following subsection (B), if three or more temporally independent samples exceed the following surface water quality standards:
  - a. The surface water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 1, except for nitrate or nitrate/nitrite;
  - b. The surface water quality standard for temperature or the single sample maximum water quality standard for suspended sediment concentration, nitrogen, and phosphorus in R18-11-109;
  - c. The surface water quality standard for radiochemicals in R18-11-109(G);
  - d. The surface water quality standard for dissolved oxygen under R18-11-109(E);
  - e. The surface water quality standard for pH under R18-11-109(B); or
  - f. The following surface water quality standards in R18-11-112:
    - i. Single sample maximum standards for nitrogen and phosphorus,
    - ii. All metals except chromium, or
    - iii. Turbidity.

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3. The Department shall place a surface water or segment on the Planning List if information in subsections (B)(2)(c), (B)(2)(d), and (B)(2)(e) indicates that a narrative water quality standard violation exists, but no narrative implementation procedure required under A.R.S. § 49-232(F) exists to support use of the information for listing.
- D. 303(d) List.**
1. When evaluating a surface water or segment for placement on the 303(d) List.
    - a. Consider at least 20 spatially or temporally independent samples collected over three or more temporally independent sampling events; and
    - b. Determine numeric water quality standards exceedances. The Department shall:
      - i. Place a surface water or segment on the 303(d) List, following subsection (B), if the number of exceedances of a surface water quality standard is greater than or equal to the number listed in Table 2, which provides the number of exceedances that indicate a minimum of a 10 percent exceedance frequency with a minimum of a 90 percent confidence level using a binomial distribution, for a given sample size; or
      - ii. For sample datasets exceeding those shown in Table 2, calculate the number of exceedances using the following equation:  $(X \geq x | n, p)$  where  $n$  = number of samples;  $p$  = exceedance probability of 0.1;  $x$  = smallest number of exceedances required for listing with “ $n$ ” samples; and confidence level  $\geq 90$  percent.

**Table 2. Minimum Number of Samples Exceeding the Numeric Standard**

MINIMUM NUMBER OF SAMPLES EXCEEDING THE NUMERIC STANDARD								
Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard
From	To		From	To		From	To	
20	25	5	174	182	24	344	352	43
26	32	6	183	191	25	353	361	44
33	40	7	192	199	26	362	370	45
41	47	8	200	208	27	371	379	46
48	55	9	209	217	28	380	388	47
56	63	10	218	226	29	389	397	48
64	71	11	227	235	30	398	406	49
72	79	12	236	244	31	407	415	50
80	88	13	245	253	32	416	424	51
89	96	14	254	262	33	425	434	52
97	104	15	263	270	34	435	443	53
105	113	16	271	279	35	444	452	54
114	121	17	280	288	36	453	461	55
122	130	18	289	297	37	462	470	56
131	138	19	298	306	38	471	479	57
139	147	20	307	315	39	480	489	58
148	156	21	316	324	40	490	498	59
157	164	22	325	333	41	499	500	60
165	173	23	334	343	42			

2. The Department shall place a surface water or segment on the 303(d) List, following subsection (B) without the required number of samples or numeric water quality standard exceedances under subsection (D)(1), if either the following conditions occur:
    - a. More than one temporally independent sample in any consecutive three-year period exceeds the surface water quality standard in:
      - i. The acute water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 2 and the acute water quality standards in R18-11-112;
      - ii. The surface water quality standard for nitrate or nitrate/nitrite in 18 A.A.C. 11, Article 1, Appendix A, Table 1; or
      - iii. The single sample maximum water quality standard for bacteria in subsections R18-11-109(A).
    - b. More than one exceedance of an annual mean, 90th percentile, aquatic and wildlife chronic water quality standard, or a bacteria 30-day geometric mean water quality standard occurs, as specified in R18-11-109, R18-11-110, R18-11-112, or 18 A.A.C. 11, Article 1, Appendix A, Table 2.
  3. Narrative water quality standards exceedances. The Department shall place a surface water or segment on the Planning List if the listing requirements are met under A.R.S. § 49-232(F).
- E. Removing a surface water, segment, or pollutant from the Planning List or the 303(d) List.**
1. Planning List. The Department shall remove a surface water, segment, or pollutant from the Planning List when:
    - a. Monitoring activities indicate that:
      - i. There is sufficient credible data to determine that the surface water or segment is impaired under subsection (D), in which case the Department shall place the surface water or segment

