

C-1

DEPARTMENT OF HEALTH SERVICES

Title 9, Chapter 13, Article 2, Newborn and Infant Screening

Amend: R9-13-201, R9-13-203



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: December 7, 2021

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

FROM: Council Staff

DATE: November 10, 2021

SUBJECT: DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 13, Article 2, Newborn and Infant Screening

Amend: R9-13-201, R9-13-203

Summary:

This expedited rulemaking from the Department of Health Services (Department) relates to rules in Title 9, Chapter 13, Article 2, regarding Newborn and Infant Screening. In this expedited rulemaking, the Department seeks to amend two rules, R9-13-201 (Definitions) and R9-13-203 (Newborn and Infant Bloodspot Tests) to comply with Laws 2021, Ch. 409, § 32, which amended A.R.S. § 36-694(D).

This statute requires the Department to establish a newborn screening program within the Department to ensure that the testing for congenital disorders and the reporting of hearing test results required under the statute are conducted in an effective and efficient manner. Laws 2021, Ch. 409, § 32 amended the statute to require the addition of spinal muscular atrophy and x-linked adrenoleukodystrophy to Arizona's newborn screening panel on or before December 31, 2021.

The session law further required the Department to add all remaining core and secondary conditions that are included on the recommended uniform screening panel adopted by the Secretary of the Department of Health and Human Services as of December 31, 2021 on or before December 31, 2023.

In this expedited rulemaking, the Department is adding the two congenital disorders specified in the session law to the state's newborn screening panel by December 31, 2021. The Department received approval to initiate this expedited rulemaking on July 19, 2021 and final approval to submit it to the Council on October 4, 2021.

1. **Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?**

Yes. As described in Item 6 of the Preamble, the Department is amending these two rules to comply with recent statutory changes. The Department further indicates that the rulemaking would not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights. The Department further states that the rulemaking would provide a public benefit and amend rules made obsolete by legislative action. Upon review of the applicable statutes, Council staff agrees that the Department meets the criteria for expedited rulemaking under A.R.S. § 41-1027(A)(4) and/or (6).

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

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

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

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

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

Yes. As indicated in Item 11 of the Preamble, the Department received two comments on this rulemaking. The Department adequately responded to both comments.

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

No. The Department did not make any changes to the rules between the Notice of Proposed Expedited Rulemaking and the Notice of Final Expedited Rulemaking.

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

No. The Department indicates that there are no corresponding federal laws to these rules.

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

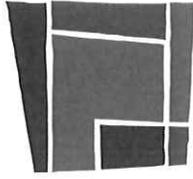
No. The Department indicates that these rules do not require the issuance of a regulatory permit.

8. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Department did not review or rely on a study in conducting this expedited rulemaking.

9. **Conclusion**

In this expedited rulemaking, the Department seeks to amend two rules in order to comply with recent statutory changes regarding the state's Newborn Screening Program. If approved, this rulemaking would be effective immediately on the Department filing the Notice of Final Expedited Rulemaking and Certificate of Approval with the Secretary of State. Council staff recommends approval of this expedited rulemaking.



ARIZONA DEPARTMENT
OF HEALTH SERVICES
POLICY & INTERGOVERNMENTAL AFFAIRS

October 05, 2021

VIA EMAIL: grrc@azdoa.gov

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

RE: Department of Health Services, 9 A.A.C. 13, Expedited Rulemaking

Dear Ms. Sornsin:

1. The close of record date: September 30, 2021
2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. The rulemaking adopts requirements implementing Laws 2021, Ch. 409 and amends an outdated rule. This rulemaking will ensure that spinal muscular atrophy and x-linked adrenoleukodystrophy are added to the State's newborn screening panel on or before December 31, 2021, as required by Laws 2021, Ch. 409, § 32. The rulemaking provides a public benefit, amends rules made obsolete by legislative action, and is expected to increase the quality of health and safety for newborns. The rulemaking complies with criteria for expedited rulemaking under A.R.S. § 41-1027, including (A)(4) and (A)(6).
3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The changes being made by the rulemaking are not related to a five-year-review report approved by the Council.

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

Douglas A. Ducey | Governor Don Herrington | Interim Director

4. A list of all items enclosed:
 - a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule, and
 - b. Statutory authority

The Department's point of contact for questions about the rulemaking documents is Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov.

Sincerely,



Robert Lane
Director's Designee

RL:tk

Enclosures

Douglas A. Ducey | Governor Don Herrington | Interim Director

NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 13. DEPARTMENT OF HEALTH SERVICES
HEALTH PROGRAM SERVICES
ARTICLE 2. NEWBORN AND INFANT SCREENING

PREAMBLE

<u>1.</u>	<u>Article, Part, of Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
	R9-13-201	Amend
	R9-13-203	Amend

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

Authorizing Statutes: A.R.S. §§ 36-132(A)(1) and 36-136(G)
Implementing Statutes: A.R.S. § 36-694

3. **The effective date of the rules:**

The rule is effective the day the Notice of Final Expedited Rulemaking is filed with the Office of the Secretary of State.

4. **Citations to all related notices published in the *Register* that pertain to the record of the final expedited rulemaking:**

Notice of Docket Opening: 27 A.A.R. 1334, August 27, 2021
Notice of Proposed Expedited Rulemaking: 27 A.A.R. 1417, September 10, 2021

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

Name: Ward B. Jacox, Assistant Bureau Chief
Address: Arizona Department of Health Services
Arizona State Public Health Laboratory
250 N. 17th Ave.
Phoenix, AZ 85007-3248

Telephone: (602) 364-1410
Fax: (602) 364-1495
E-mail: ward.jacox@azdhs.gov

or

Name: Robert Lane, Office Chief
Address: Arizona Department of Health Services

Office of Administrative Counsel and Rules
150 N. 18th Ave., Suite 200
Phoenix, AZ 85007

Telephone: (602) 542-1020

Fax: (602) 364-1150

E-mail: Robert.Lane@azdhs.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S. § 41-1027, to include an explanation about the rulemaking:

Arizona Revised Statutes (A.R.S.) § 36-694(D) requires the Arizona Department of Health Services (Department) to establish a Newborn Screening Program within the Department to ensure that the testing for congenital disorders required by A.R.S. § 36-694 is conducted in an effective and efficient manner. The Department has adopted rules to implement A.R.S. § 36-694 in Arizona Administrative Code (A.A.C.) Title 9, Chapter 13, Article 2. A.R.S. § 36-694(D), as amended by Laws 2021, Ch. 409, § 14, requires the Newborn Screening Program to include all congenital disorders that are included on the Recommended Uniform Screening Panel adopted by the Secretary of the United States Department of Health and Human Services (<https://www.hrsa.gov/advisory-committees/heritable-disorders/rusp/index.html>) for both core and secondary conditions, as well as make necessary changes related to fees. The Department received an exception from the Governor's rulemaking moratorium to make these changes. Laws 2021, Chapter 409, § 32 requires the Department to add two disorders to the State's Newborn Screening panel by December 31, 2021. Through this expedited rulemaking, the Department is complying with this Legislative requirement and adding the two disorders. These changes do not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights. Rather, they provide a public benefit and amend rules made obsolete by legislative action. The proposed changes conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

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

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

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

Not applicable

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

Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.

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

Between the proposed expedited rulemaking and the final expedited rulemaking, no changes were made to the rulemaking.

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

The Department received two comments on the rulemaking. The first was from Cure SMA and stated: "Cure SMA strongly supports the expedited rulemaking proposal to add SMA and x-lined adrenoleukodystrophy (X-ALD) to Arizona's Newborn screening program" and asked "that the rule be adopted immediately." The second comment was from an unidentified stakeholder through the Department's on-line survey. The portion of the comment related to the rulemaking stated that the Recommended Uniform Screening Panel (RUSP) also "calls for methylmalonic Acidemia (Cobalamin Disorders)." Laws 2021, Chapter 409, § 32 requires the Department to add spinal muscular atrophy and X-linked adrenoleukodystrophy by December 31, 2021, and notwithstanding A.R.S. § 36-694(D), requires the Department, "[o]n or before December 31, 2023, [to] add all remaining core and secondary conditions that are included on the RUSP." Accordingly, on or before December 31, 2023, the Department, through a subsequent rulemaking, plans to add all remaining core and secondary conditions that are included on the RUSP as of December 31, 2021, to the Newborn Screening panel.