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- on the 303(d) List. This includes surface waters with an EPA approved TMDL when the Department determines that the TMDL strategy is insufficient for the surface water or segment to attain water quality standards; or
- ii. There is sufficient credible data to determine that the surface water or segment is attaining all designated uses and standards.
- b. All pollutants for the surface water or segment are delisted.
2. 303(d) List. The Department shall:
    - a. Remove a pollutant from a surface water or segment from the 303(d) List based on one or more of the following criteria:
      - i. The Department developed, and EPA approved, a TMDL for the pollutant;
      - ii. The data used for previously listing the surface water or segment under R18-11-605(D) is superseded by more recent credible and scientifically defensible data meeting the requirements of R18-11-602, showing that the surface water or segment meets the applicable numeric or narrative surface water quality standard. When evaluating data to remove a pollutant from the 303(d) List, the monitoring entity shall collect the more recent data under similar hydrologic or climatic conditions as occurred when the samples were taken that indicated impairment, if those conditions still exist;
      - iii. The surface water or segment no longer meets the criteria for impairment based on a change in the applicable surface water quality standard or a designated use approved by EPA under section 303(c)(1) of the Clean Water Act;
      - iv. The surface water or segment no longer meets the criteria for impairment for the specific narrative water quality standard based on a change in narrative water quality standard implementation procedures;
      - v. A re-evaluation of the data indicate that the surface water or segment does not meet the criteria for impairment because of a deficiency in the original analysis; or
      - vi. Pollutant loadings from naturally occurring conditions alone are sufficient to cause a violation of applicable water quality standards;
    - b. Remove a surface water, segment, or pollutant from the 303(d) List, based on criteria that are no more stringent than the listing criteria under subsection (D);
    - c. Remove a surface water or segment from the 303(d) List if all pollutants for the surface water or segment are removed from the list;
    - d. Remove a surface water, segment, or pollutant, from the 303(d) List and place it on the Planning List, if:
      - i. The surface water, segment or pollutant was on the 1998 303(d) List and the dataset used in the original listing does not meet the credible data requirements under R18-11-602, or contains insufficient samples to meet the data requirements under subsection (D); or
      - ii. The monitoring data indicate that the impairment is due to pollution, but not a pollutant.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

**R18-11-606. TMDL Priority Criteria for 303(d) Listed Surface Waters or Segments**

- A. In addition to the factors specified in A.R.S. § 49-233(C), the Department shall consider the following when prioritizing an impaired water for development of TMDLs:
  1. A change in a water quality standard;
  2. The date the surface water or segment was added to the 303(d) List;
  3. The presence in a surface water or segment of species listed as threatened or endangered under section 4 of the Endangered Species Act;
  4. The complexity of the TMDL;
  5. State, federal, and tribal policies and priorities; and
  6. The efficiencies of coordinating TMDL development with the Department's surface water monitoring program, the watershed monitoring rotation, or with remedial programs.
- B. The Department shall prioritize an impaired surface water or segment for TMDL development based on the factors specified in A.R.S. § 49-233(C) and subsection (A) as follows:
  1. Consider an impaired surface water or segment a high priority if:
    - a. The listed pollutant poses a substantial threat to the health and safety of humans, aquatic life, or wildlife based on:
      - i. The number and type of designated uses impaired;
      - ii. The type and extent of risk from the impairment to human health, aquatic life, or wildlife;
      - iii. The pollutant causing the impairment, or
      - iv. The severity, magnitude, and duration the surface water quality standard was exceeded;
    - b. A new or modified individual NPDES or AZPDES permit is sought for a new or modified discharge to the impaired water;
    - c. The listed surface water or segment is listed as a unique water in A.A.C. R18-11-112 or is part of an area classified as a "wilderness area," "wild and scenic river," or other federal or state special protection of the water resource;
    - d. The listed surface water or segment contains a species listed as threatened or endangered under the federal Endangered Species Act and the presence of the pollutant in the surface water or segment is likely to jeopardize the listed species;
    - e. A delay in conducting the TMDL could jeopardize the Department's ability to gather sufficient credible data necessary to develop the TMDL;
    - f. There is significant public interest and support for the development of a TMDL;
    - g. The surface water or segment has important recreational and economic significance to the public; or
    - h. The pollutant is listed for eight years or more.
  2. Consider an impaired surface water or segment a medium priority if:
    - a. The surface water or segment fails to meet more than one designated use;
    - b. The pollutant exceeds more than one surface water quality standard;
    - c. A surface water quality standard exceedance is correlated to seasonal conditions caused by natural events, such as storms, weather patterns, or lake turnover;