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

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

The rule does not require the issuance of a regulatory permit. Therefore, a general permit is not applicable.

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

Federal laws do not apply to the rule.

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

No such analysis was submitted.

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

None

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

The rule was not previously made as an emergency rule.

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES
CHAPTER 13. DEPARTMENT OF HEALTH SERVICES
HEALTH PROGRAM SERVICES
ARTICLE 2. NEWBORN AND INFANT SCREENING

Section

- R9-13-201. Definitions
- R9-13-203. Newborn and Infant Bloodspot Tests

R9-13-201. Definitions

In this Article, unless otherwise specified:

1. “Abnormal result” means an outcome that deviates from the range of values established by:
 - a. The Department for an analysis performed as part of a bloodspot test or for a hearing test, or
 - b. A health care facility or health care provider for critical congenital heart defect screening.
2. “Admission” or “admitted” means the same as in A.A.C. R9-10-101.
3. “AHCCCS” means the Arizona Health Care Cost Containment System.
4. “Argininosuccinic acidemia” means a congenital disorder characterized by an inability to metabolize the amino acid argininosuccinic acid due to defective argininosuccinate lyase activity.
5. “Arizona State Laboratory” means the entity operated according to A.R.S. § 36-251.
6. “Audiological equipment” means an instrument used to help determine the presence, type, or degree of hearing loss by:
 - a. Providing ear-specific and frequency-specific stimuli to an individual; or
 - b. Measuring an individual’s physiological response to stimuli.
7. “Audiologist” means the same as in A.R.S. § 36-1901.
8. “Beta-ketothiolase deficiency” means a congenital disorder characterized by an inability to metabolize 2-methyl-acetoacetyl-CoA due to defective mitochondrial acetoacetyl-CoA thiolase activity.
9. “Biotinidase deficiency” means a congenital disorder characterized by defective biotinidase activity that causes abnormal biotin metabolism.
10. “Birth center” means a health care facility that is not a hospital and is organized for the purpose of delivering newborns.
11. “Blood sample” means capillary or venous blood, but not cord blood, applied to the filter paper of a specimen collection kit.
12. “Bloodspot test” means multiple laboratory analyses performed on a blood sample to screen for the presence of congenital disorders listed in R9-13-203.
13. “Carnitine uptake defect” means a congenital disorder characterized by a decrease in the amount of free carnitine due to defective sodium ion-dependent carnitine transporter OCTN2 activity.

14. "Citrullinemia" means a congenital disorder characterized by an inability to convert the amino acid citrulline and aspartic acid into argininosuccinic acid due to defective argininosuccinate synthetase activity.
15. "Classic galactosemia" means a congenital disorder characterized by abnormal galactose metabolism due to defective galactose-1-phosphate uridylyltransferase activity.
16. "Congenital adrenal hyperplasia" means a congenital disorder characterized by decreased cortisol production and increased androgen production due to defective 21-hydroxylase activity.
17. "Congenital disorder" means an abnormal condition present at birth, as a result of heredity or environmental factors, that impairs normal physiological functioning of a human body.
18. "Congenital hypothyroidism" means a congenital disorder characterized by deficient thyroid hormone production.
19. "Critical congenital heart defect" means a heart abnormality or condition present at birth that places a newborn or infant at significant risk of disability or death if not diagnosed soon after birth.
20. "Cystic fibrosis" means a congenital disorder caused by defective functioning of a transmembrane regulator protein and characterized by damage to and dysfunction of various organs, such as the lungs, pancreas, and reproductive organs.
21. "Department" means the Arizona Department of Health Services.
22. "Diagnostic evaluation" means a hearing test performed by an audiologist or a physician to determine whether hearing loss exists, and, if applicable, determine the type or degree of hearing loss.
23. "Discharge" means the termination of inpatient services to a newborn or an infant.
24. "Disorder" means a disease or medical condition that may be identified by a laboratory analysis.
25. "Document" means to establish and maintain information in written, photographic, electronic, or other permanent form.
26. "Educational materials" means printed or electronic information provided by the Department, explaining newborn and infant screening, any of the congenital disorders listed in R9-13-203, hearing loss, or critical congenital heart defect.
27. "Electronic" means the same as in A.R.S. § 44-7002.

28. “First specimen” means the initial specimen that is collected from a newborn who is less than five days of age and sent to the Arizona State Laboratory for testing and recording of demographic information.
29. “Glutaric acidemia type I” means a congenital disorder characterized by an accumulation of glutaric acid due to defective glutaryl-CoA dehydrogenase activity.
30. “Guardian” means an individual appointed by a court under A.R.S. Title 14, Chapter 5, Article 2.
31. “Health care facility” means a health care institution defined in A.R.S. § 36-401 where obstetrical care or newborn care is provided.
32. “Health care provider” means a physician, physician assistant, registered nurse practitioner, or midwife.
33. “Health-related services” means the same as in A.R.S. § 36-401.
34. “Hearing screening” means a hearing test to determine the likelihood of hearing loss in a newborn or infant.
35. “Hearing test” means an evaluation of each of a newborn’s or an infant’s ears, using audiological equipment to:
 - a. Screen the newborn or infant for a possible hearing loss;
 - b. Determine that the newborn or infant does not have a hearing loss; or
 - c. Diagnose a hearing loss in the newborn or infant, including determining the type or degree of hearing loss.
36. “Hemoglobin S/Beta-thalassemia” means a sickle cell disease in which an individual has one sickle cell gene and one gene for beta thalassemia, another inherited hemoglobinopathy.
37. “Hemoglobin S/C disease” means a sickle cell disease in which an individual has one sickle cell gene and one gene for another inherited hemoglobinopathy called hemoglobin C.
38. “Hemoglobinopathy” means a congenital disorder characterized by abnormal production, structure, or functioning of hemoglobin.
39. “Home birth” means delivery of a newborn, outside a health care facility, when the newborn is not hospitalized within 72 hours of delivery.
40. “Homocystinuria” means a congenital disorder characterized by abnormal methionine and homocysteine metabolism due to defective cystathione-β-synthase activity.
41. “Hospital” means the same as in A.A.C. R9-10-101.
42. “Hospital services” means the same as in A.A.C. R9-10-201.

43. “3-Hydroxy-3-methylglutaric aciduria” means a congenital disorder characterized by the accumulation of 3-hydroxy-3-methylglutaric acid due to a defective 3-hydroxy-3-methylglutaryl-CoA lyase activity.
44. “Identification code” means a unique set of numbers or letters, or a unique set of both numbers and letters, assigned by the Department to a health care facility, a health care provider, an audiologist, or another person submitting specimen collection kits to the Arizona State Laboratory or hearing test results to the Department.
45. “Infant” means the same as in A.R.S. § 36-694.
46. “Inpatient” means an individual who:
 - a. Is admitted to a hospital,
 - b. Receives hospital services for 24 consecutive hours, or
 - c. Is admitted to a birth center.
47. “Inpatient services” means medical services, nursing services, or other health-related services provided to an inpatient in a health care facility.
48. “Isovaleric acidemia” means a congenital disorder characterized by an accumulation of isovaleric acid due to defective isovaleryl-CoA dehydrogenase activity.
49. “Long-chain 3-hydroxy acyl-CoA dehydrogenase deficiency” means a congenital disorder characterized by an inability to metabolize fatty acids that are 12 to 16 carbon atoms in length due to defective long-chain 3-hydroxy acyl-CoA dehydrogenase activity.
50. “Maple syrup urine disease” means a congenital disorder of branched chain amino acid metabolism due to defective branched chain-keto acid dehydrogenase activity.
51. “Medical services” means the same as in A.R.S. § 36-401.
52. “Medium chain acyl-CoA dehydrogenase deficiency” means a congenital disorder characterized by an inability to metabolize fatty acids that are 6 to 10 carbon atoms in length due to defective medium-chain acyl-CoA dehydrogenase activity.
53. “3-Methylcrotonyl-CoA carboxylase deficiency” means a congenital disorder characterized by an accumulation of 3-methylcrotonyl-glycine due to defective 3-methylcrotonyl-CoA carboxylase activity.
54. “Methylmalonic acidemia (Cbl A,B)” means a congenital disorder characterized by an accumulation of methylmalonic acid due to defective activity of methylmalonyl-CoA racemase or adenosylcobalamin synthetase.
55. “Methylmalonic acidemia (mutase deficiency)” means a congenital disorder characterized by an accumulation of methylmalonic acid due to defective methylmalonyl-CoA mutase activity.