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- d. It will take more than two years for proposed actions in the watershed to result in the surface water attaining applicable water quality standards;
  - e. The type of pollutant and other factors relating to the surface water or segment make the TMDL complex; or
  - f. The administrative needs of the Department, including TMDL schedule commitments with EPA, permitting requirements, or basin priorities that require completion of the TMDL.
3. Consider an impaired surface water or segment a low priority if:
- a. The Department has formally submitted a proposal to delist the surface water, segment, or pollutant to EPA based on R18-11-605(E)(2). If the Department makes the submission outside the listing process cycle, the change in priority ranking will not be effective until EPA approves the submittal;
  - b. The Department has modified, or formally proposed for modification, the designated use or applicable surface water quality standard, resulting in an impaired water no longer being impaired, but the modification has not been approved by EPA;
  - c. The surface water or segment is expected to attain surface water quality standards due to any of the following:
    - i. Recently instituted treatment levels or best management practices in the drainage area,
    - ii. Discharges or activities related to the impairment have ceased, or
    - iii. Actions have been taken and controls are in place or scheduled for implementation that will likely to bring the surface water back into compliance;
  - d. The surface water or segment is ephemeral or intermittent. The Department shall re-prioritize the surface water or segment if the presence of the pollutant in the listed water poses a threat to the health and safety of humans, aquatic life, or wildlife using the water, or the pollutant is contributing to the impairment of a downstream perennial surface water or segment;
  - e. The pollutant poses a low ecological and human health risk;
  - f. Insufficient data exist to determine the source of the pollutant load;
  - g. The uncertainty of timely coordination with national and international entities concerning international waters;
  - h. Naturally occurring conditions are a major contributor to the impairment; and
  - i. No documentation or effective analytical tools exist to develop a TMDL for the surface water or segment with reasonable accuracy.
- C.** The Department will target surface waters with high priority factors in subsections (B)(1)(a) through (B)(1)(d) for initiation of TMDLs within two years following EPA approval of the 303(d) List.
- D.** The Department may shift priority ranking of a surface water or segment for any of the following reasons:
1. A change in federal, state, or tribal policies or priorities that affect resources to complete a TMDL;
  2. Resource efficiencies for coordinating TMDL development with other monitoring activities, including the Department's ambient monitoring program that monitors watersheds on a five-year rotational basis;
  3. Resource efficiencies for coordinating TMDL development with Department remedial or compliance programs;
  4. New information is obtained that will revise whether the surface water or segment is a high priority based on factors in subsection (B); and
  5. Reduction or increase in staff or budget involved in the TMDL development.
- E.** The Department may complete a TMDL initiated before July 12, 2002 for a surface water or segment that was listed as impaired on the 1998 303(d) List but does not qualify for listing under the criteria in R18-11-605, if:
1. The TMDL investigation establishes that the water quality standard is not being met and the allocation of loads is expected to bring the surface water into compliance with standards,
  2. The Department estimates that more than 50 percent of the cost of completing the TMDL has been spent,
  3. There is community involvement and interest in completing the TMDL, or
  4. The TMDL is included within an EPA-approved state workplan initiated before July 12, 2002.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

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## 49-203. Powers and duties of the director and department

### A. The director shall:

1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.
2. Adopt, by rule, a permit program that is consistent with but no more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into navigable waters. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.
3. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into navigable waters.
4. Adopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants that are reaching or may with a reasonable probability reach an aquifer. The permit program shall be as prescribed by article 3 of this chapter.
5. Adopt, by rule, the permit program for underground injection control described in the safe drinking water act.
6. Adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water.
7. Adopt, by rule or as permit conditions, such discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and such other standards and conditions as are reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 5 of this subsection.
8. Assess and collect fees to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees that are reasonably related to the department's costs of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this chapter. Monies collected from aquifer protection permit fees and from Arizona pollutant discharge elimination system permit fees shall be deposited, pursuant to sections 35-146 and 35-147,

in the water quality fee fund established by section 49-210. Monies from other permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund unless otherwise provided by law. Monies paid by an applicant for review by consultants for the department pursuant to section 49-241.02, subsection D, shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

9. Adopt, modify, repeal and enforce other rules that are reasonably necessary to carry out the director's functions under this chapter.

10. Require monitoring at an appropriate point of compliance for any organic or inorganic pollutant listed under section 49-243, subsection I if the director has reason to suspect the presence of the pollutant in a discharge.

11. Adopt rules establishing what constitutes a significant increase or adverse alteration in the characteristics or volume of pollutants discharged for purposes of determining what constitutes a major modification to an existing facility under the definition of new facility pursuant to section 49-201. Before the adoption of these rules, the director shall determine whether a change at a particular facility results in a significant increase or adverse alteration in the characteristics or volume of pollutants discharged on a case by case basis, taking into account site conditions and operational factors.

B. The director may:

1. On presentation of credentials, enter into, on or through any public or private property from which a discharge has occurred, is occurring or may occur or on which any disposal, land application of sludge or treatment regulated by this chapter has occurred, is occurring or may be occurring and any public or private property where records relating to a discharge or records that are otherwise required to be maintained as prescribed by this chapter are kept, as is reasonably necessary to ensure compliance with this chapter. The director or a department employee may take samples, inspect and copy records required to be maintained pursuant to this chapter, inspect equipment, activities, facilities and monitoring equipment or methods of monitoring, take photographs and take other action reasonably necessary to determine the application of, or compliance with, this chapter. The owner or managing agent of the property shall be afforded the opportunity to accompany the director or department employee during inspections and investigations, but prior notice of entry to the owner or managing agent is not required if reasonable grounds exist to believe that such notice would frustrate the enforcement of this chapter. If the director or department employee obtains any samples before leaving the premises, the director or department employee shall give the owner or managing agent a receipt describing the samples obtained and a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of samples, or monitoring and testing are performed, a copy of the results shall be furnished promptly to the owner or managing agent.

2. Require any person who has discharged, is discharging or may discharge into the waters of the state under article 3 or 3.1 of this chapter and any person who is subject to pretreatment standards and requirements or sewage sludge use or disposal requirements under article 3.1 of this chapter to collect samples, to establish and maintain records, including photographs, and to install, use and maintain sampling and monitoring equipment to determine the absence or presence and nature of the discharge or indirect discharge or sewage sludge use or disposal.

3. Administer state or federal grants, including grants to political subdivisions of this state, for the construction and installation of publicly and privately owned pollutant treatment works and pollutant control devices and establish grant application priorities.

4. Develop, implement and administer a water quality planning process, including a ranking system for applicant eligibility, wherein appropriated state monies and available federal monies are awarded to political subdivisions of this state to support or assist regional water quality planning programs and activities.

5. Enter into contracts and agreements with the federal government to implement federal environmental statutes and programs.

6. Enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3 if the agreement is necessary to more effectively administer the powers and duties described in this chapter.

7. Participate in, conduct and contract for studies, investigations, research and demonstrations relating to the causes, minimization, prevention, correction, abatement, mitigation, elimination, control and remedy of discharges and collect and disseminate information relating to discharges.

8. File bonds or other security as required by a court in any enforcement actions under article 4 of this chapter.

C. Subject to section 38-503 and other applicable statutes and rules, the department may contract with a private consultant for the purposes of assisting the department in reviewing aquifer protection permit applications and on-site wastewater treatment facilities to determine whether a facility meets the criteria and requirements of this chapter and the rules adopted by the director. Except as provided in section 49-241.02, subsection D, the department shall not use a private consultant if the fee charged for that service would be greater than the fee the department would charge to provide that service. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant or facility to the department pursuant to subsection A, paragraph 8 of this section.