56. “Midwife” means an individual licensed under A.R.S. Title 36, Chapter 6, Article 7, or certified under A.R.S. Title 32, Chapter 15.
57. “Multiple carboxylase deficiency” means a congenital disorder characterized by an inability to transport or metabolize biotin that leads to defective activity of propionyl-CoA carboxylase, beta-methylcrotonyl-CoA carboxylase, and pyruvate carboxylase.
58. “Newborn” means the same as in A.R.S. § 36-694.
59. “Newborn care” means medical services, nursing services, and health-related services provided to a newborn.
60. “Nursing services” means the same as in A.R.S. § 36-401.
61. “Obstetrical care” means medical services, nursing services, and health-related services provided to a woman throughout her pregnancy, labor, delivery, and postpartum.
62. “Organ” means a somewhat independent part of a human body, such as a salivary gland, kidney, or pancreas, which performs a specific function.
63. “Parent” means a natural, adoptive, or custodial mother or father of a newborn or an infant.
64. “Parenteral nutrition” means the feeding of an individual intravenously through the administration of a formula containing glucose, amino acids, lipids, vitamins, and minerals.
65. “Person” means the state, a municipality, district, or other political subdivision, a cooperative, institution, corporation, company, firm, partnership, individual, or other legal entity.
66. “Phenylketonuria” means a congenital disorder characterized by abnormal phenylalanine metabolism due to defective phenylalanine hydroxylase activity.
67. “Physician” means an individual licensed under A.R.S. Title 32, Chapters 13, 14, 17, or 29.
68. “Physician assistant” means an individual licensed under A.R.S. Title 32, Chapter 25.
69. “Propionic acidemia” means a congenital disorder characterized by an accumulation of glycine and 3-hydroxypropionic acid due to defective propionyl-CoA carboxylase activity.
70. “Pulse oximetry” means a non-invasive method of measuring the percentage of hemoglobin in the blood that is saturated with oxygen using a device approved by the U.S. Food and Drug Administration for use with newborns or infants less than six weeks of age.
71. “Registered nurse practitioner” means the same as in A.R.S. § 32-1601.

72. “Second specimen” means a specimen that is sent to the Arizona State Laboratory for testing and recording of demographic information, after being collected:
- a. From a newborn after a first specimen; or
 - b. From an individual at least five days and not older than one year of age, regardless of whether a first specimen was collected.
73. “Severe combined immunodeficiency” means a congenital disorder usually characterized by a defect in both the T- and B-lymphocyte systems, which typically results in the onset of one or more serious infections within the first few months of life.
74. “Sickle cell anemia” means a sickle cell disease in which an individual has two sickle cell genes.
75. “Sickle cell disease” means a hemoglobinopathy characterized by an abnormally shaped red blood cell resulting from the abnormal structure of the protein hemoglobin.
76. “Sickle cell gene” means a unit of inheritance that is involved in producing an abnormal type of the protein hemoglobin, in which the amino acid valine is substituted for the amino acid glutamic acid at a specific location in the hemoglobin.
77. “Specimen” means a blood sample obtained from and demographic information about a newborn or an infant.
78. “Specimen collection kit” means a strip of filter paper for collecting a blood sample attached to a form for obtaining the information specified in R9-13-203(B)(3) about a newborn or an infant.
79. “Spinal muscular atrophy ” means a congenital disorder characterized by the loss of nerve cells in the spinal cord that control muscle movement due to the deletion of exon 7 in the survival motor neuron 1 (SMN1) gene.
- ~~79.~~80. “Transfer” means a health care facility or health care provider discharging a newborn and sending the newborn to a hospital for inpatient medical services without the intent that the patient will be returned to the sending health care facility or health care provider.
- ~~80.~~81. “Transfusion” means the infusion of blood or blood products into the body of an individual.
- ~~81.~~82. “Trifunctional protein deficiency” means a congenital disorder characterized by an inability to metabolize fatty acids that are 12 to 18 carbon atoms in length due to defective mitochondrial trifunctional protein activity.
- ~~82.~~83. “Tyrosinemia type I” means a congenital disorder characterized by an accumulation of the amino acid tyrosine due to defective fumarylacetoacetate hydrolase activity.

- ~~83-84.~~ “Verify” means to confirm by obtaining information through a source such as the newborn screening program, a health care provider, a health care facility, or a documented record.
- ~~84-85.~~ “Very long-chain acyl-CoA dehydrogenase deficiency” means a congenital disorder characterized by an inability to metabolize fatty acids that are 14 to 18 carbon atoms in length due to defective very long-chain acyl-CoA dehydrogenase activity.
- ~~85-86.~~ “Working day” means 8:00 a.m. through 5:00 p.m. Monday through Friday, excluding state holidays.
- ~~87.~~ “X-linked adrenoleukodystrophy” means a congenital disorder characterized by the build-up in the body of very long-chain fatty acids due to a deficiency in the amount of adrenoleukodystrophy protein, caused by a defective ABCD1 gene.

R9-13-203. Newborn and Infant Bloodspot Tests

- A.** A bloodspot test shall screen for the following congenital disorders:
1. 3-Hydroxy-3-methylglutaric aciduria,
 2. 3-Methylcrotonyl-CoA carboxylase deficiency,
 3. Argininosuccinic acidemia,
 4. Beta-ketothiolase deficiency,
 5. Biotinidase deficiency,
 6. Carnitine uptake defect,
 7. Citrullinemia,
 8. Classic galactosemia,
 9. Congenital adrenal hyperplasia,
 10. Congenital hypothyroidism,
 11. Cystic fibrosis,
 12. Glutaric acidemia type I,
 13. Hemoglobin S/Beta-thalassemia,
 14. Hemoglobin S/C disease,
 15. Homocystinuria,
 16. Isovaleric acidemia,
 17. Long-chain 3-hydroxy acyl-CoA dehydrogenase deficiency,
 18. Maple syrup urine disease,
 19. Medium chain acyl-CoA dehydrogenase deficiency,
 20. Methylmalonic acidemia (Cbl A,B),
 21. Methylmalonic acidemia (mutase deficiency),

- 22. Multiple carboxylase deficiency,
- 23. Phenylketonuria,
- 24. Propionic acidemia,
- 25. Severe combined immunodeficiency,
- 26. Sickle cell anemia,
- 27. Spinal muscular atrophy.
- ~~27-28.~~ Trifunctional protein deficiency,
- ~~28-29.~~ Tyrosinemia type I, ~~and~~
- ~~29-30.~~ Very long-chain acyl-CoA dehydrogenase deficiency, and
- 31. X-linked adrenoleukodystrophy.

B. When a bloodspot test is ordered for a newborn or an infant, a health care facility's designee, a health care provider, or the health care provider's designee shall:

- 1. Only use a specimen collection kit supplied by the Department;
- 2. Collect a blood sample from the newborn or infant on a specimen collection kit;
- 3. Complete the following information on the specimen collection kit:
 - a. The newborn's or infant's name, gender, race, ethnicity, medical record number, and, if applicable, AHCCCS identification number;
 - b. The newborn's or infant's type of food or food source;
 - c. Whether the newborn or infant is from a single or multiple birth;
 - d. If the newborn or infant is from a multiple birth, the birth order of the newborn or infant;
 - e. Whether the newborn or infant has a medical condition that may affect the bloodspot test results;
 - f. Whether the newborn or infant received a blood transfusion and, if applicable, the date of the last blood transfusion;
 - g. The date and time of birth, and the newborn's or infant's weight at birth;
 - h. The date and time of blood sample collection, and the newborn's or infant's weight when the blood sample is collected;
 - i. The identification code or the name and address of the health care facility or health care provider submitting the specimen collection kit;
 - j. The name, address, and telephone number or the identification code of the health care provider responsible for the management of medical services provided to the newborn or infant;

- k. Except as provided in subsection (B)(3)(l), the mother's first and last names, date of birth, name before first marriage, mailing address, telephone number, and if applicable, AHCCCS identification number; and
 - l. If the newborn's or infant's mother does not have physical custody of the newborn or infant, the first and last names, mailing address, and telephone number of the person who has physical custody of the newborn or infant; and
 - 4. Submit the specimen collection kit to the Arizona State Laboratory no later than 24 hours or the next working day after the blood sample is collected.
- C. A health care facility or a health care provider submitting a first specimen to the Arizona State Laboratory shall pay the Department the fee in R9-13-208(A).
- D. A person who submits a second specimen to the Arizona State Laboratory shall:
 - 1. Pay the fee in R9-13-208(B) to the Department, or
 - 2. Provide the following information to the Arizona State Laboratory for billing purposes:
 - a. The name, mailing address, and telephone number of the newborn's or infant's parent or the individual responsible for paying, if not the parent; and
 - b. If the individual responsible for paying has health care insurance for the newborn or infant, information about the health care insurance, including:
 - i. The policyholder's name;
 - ii. The name and billing address of the health care insurance company;
 - iii. The member identification number;
 - iv. The group number, if applicable; and
 - v. The effective date of the health care insurance; or
 - c. That the individual responsible for paying has no health care insurance for the newborn or infant.
- E. When a health care insurance company or an individual responsible for paying is identified as specified in subsection (D)(2), the health care insurance company or the individual responsible for paying shall pay the Department the fee in R9-13-208(B).
- F. When a home birth not attended by a health care provider is reported to a local registrar, a deputy local registrar, or the state registrar under A.R.S. § 36-333:
 - 1. The local registrar, deputy local registrar, or state registrar shall notify the local health department of the county where the birth occurred; and
 - 2. The local health department's designee shall collect a specimen from the newborn or infant according to the requirements in R9-13-204(A)(2) or R9-13-205(C).

- G.** A health care facility's designee, a health care provider, or the health care provider's designee shall ensure that:
1. Educational materials are provided to the parent or guardian of a newborn or an infant for whom a bloodspot test is ordered, and
 2. The newborn's or infant's parent or guardian is informed of the requirement for a second specimen if the second specimen has not been collected.
- H.** For a home birth, a health care provider or the health care provider's designee shall provide educational materials to the parent or guardian of a newborn or an infant for whom a bloodspot test is ordered.



Make today a breakthrough.

September 22, 2021

Mr. Ward B. Jacox
Assistant Bureau Chief
Arizona Department of Health Services
Arizona State Public Health Laboratory
250 N. 17th Avenue
Phoenix, AZ 85007-3248

Mr. Robert Lane
Office Chief
Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Avenue, Suite 200
Phoenix, AZ 85007

Dear Mr. Jacox and Mr. Lane:

On behalf of Arizona residents and families with spinal muscular atrophy (SMA), **Cure SMA strongly supports the expedited rulemaking proposal to add SMA and x-linked adrenoleukodystrophy (X-ALD) to Arizona's newborn screening program.** Adding these two conditions "on or before December 31, 2021", as required by law, will ensure that Arizona families of babies born with SMA or X-ALD can make timely decisions about treatment and care following a positive newborn screening diagnosis.

SMA is a progressive neurodegenerative disease caused by a mutation in the survival motor neuron gene 1, or SMN1. In a healthy person, this gene produces a protein that is critical to the function of the nerves that control our muscles. Without it, those nerve cells cannot properly function and eventually die, taking away an individual's ability to walk, eat, and breathe. SMA impacts 1 in 11,000 births in the United States. **In Arizona, more than 140,000 residents are carriers of the SMA genetic mutation.**ⁱ If both parents are SMA carriers, every child they have together has a 25% chance of being diagnosed with SMA, regardless of race, ethnicity, and gender. **Based on Cure SMA estimates, about 7 Arizona babies are born each year with SMA.**

Due to treatment and care breakthroughs, babies born today with SMA—and identified soon after birth through newborn screening—are achieving unprecedented developmental milestones and thriving in their communities. The U.S. Food and Drug Administration (FDA) has approved three treatments for SMA—Spinraza (2016), Zolgensma (2019), and Evrysdi (2020)—that make it possible for babies born with SMA today to achieve developmental milestones, such as sitting, standing, and walking for SMA Type 1 infants. Clinical data shows these treatments are most effective when delivered early, and especially when pre-symptomatically.ⁱⁱ Data also indicates that motor and developmental gains are sustained, which could lead to reduced future need for intensive healthcare, specialized supports and care, and medical devices, such as ventilators.

Early diagnosis and timely treatment are critical for babies born with SMA. Cure SMA advocated for the newborn screening provisions included in [Arizona Senate Bill 1824](#). The legislation, which became law on June 30, 2021, requires the Arizona Department of Health Services to include all congenital disorders that are included on the Recommended Uniform Screening Panel (RUSP). The law also requires that SMA, which was added to the RUSP in 2018, be added to the Arizona newborn screening program on or before December 31, 2021, along with X-ALD. The Department's plan for a two-step rulemaking process, including an expedited process for adding SMA and X-ALD, will ensure Arizona joins 38 other states who currently screen for SMA through permanent or pilot programs.ⁱⁱⁱ

Cure SMA and our network of Arizona supporters, including the Wolff family from Phoenix and the Sirak family from Mesa, appreciate the leadership and efforts of the Arizona Department of Health Services to prepare this rule and to complete the final steps to implement newborn screening of SMA before the end of 2021.

Angel and Ryan Wolff's daughter, Madison, was born with SMA Type 2 in 2003, more than a decade before the first SMA treatment was approved by the FDA. Madison was a happy little girl who reached her early developmental milestones. But, at around age 9 months, her parents noticed she would try to crawl by just dragging her legs. They raised the concern with Madison's pediatrician, who referred them to see a neurologist at the local children's hospital. Following a year of tests and appointments, Madison was diagnosed with SMA Type 2, just before her second birthday. At the time, no SMA treatments were available. Instead, the family ensured that Madison accessed appropriate supports and specialized equipment, such as a wheelchair. They also got involved with Cure SMA, where Madison's mom assists other Arizona families with children with SMA as the president of Cure SMA's Arizona chapter. Today, Madison is 18 years old and benefiting from one of the FDA-approved treatments, which has allowed her to retain physical strength and prevent further muscle deterioration. She is attending Arizona State University's Walter Cronkite School of Journalism as a freshman.

Cassandra and Kafele Sirak's son, Kafele, Jr., was born on January 16, 2018, around the time the federal Advisory Committee on Heritable Disorders in Newborns and Children was considering the addition of SMA to the federal RUSP. Junior, as his family calls him, did not show immediate symptoms. He never got sick and met early developmental milestones, including holding up his head. By the time Junior turned 3-months-old, his parents noticed signs. He wasn't rolling, bearing weight on his legs, or kicking his legs in the bath, which was something he loved to do. This began the Sirak's diagnostic odyssey, which included online research and doctors' visits. In June of 2018—nearly 6 months after Junior was born—the family received the SMA diagnosis from Phoenix Children's Hospital. Junior started an SMA treatment shortly after his diagnosis. While he responded well to it, he was almost six months of age and had already lost vital motor neurons and his ability to easily control his head and lift his arms. Treatments are most effective when delivered early, which is only possible with early detection through newborn screening. Today,

Junior is 3 years old. He enjoys time with his big sister and navigating his neighborhood in his power wheelchair.

These and other Arizona families with children with SMA understand what a difference newborn screening of SMA can have on children born today with SMA.

When implemented at the end of this year, newborn screening will mean Arizona families with children born with SMA will receive their child's SMA diagnosis shortly after birth, allowing them to make timely decisions about treatment and care. Newborn screening shortens the time it takes to receive a diagnosis and helps first-time parents who may not be aware of delays in developmental milestones to recognize SMA symptoms early on.^{iv}

The work of the Arizona Department of Health Services, including the laboratory team, to adopt the newborn screening rule and begin screening for SMA will mean no other Arizona family will have to experience the frustration of delayed diagnosis and missed opportunities for better outcomes. Your important work will ensure that the approximately 76,000 babies born each year in Arizona will be screened for the leading genetic cause of infant death.