D. The director shall integrate all of the programs authorized in this section and such other programs affording water quality protection that are administered by the department for purposes of administration and enforcement and shall avoid duplication and dual permitting to the maximum extent practicable.

### 49-231. Definitions *[provided for reference]*

In this article, unless the context otherwise requires:

1. "Impaired water" means a navigable water for which credible scientific data exists that satisfies the requirements of section 49-232 and that demonstrates that the water should be identified pursuant to 33 United States Code section 1313(d) and the regulations implementing that statute.

2. "Surface water quality standard" means a standard adopted for a navigable water pursuant to sections 49-221 and 49-222 and section 303(c) of the clean water act (33 United States Code section 1313(c)).

3. "TMDL implementation plan" means a written strategy to implement a total maximum daily load that is developed for an impaired water. TMDL implementation plans may rely on any combination of the following components that the department determines will result in achieving and maintaining compliance with applicable surface water quality standards in the most cost-effective and equitable manner:

(a) Permit limitations.

(b) Best management practices.

(c) Education and outreach efforts.

- (d) Technical assistance.
- (e) Cooperative agreements, voluntary measures and incentive-based programs.
- (f) Load reductions resulting from other legally required programs or activities.
- (g) Land management programs.
- (h) Pollution prevention planning, waste minimization or pollutant trading agreements.
- (i) Other measures deemed appropriate by the department.

4. "Total maximum daily load" means an estimation of the total amount of a pollutant from all sources that may be added to a water while still allowing the water to achieve and maintain applicable surface water quality standards. Each total maximum daily load shall include allocations for sources that contribute the pollutant to the water, as required by section 303(d) of the clean water act (33 United States Code section 1313(d)) and regulations implementing that statute to achieve applicable surface water quality standards.

#### 49-232. Lists of impaired waters; data requirements; rules

A. At least once every five years, the department shall prepare a list of impaired waters for the purpose of complying with section 303(d) of the clean water act (33 United States Code section 1313(d)). The department shall provide public notice and allow for comment on a draft list of impaired waters prior to its submission to the United States environmental protection agency. The department shall prepare written responses to comments received on the draft list. The department shall publish the list of impaired waters that it plans to submit initially to the regional administrator and a summary of the responses to comments on the draft list in the Arizona administrative register at least forty-five days before submission of the list to the regional administrator. Publication of the list in the Arizona administrative register is an appealable agency action pursuant to title 41, chapter 6, article 10 that may be appealed by any party that submitted written comments on the draft list. If the department receives a notice of appeal of a listing pursuant to section 41-1092, subsection B within forty-five days of the publication of the list in the Arizona administrative register, the department shall not include the challenged listing in its initial submission to the regional administrator. The department may subsequently submit the challenged listing to the regional administrator if the listing is upheld in the director's final administrative decision pursuant to section 41-1092.08, or if the challenge to the listing is withdrawn prior to a final administrative decision.

B. In determining whether a water is impaired, the department shall consider only reasonably current credible and scientifically defensible data that the department has collected or has received from another source. Results of water sampling or other assessments of water quality, including physical or biological health, shall be considered credible and scientifically defensible data only if the department has determined all of the following:

1. Appropriate quality assurance and quality control procedures were followed and documented in collecting and analyzing the data.
2. The samples or analyses are representative of water quality conditions at the time the data was collected.
3. The data consists of an adequate number of samples based on the nature of the water in question and the parameters being analyzed.

4. The method of sampling and analysis, including analytical, statistical and modeling methods, is generally accepted and validated in the scientific community as appropriate for use in assessing the condition of the water.

C. The department shall adopt by rule the methodology to be used in identifying waters as impaired. The rules shall specify all of the following:

1. Minimum data requirements and quality assurance and quality control requirements that are consistent with subsection B of this section and that must be satisfied in order for the data to serve as the basis for listing and delisting decisions.

2. Appropriate sampling, analytical and scientific techniques that may be used in assessing whether a water is impaired.

3. Any statistical or modeling techniques that the department uses to assess or interpret data.

4. Criteria for including and removing waters from the list of impaired waters, including any implementation procedures developed pursuant to subsection F of this section. The criteria for removing a water from the list of impaired waters shall not be any more stringent than the criteria for adding a water to that list.