Cure SMA and Arizona residents with SMA and their families support the newborn screening rule proposal and ask that the rule be adopted immediately. Thank you for considering our views. Please do not hesitate to contact Cure SMA if you have questions or need additional information. Cure SMA can be reached through Maynard Friesz, Vice President for Policy and Advocacy at Cure SMA, at maynard.friesz@curesma.org or 202-871-8004. Thank you for your consideration.

Sincerely,


Kenneth Hobby
President


Mary Schroth, M.D.
Chief Medical Director


Maynard Friesz
Vice President, Policy

ⁱ Cure SMA Arizona State Fact Sheet, 2021 https://www.curesma.org/wp-content/uploads/2021/06/SMA-State-Fact-Sheet_June2021_AZ_v2.pdf

ⁱⁱ Opening the window: The case for carrier and perinatal screening for spinal muscular atrophy, 2016, <https://www.ncbi.nlm.nih.gov/pubmed/27460292>

ⁱⁱⁱ Cure SMA Nationwide SMA Newborn Screening Status Map, <https://www.curesma.org/newborn-screening-for-sma/>

^{iv} "Understanding the experiences and needs of individuals with Spinal Muscular Atrophy and their parents: a qualitative study," 2015, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4619513/>



Newborn and Infant Screening Rule

QUESTION SUMMARIES

DATA TRENDS

INDIVIDUAL RESPONSES

Respondent #2 ▼ ◀ ▶

COMPLETE

Started: Tuesday, August 10, 2021 11:01:16 AM
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Page 1:

Q1

What concerns or comments do you have about the draft expedited rule?

I do not see any language about Newborn Hearing Screening and Critical Congenital Heart Disease other than in the definitions. Are these two programs in another document?

Also, the RUSP calls for methylmalonic Acidemia (Cobalamin Disorders) Not just Cobalamin A and B. Most children with Cobalamin Disorders have Cobalamin C.

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2 responses



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ARTICLE 2. NEWBORN AND INFANT SCREENING

R9-13-201. Definitions

In this Article, unless otherwise specified:

1. "Abnormal result" means an outcome that deviates from the range of values established by:
 - a. The Department for an analysis performed as part of a bloodspot test or for a hearing test, or
 - b. A health care facility or health care provider for critical congenital heart defect screening.
2. "Admission" or "admitted" means the same as in A.A.C. R9-10-101.
3. "AHCCCS" means the Arizona Health Care Cost Containment System.
4. "Argininosuccinic acidemia" means a congenital disorder characterized by an inability to metabolize the amino acid argininosuccinic acid due to defective argininosuccinate lyase activity.
5. "Arizona State Laboratory" means the entity operated according to A.R.S. § 36-251.
6. "Audiological equipment" means an instrument used to help determine the presence, type, or degree of hearing loss by:
 - a. Providing ear-specific and frequency-specific stimuli to an individual; or
 - b. Measuring an individual's physiological response to stimuli.
7. "Audiologist" means the same as in A.R.S. § 36-1901.
8. "Beta-ketothiolase deficiency" means a congenital disorder characterized by an inability to metabolize 2-methylacetoacetyl-CoA due to defective mitochondrial acetoacetyl-CoA thiolase activity.
9. "Biotinidase deficiency" means a congenital disorder characterized by defective biotinidase activity that causes abnormal biotin metabolism.
10. "Birth center" means a health care facility that is not a hospital and is organized for the purpose of delivering newborns.
11. "Blood sample" means capillary or venous blood, but not cord blood, applied to the filter paper of a specimen collection kit.
12. "Bloodspot test" means multiple laboratory analyses performed on a blood sample to screen for the presence of congenital disorders listed in R9-13-203.
13. "Carnitine uptake defect" means a congenital disorder characterized by a decrease in the amount of free carnitine due to defective sodium ion-dependent carnitine transporter OCTN2 activity.
14. "Citrullinemia" means a congenital disorder characterized by an inability to convert the amino acid citrulline and aspartic acid into argininosuccinic acid due to defective argininosuccinate synthetase activity.
15. "Classic galactosemia" means a congenital disorder characterized by abnormal galactose metabolism due to defective galactose-1-phosphate uridylyltransferase activity.
16. "Congenital adrenal hyperplasia" means a congenital disorder characterized by decreased cortisol production and increased androgen production due to defective 21-hydroxylase activity.
17. "Congenital disorder" means an abnormal condition present at birth, as a result of heredity or environmental factors, that impairs normal physiological functioning of a human body.
18. "Congenital hypothyroidism" means a congenital disorder characterized by deficient thyroid hormone production.
19. "Critical congenital heart defect" means a heart abnormality or condition present at birth that places a newborn or infant at significant risk of disability or death if not diagnosed soon after birth.
20. "Cystic fibrosis" means a congenital disorder caused by defective functioning of a transmembrane regulator protein and characterized by damage to and dysfunction of various organs, such as the lungs, pancreas, and reproductive organs.
21. "Department" means the Arizona Department of Health Services.
22. "Diagnostic evaluation" means a hearing test performed by an audiologist or a physician to determine whether hearing loss exists, and, if applicable, determine the type or degree of hearing loss.
23. "Discharge" means the termination of inpatient services to a newborn or an infant.
24. "Disorder" means a disease or medical condition that may be identified by a laboratory analysis.
25. "Document" means to establish and maintain information in written, photographic, electronic, or other permanent form.
26. "Educational materials" means printed or electronic information provided by the Department, explaining newborn and infant screening, any of the congenital disorders listed in R9-13-203, hearing loss, or critical congenital heart defect.
27. "Electronic" means the same as in A.R.S. § 44-7002.
28. "First specimen" means the initial specimen that is collected from a newborn who is less than five days of age and sent to the Arizona State Laboratory for testing and recording of demographic information.
29. "Glutaric acidemia type I" means a congenital disorder characterized by an accumulation of glutaric acid due to defective glutaryl-CoA dehydrogenase activity.
30. "Guardian" means an individual appointed by a court under A.R.S. Title 14, Chapter 5, Article 2.
31. "Health care facility" means a health care institution defined in A.R.S. § 36-401 where obstetrical care or newborn care is provided.
32. "Health care provider" means a physician, physician assistant, registered nurse practitioner, or midwife.
33. "Health-related services" means the same as in A.R.S. § 36-401.
34. "Hearing screening" means a hearing test to determine the likelihood of hearing loss in a newborn or infant.
35. "Hearing test" means an evaluation of each of a newborn's or an infant's ears, using audiological equipment to:
 - a. Screen the newborn or infant for a possible hearing loss;
 - b. Determine that the newborn or infant does not have a hearing loss; or
 - c. Diagnose a hearing loss in the newborn or infant, including determining the type or degree of hearing loss.
36. "Hemoglobin S/Beta-thalassemia" means a sickle cell disease in which an individual has one sickle cell gene and one gene for beta thalassemia, another inherited hemoglobinopathy.
37. "Hemoglobin S/C disease" means a sickle cell disease in which an individual has one sickle cell gene and one gene for another inherited hemoglobinopathy called hemoglobin C.

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38. "Hemoglobinopathy" means a congenital disorder characterized by abnormal production, structure, or functioning of hemoglobin.
39. "Home birth" means delivery of a newborn, outside a health care facility, when the newborn is not hospitalized within 72 hours of delivery.
40. "Homocystinuria" means a congenital disorder characterized by abnormal methionine and homocysteine metabolism due to defective cystathione- β -synthase activity.
41. "Hospital" means the same as in A.A.C. R9-10-101.
42. "Hospital services" means the same as in A.A.C. R9-10-201.
43. "3-Hydroxy-3-methylglutaric aciduria" means a congenital disorder characterized by the accumulation of 3-hydroxy-3-methylglutaric acid due to a defective 3-hydroxy-3-methylglutaryl-CoA lyase activity.
44. "Identification code" means a unique set of numbers or letters, or a unique set of both numbers and letters, assigned by the Department to a health care facility, a health care provider, an audiologist, or another person submitting specimen collection kits to the Arizona State Laboratory or hearing test results to the Department.
45. "Infant" means the same as in A.R.S. § 36-694.
46. "Inpatient" means an individual who:
- Is admitted to a hospital,
 - Receives hospital services for 24 consecutive hours, or
 - Is admitted to a birth center.
47. "Inpatient services" means medical services, nursing services, or other health-related services provided to an inpatient in a health care facility.
48. "Isovaleric acidemia" means a congenital disorder characterized by an accumulation of isovaleric acid due to defective isovaleryl-CoA dehydrogenase activity.
49. "Long-chain 3-hydroxy acyl-CoA dehydrogenase deficiency" means a congenital disorder characterized by an inability to metabolize fatty acids that are 12 to 16 carbon atoms in length due to defective long-chain 3-hydroxy acyl-CoA dehydrogenase activity.
50. "Maple syrup urine disease" means a congenital disorder of branched chain amino acid metabolism due to defective branched chain-keto acid dehydrogenase activity.
51. "Medical services" means the same as in A.R.S. § 36-401.
52. "Medium chain acyl-CoA dehydrogenase deficiency" means a congenital disorder characterized by an inability to metabolize fatty acids that are 6 to 10 carbon atoms in length due to defective medium-chain acyl-CoA dehydrogenase activity.
53. "3-Methylcrotonyl-CoA carboxylase deficiency" means a congenital disorder characterized by an accumulation of 3-methylcrotonyl-glycine due to defective 3-methylcrotonyl-CoA carboxylase activity.
54. "Methylmalonic acidemia (Cbl A,B)" means a congenital disorder characterized by an accumulation of methylmalonic acid due to defective activity of methylmalonyl-CoA racemase or adenosylcobalamin synthetase.
55. "Methylmalonic acidemia (mutase deficiency)" means a congenital disorder characterized by an accumulation of methylmalonic acid due to defective methylmalonyl-CoA mutase activity.
56. "Midwife" means an individual licensed under A.R.S. Title 36, Chapter 6, Article 7, or certified under A.R.S. Title 32, Chapter 15.
57. "Multiple carboxylase deficiency" means a congenital disorder characterized by an inability to transport or metabolize biotin that leads to defective activity of propionyl-CoA carboxylase, beta-methylcrotonyl-CoA carboxylase, and pyruvate carboxylase.
58. "Newborn" means the same as in A.R.S. § 36-694.
59. "Newborn care" means medical services, nursing services, and health-related services provided to a newborn.
60. "Nursing services" means the same as in A.R.S. § 36-401.
61. "Obstetrical care" means medical services, nursing services, and health-related services provided to a woman throughout her pregnancy, labor, delivery, and postpartum.
62. "Organ" means a somewhat independent part of a human body, such as a salivary gland, kidney, or pancreas, which performs a specific function.
63. "Parent" means a natural, adoptive, or custodial mother or father of a newborn or an infant.
64. "Parenteral nutrition" means the feeding of an individual intravenously through the administration of a formula containing glucose, amino acids, lipids, vitamins, and minerals.
65. "Person" means the state, a municipality, district, or other political subdivision, a cooperative, institution, corporation, company, firm, partnership, individual, or other legal entity.
66. "Phenylketonuria" means a congenital disorder characterized by abnormal phenylalanine metabolism due to defective phenylalanine hydroxylase activity.
67. "Physician" means an individual licensed under A.R.S. Title 32, Chapters 13, 14, 17, or 29.
68. "Physician assistant" means an individual licensed under A.R.S. Title 32, Chapter 25.
69. "Propionic acidemia" means a congenital disorder characterized by an accumulation of glycine and 3-hydroxypropionic acid due to defective propionyl-CoA carboxylase activity.
70. "Pulse oximetry" means a non-invasive method of measuring the percentage of hemoglobin in the blood that is saturated with oxygen using a device approved by the U.S. Food and Drug Administration for use with newborns or infants less than six weeks of age.
71. "Registered nurse practitioner" means the same as in A.R.S. § 32-1601.
72. "Second specimen" means a specimen that is sent to the Arizona State Laboratory for testing and recording of demographic information, after being collected:
- From a newborn after a first specimen; or
 - From an individual at least five days and not older than one year of age, regardless of whether a first specimen was collected.
73. "Severe combined immunodeficiency" means a congenital disorder usually characterized by a defect in both the T- and B-lymphocyte systems, which typically results in the onset of one or more serious infections within the first few months of life.
74. "Sickle cell anemia" means a sickle cell disease in which an individual has two sickle cell genes.
75. "Sickle cell disease" means a hemoglobinopathy characterized by an abnormally shaped red blood cell resulting from the abnormal structure of the protein hemoglobin.
76. "Sickle cell gene" means a unit of inheritance that is involved in producing an abnormal type of the protein hemoglobin, in which the amino acid valine is substituted for the amino acid glutamic acid at a specific location in the hemoglobin.

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77. "Specimen" means a blood sample obtained from and demographic information about a newborn or an infant.
78. "Specimen collection kit" means a strip of filter paper for collecting a blood sample attached to a form for obtaining the information specified in R9-13-203(B)(3) about a newborn or an infant.
79. "Transfer" means a health care facility or health care provider discharging a newborn and sending the newborn to a hospital for inpatient medical services without the intent that the patient will be returned to the sending health care facility or health care provider.
80. "Transfusion" means the infusion of blood or blood products into the body of an individual.
81. "Trifunctional protein deficiency" means a congenital disorder characterized by an inability to metabolize fatty acids that are 12 to 18 carbon atoms in length due to defective mitochondrial trifunctional protein activity.
82. "Tyrosinemia type I" means a congenital disorder characterized by an accumulation of the amino acid tyrosine due to defective fumarylacetoacetate hydrolase activity.
83. "Verify" means to confirm by obtaining information through a source such as the newborn screening program, a health care provider, a health care facility, or a documented record.
84. "Very long-chain acyl-CoA dehydrogenase deficiency" means a congenital disorder characterized by an inability to metabolize fatty acids that are 14 to 18 carbon atoms in length due to defective very long-chain acyl-CoA dehydrogenase activity.
85. "Working day" means 8:00 a.m. through 5:00 p.m. Monday through Friday, excluding state holidays.

Historical Note

Amended effective October 26, 1977 (Supp. 77-5). Former Section R9-13-201 repealed, new Section R9-13-201 adopted effective July 16, 1981 (Supp. 81-4). Amended as an emergency effective September 21, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-5). Emergency expired. Permanent rule adopted effective March 22, 1983 (Supp. 83-2). Amended by adding paragraphs (3), (5) and (7) and renumbering remaining paragraphs effective November 23, 1983. Amended as an emergency, by adding paragraphs (32) and (42) and renumbering remaining paragraphs, effective November 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency amendment expired. Permanent amendment, adding paragraphs (32) and (42) and renumbering remaining paragraphs adopted effective March 19, 1984 (Supp. 84-2). Amended as an emergency effective November 6, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency expired. Readopted as an emergency effective February 7, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Readopted as an emergency with changes effective May 7, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Readopted as an emergency with changes effective August 6, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Readopted as an emergency without change effective October 31, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4). Readopted as an emergency with changes effective January 16, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-1). Readopted as an emergency without change effective April 11, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency amendments permanently

adopted with changes effective July 3, 1991 (Supp. 91-3). Amended effective December 16, 1996 (Supp. 96-4). Section automatically repealed by final rulemaking at 3 A.A.R. 146, effective September 24, 1998 (Supp. 99-1). New Section recodified from R9-14-501 at 11 A.A.R. 3577, effective August 31, 2005 (Supp. 05-3). Amended by final rulemaking at 12 A.A.R. 1166, effective April 4, 2006 (Supp. 06-2). Amended by final rulemaking at 20 A.A.R. 953, effective April 1, 2014 (Supp. 14-2). Amended by final exempt rulemaking at 21 A.A.R. 1083, effective July 1, 2015 (Supp. 15-2). Amended by final rulemaking at 23 A.A.R. 3262, effective November 7, 2017 (Supp. 17-4).