D. In assessing whether a water is impaired, the department shall consider the data available in light of the nature of the water in question, including whether the water is an ephemeral water. A water in which pollutant loadings from naturally occurring conditions alone are sufficient to cause a violation of applicable surface water quality standards shall not be listed as impaired.

E. If the department has adopted a numeric surface water quality standard for a pollutant and that standard is not being exceeded in a water, the department shall not list the water as impaired based on a conclusion that the pollutant causes a violation of a narrative or biological standard unless:

1. The department has determined that the numeric standard is insufficient to protect water quality.

2. The department has identified specific reasons that are appropriate for the water in question, that are based on generally accepted scientific principles and that support the department's determination.

F. Before listing a navigable water as impaired based on a violation of a narrative or biological surface water quality standard and after providing an opportunity for public notice and comment, the department shall adopt implementation procedures that specifically identify the objective basis for determining that a violation of the narrative or biological criterion exists. A total maximum daily load designed to achieve compliance with a narrative or biological surface water quality standard shall not be adopted until the implementation procedure for the narrative or biological surface water quality standard has been adopted.

G. On request, the department shall make available to the public data used to support the listing of a water as impaired and may charge a reasonable fee to persons requesting the data.

H. By January 1, 2002, the department shall review the list of waters identified as impaired as of January 1, 2000 to determine whether the data that supports the listing of those waters complies with this section. If the data that supports a listing does not comply with this section, the listed water shall not be included on future lists submitted to the United States environmental protection agency pursuant to 33 United States Code section 1313(d) unless in the interim data that satisfies the requirements of this section has been collected or received by the department.

I. The department shall add a water to or remove a water from the list using the process described in section 49-232, subsection A outside of the normal listing cycle if it collects or receives credible and scientifically defensible data that satisfies the requirements of this section and that demonstrates that the current quality of the water is such that it should be removed from or added to the list. A listed water may no longer warrant classification as impaired or an unlisted water may be identified as impaired if the applicable surface water quality standards, implementation procedures or designated uses have changed or if there is a change in water quality.

### 49-233. Priority ranking and schedule

A. Each list developed by the department pursuant to section 49-232 shall contain a priority ranking of navigable waters identified as impaired and for which total maximum daily loads are required pursuant to section 49-234 and a schedule for the development of all required total maximum daily loads.

B. In the first list submitted to the United States environmental protection agency after the effective date of this article, the schedule shall be sufficient to ensure that all required total maximum daily loads will be developed within fifteen years of the date the list is approved by the environmental protection agency. Total maximum daily loads that are required to be developed for navigable waters that are included for the first time on subsequent lists shall be developed within fifteen years of the initial inclusion of the water on the list.

C. As part of the rule making prescribed by section 49-232, subsection C, the department shall identify the factors that it will use to prioritize navigable waters that require development of total maximum daily loads. At a minimum and to the extent relevant data is available, the department shall consider the following factors in prioritizing navigable waters for development of total maximum daily loads:

1. The designated uses of the navigable water.
2. The type and extent of risk from the impairment to human health or aquatic life.
3. The degree of public interest and support, or its lack.
4. The nature of the navigable water, including whether it is an ephemeral, intermittent or effluent-dependent water.
5. The pollutants causing the impairment.
6. The severity, magnitude and duration of the violation of the applicable surface water quality standard.
7. The seasonal variation caused by natural events such as storms or weather patterns.
8. Existing treatment levels and management practices.
9. The availability of effective and economically feasible treatment techniques, management practices or other pollutant loading reduction measures.
10. The recreational and economic importance of the water.
11. The extent to which the impairment is caused by discharges or activities that have ceased.
12. The extent to which natural sources contribute to the impairment.

13. Whether the water is accorded special protection under federal or state water quality law.
14. Whether action that is taken or that is likely to be taken under other programs, including voluntary programs, is likely to make significant progress toward achieving applicable standards even if a total maximum daily load is not developed.
15. The time expected to be required to achieve compliance with applicable surface water quality standards.
16. The availability of documented, effective analytical tools for developing a total maximum daily load for the water with reasonable accuracy.
17. Department resources and programmatic needs.

#### 49-235. Rules

The department shall adopt any rules necessary to implement this article.