R9-13-202. Newborn and Infant Critical Congenital Heart Defect Screening

- A.** A health care facility's designee, a health care provider, or a health care provider's designee shall order critical congenital heart defect screening using pulse oximetry for a newborn to be performed:
1. Between 24 and 48 hours after birth according to the health care facility's or health care provider's policies and procedures, or
 2. As late as possible before discharge according to the health care facility's or health care provider's policies and procedures if the newborn is discharged earlier than 24 hours after birth.
- B.** Before critical congenital heart defect screening is performed on a newborn, a health care facility's designee, a health care provider, or a health care provider's designee shall provide educational materials to the newborn's parent or guardian.
- C.** When critical congenital heart defect screening is ordered for a newborn, a health care facility's designee, a health care provider, or a health care provider's designee shall submit, in a format specified by the Department, the following information:
1. The newborn's name, gender, race, ethnicity, medical record number, and, if applicable, AHCCCS identification number;
 2. Whether the newborn is from a single or multiple birth;
 3. If the newborn is from a multiple birth, the birth order of the newborn;
 4. The date and time of birth, and the newborn's weight at birth;
 5. The identification code or the name and address of the health care facility or health care provider submitting the information;
 6. Except as provided in subsection (C)(7), the mother's first and last names, date of birth, name before first marriage, mailing address, telephone number, and, if applicable, AHCCCS identification number;
 7. If the newborn's mother does not have physical custody of the newborn, the first and last names, mailing address, and telephone number of the person who has physical custody of the newborn;
 8. The date, time, and result of the critical congenital heart defect screening;
 9. If critical congenital heart defect screening was not performed, the reason critical congenital heart defect screening was not performed;
 10. If the newborn was transferred to another health care facility or health care provider before the critical congenital heart defect screening was performed, the name, address, and telephone number of the health care facility or health care provider to which the newborn was transferred; and

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11. Whether the newborn has a medical condition that may affect the critical congenital heart defect screening results.
- D.** In addition to the information in subsection (C), if the reported result of critical congenital heart defect screening for a newborn or infant is abnormal, a health care facility's designee, a health care provider, or a health care provider's designee shall submit to the Department, upon request and in a format specified by the Department, the following information:
1. The dates, times, values of all critical congenital heart defect screening results;
 2. The dates, times, and results of any subsequent tests performed as a result of critical congenital heart defect screening;
 3. The name, address, and telephone number of the contact person for the health care facility, health care provider, or other person performing the subsequent tests; and
 4. If a medical condition is found as a result of critical congenital heart defect screening or subsequent tests, the type of medical condition found and the name of the health care provider who will be responsible for the coordination of medical services for the newborn or infant after the newborn or infant is discharged.
- Historical Note**
- Amended effective October 26, 1977 (Supp. 77-5).
Former Section R9-13-202 repealed, new Section R9-13-202 adopted effective July 16, 1981 (Supp. 81-4).
Repealed by emergency effective November 6, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency expired. Emergency repeal readopted effective February 7, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1).
Emergency repeal readopted effective May 7, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency repeal readopted effective August 6, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency repeal readopted effective October 31, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4). Emergency repeal readopted effective January 16, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-1).
Emergency repeal readopted effective April 11, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Repealed permanently effective July 3, 1991 (Supp. 91-3). New Section recodified from R9-14-502 at 11 A.A.R. 3577, effective August 31, 2005 (Supp. 05-3). Section repealed; new Section made by final rulemaking at 12 A.A.R. 1166, effective April 4, 2006 (Supp. 06-2). Amended by final rulemaking at 20 A.A.R. 953, effective April 1, 2014 (Supp. 14-2).
Amended by final exempt rulemaking at 21 A.A.R. 1083, effective July 1, 2015 (Supp. 15-2).
- R9-13-203. Newborn and Infant Bloodspot Tests**
- A.** A bloodspot test shall screen for the following congenital disorders:
1. 3-Hydroxy-3-methylglutaric aciduria,
 2. 3-Methylcrotonyl-CoA carboxylase deficiency,
 3. Argininosuccinic acidemia,
 4. Beta-ketothiolase deficiency,
 5. Biotinidase deficiency,
 6. Carnitine uptake defect,
 7. Citrullinemia,
 8. Classic galactosemia,
 9. Congenital adrenal hyperplasia,
 10. Congenital hypothyroidism,
 11. Cystic fibrosis,
 12. Glutaric acidemia type I,
 13. Hemoglobin S/Beta-thalassemia,
 14. Hemoglobin S/C disease,
 15. Homocystinuria,
 16. Isovaleric acidemia,
 17. Long-chain 3-hydroxy acyl-CoA dehydrogenase deficiency,
 18. Maple syrup urine disease,
 19. Medium chain acyl-CoA dehydrogenase deficiency,
 20. Methylmalonic acidemia (Cbl A,B),
 21. Methylmalonic acidemia (mutase deficiency),
 22. Multiple carboxylase deficiency,
 23. Phenylketonuria,
 24. Propionic acidemia,
 25. Severe combined immunodeficiency,
 26. Sickle cell anemia,
 27. Trifunctional protein deficiency,
 28. Tyrosinemia type I, and
 29. Very long-chain acyl-CoA dehydrogenase deficiency.
- B.** When a bloodspot test is ordered for a newborn or an infant, a health care facility's designee, a health care provider, or the health care provider's designee shall:
1. Only use a specimen collection kit supplied by the Department;
 2. Collect a blood sample from the newborn or infant on a specimen collection kit;
 3. Complete the following information on the specimen collection kit:
 - a. The newborn's or infant's name, gender, race, ethnicity, medical record number, and, if applicable, AHCCCS identification number;
 - b. The newborn's or infant's type of food or food source;
 - c. Whether the newborn or infant is from a single or multiple birth;
 - d. If the newborn or infant is from a multiple birth, the birth order of the newborn or infant;
 - e. Whether the newborn or infant has a medical condition that may affect the bloodspot test results;
 - f. Whether the newborn or infant received a blood transfusion and, if applicable, the date of the last blood transfusion;
 - g. The date and time of birth, and the newborn's or infant's weight at birth;
 - h. The date and time of blood sample collection, and the newborn's or infant's weight when the blood sample is collected;
 - i. The identification code or the name and address of the health care facility or health care provider submitting the specimen collection kit;
 - j. The name, address, and telephone number or the identification code of the health care provider responsible for the management of medical services provided to the newborn or infant;
 - k. Except as provided in subsection (B)(3)(l), the mother's first and last names, date of birth, name before first marriage, mailing address, telephone number, and if applicable, AHCCCS identification number; and
 1. If the newborn's or infant's mother does not have physical custody of the newborn or infant, the first and last names, mailing address, and telephone number of the person who has physical custody of the newborn or infant; and

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4. Submit the specimen collection kit to the Arizona State Laboratory no later than 24 hours or the next working day after the blood sample is collected.
- C.** A health care facility or a health care provider submitting a first specimen to the Arizona State Laboratory shall pay the Department the fee in R9-13-208(A).
- D.** A person who submits a second specimen to the Arizona State Laboratory shall:
1. Pay the fee in R9-13-208(B) to the Department, or
 2. Provide the following information to the Arizona State Laboratory for billing purposes:
 - a. The name, mailing address, and telephone number of the newborn's or infant's parent or the individual responsible for paying, if not the parent; and
 - b. If the individual responsible for paying has health care insurance for the newborn or infant, information about the health care insurance, including:
 - i. The policyholder's name;
 - ii. The name and billing address of the health care insurance company;
 - iii. The member identification number;
 - iv. The group number, if applicable; and
 - v. The effective date of the health care insurance; or
 - c. That the individual responsible for paying has no health care insurance for the newborn or infant.
- E.** When a health care insurance company or an individual responsible for paying is identified as specified in subsection (D)(2), the health care insurance company or the individual responsible for paying shall pay the Department the fee in R9-13-208(B).
- F.** When a home birth not attended by a health care provider is reported to a local registrar, a deputy local registrar, or the state registrar under A.R.S. § 36-333:
1. The local registrar, deputy local registrar, or state registrar shall notify the local health department of the county where the birth occurred; and
 2. The local health department's designee shall collect a specimen from the newborn or infant according to the requirements in R9-13-204(A)(2) or R9-13-205(C).
- G.** A health care facility's designee, a health care provider, or the health care provider's designee shall ensure that:
1. Educational materials are provided to the parent or guardian of a newborn or an infant for whom a bloodspot test is ordered, and
 2. The newborn's or infant's parent or guardian is informed of the requirement for a second specimen if the second specimen has not been collected.
- H.** For a home birth, a health care provider or the health care provider's designee shall provide educational materials to the parent or guardian of a newborn or an infant for whom a bloodspot test is ordered.

Historical Note

Effective 11-74; Former Section R9-13-203 repealed, new Section R9-13-203 adopted effective July 16, 1981 (Supp. 81-4). Amended effective December 16, 1996 (Supp. 96-4). Section automatically repealed by final rulemaking at 3 A.A.R. 146, effective September 24, 1998 (Supp. 99-1). New Section recodified from R9-14-503 at 11 A.A.R. 3577, effective August 31, 2005 (Supp. 05-3). Section repealed; new Section made by final rulemaking at 12 A.A.R. 1166, effective April 4, 2006 (Supp. 06-2). Amended by final rulemaking at 20 A.A.R. 953, effective April 1, 2014 (Supp. 14-2). Amended by final exempt rulemaking at 21 A.A.R. 1083, effective July 1, 2015 (Supp. 15-2). Amended by final

rulemaking at 23 A.A.R. 3262, effective November 7, 2017 (Supp. 17-4).

R9-13-204. First Specimen Collection

- A.** When a newborn is born in a hospital, the hospital's designee shall collect a first specimen from the newborn according to whichever of the following occurs first:
1. Unless specified otherwise by a physician, physician assistant, or registered nurse practitioner, before administering a transfusion or parenteral nutrition;
 2. When the newborn is at least 24 but not more than 72 hours old; or
 3. Before the newborn is discharged, unless the newborn:
 - a. Is transferred to another hospital before the newborn is 48 hours old; or
 - b. Dies before the newborn is 72 hours old.
- B.** If a newborn is admitted or transferred to a hospital before the newborn is 48 hours old, the receiving hospital's designee shall:
1. Verify that the first specimen was collected before admission or transfer, or
 2. Collect a first specimen from the newborn according to the requirements in subsection (A).
- C.** When a newborn is born in a birth center, the birth center's designee shall collect a first specimen from the newborn according to subsections (A)(1) or (A)(2).
- D.** For a home birth attended by a health care provider, the health care provider or the health care provider's designee shall collect a first specimen from the newborn according to the requirements in subsection (A)(2).

Historical Note

Effective 11-74; Former Section R9-13-204 repealed, new Section R9-13-204 adopted effective July 16, 1981 (Supp. 81-4). Amended effective December 6, 1996 (Supp. 96-4). Section automatically repealed by final rulemaking at 3 A.A.R. 146, effective September 24, 1998 (Supp. 99-1). New Section recodified from R9-14-504 at 11 A.A.R. 3577, effective August 31, 2005 (Supp. 05-3). Section repealed; new Section made by final rulemaking at 12 A.A.R. 1166, effective April 4, 2006 (Supp. 06-2). Amended by final rulemaking at 20 A.A.R. 953, effective April 1, 2014 (Supp. 14-2).

R9-13-205. Second Specimen Collection

- A.** After a newborn's or an infant's discharge from a health care facility or after a home birth, a health care provider or the health care provider's designee shall:
1. Collect a second specimen from the newborn or infant not older than one year of age at the time of the newborn's or infant's first visit to the health care provider, or
 2. Verify that a health care facility or different health care provider has collected a second specimen from the newborn or infant.
- B.** If a newborn is an inpatient of a health care facility at 5 days of age, the health care facility's designee shall collect a second specimen from the newborn:
1. When the newborn is at least 5 but not more than 10 days old; or
 2. If the newborn is discharged from the health care facility when the newborn is at least 5 but not more than 10 days old, before discharge.
- C.** For a home birth that is not attended by a health care provider, a local health department's designee shall collect a specimen from a newborn or an infant if the local health department's designee has not verified that a second specimen has already been collected from the newborn or infant.

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Historical Note

Effective 11-74; Former Section R9-13-205 repealed, new Section R9-13-205 adopted effective July 16, 1981 (Supp. 81-4). Amended effective December 6, 1996 (Supp. 96-4). Section automatically repealed by final rulemaking at 3 A.A.R. 146, effective September 24, 1998 (Supp. 99-1). New Section recodified from R9-14-505 at 11 A.A.R. 3577, effective August 31, 2005 (Supp. 05-3). Section repealed; new Section made by final rulemaking at 12 A.A.R. 1166, effective April 4, 2006 (Supp. 06-2). Amended by final rulemaking at 20 A.A.R. 953, effective April 1, 2014 (Supp. 14-2).

R9-13-206. Reporting Requirements for Specimens

- A.** The Arizona State Laboratory shall report, in written or electronic format, to the health care provider and, if applicable, health care facility identified on a specimen collection kit:
1. The results of a bloodspot test on a specimen; or
 2. For a specimen that does not meet quality standards established by the Arizona State Laboratory in compliance with 42 CFR § 493.1200:
 - a. That a bloodspot test was not performed on the specimen; and
 - b. The reason the bloodspot test was not performed.
- B.** A health care facility's designee, a health care provider, or the health care provider's designee, who orders a subsequent test on a newborn or an infant in response to an abnormal result on a bloodspot test, shall send the results of the subsequent test in writing to the Department, if the subsequent test is not performed by the Arizona State Laboratory.
- C.** Bloodspot test results are confidential subject to the disclosure provisions of 9 A.A.C. 1, Article 3, and A.R.S. §§ 12-2801 and 12-2802.

Historical Note

Effective 11-74; Repealed effective July 16, 1981 (Supp. 81-4). Adopted as an emergency effective November 6, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency expired. Readopted as an emergency effective February 7, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired. Readopted as an emergency with changes effective May 7, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Readopted as an emergency with changes effective August 6, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Readopted as an emergency without change effective October 31, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4). Readopted as an emergency without change effective January 16, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-1). Readopted as an emergency without change effective April 11, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency rule permanently adopted with changes effective July 3, 1991 (Supp. 91-3). Amended effective December 16, 1996 (Supp. 96-4). Section automatically repealed by final rulemaking at 3 A.A.R. 146, effective September 24, 1998 (Supp. 99-1). New Section made by final rulemaking at 12 A.A.R. 1166, effective April 4, 2006 (Supp. 06-2). Amended by final rulemaking at 20 A.A.R. 953, effective April 1, 2014 (Supp. 14-2).

R9-13-207. Newborn and Infant Hearing Tests

- A.** Before a hearing test is performed on a newborn or infant, a health care facility's designee, a health care provider, or the health care provider's designee shall provide educational materials to the newborn's or infant's parent or guardian.

- B.** A health care facility's designee, a health care provider, or the health care provider's designee shall order hearing testing for a newborn or infant to be performed according to the health care facility's or health care provider's policies and procedures that includes:
1. An initial hearing screening ordered to be performed within 30 days after birth or before discharge;
 2. A second hearing screening ordered to be performed within 30 days after birth if an abnormal result is obtained in one or both of a newborn's or infant's ears on the initial hearing screening; and
 3. Diagnostic evaluation ordered to be performed:
 - a. If a newborn or infant has an abnormal result in one or both ears on the second hearing screening;
 - b. If a newborn or infant has been admitted to the Neonatal Intensive Care Unit for five days or more and has an abnormal initial hearing screening;
 - c. If a newborn or infant has a medical condition that makes diagnostic evaluation more appropriate; or
 - d. As clinically indicated.
- C.** When an initial hearing test is performed on a newborn or infant, a health care facility's designee, a health care provider, or the health care provider's designee shall submit to the Department, as specified in subsection (G), the following information:
1. The newborn's or infant's name, date of birth, gender, and medical record number;
 2. Whether the newborn or infant is from a single or multiple birth;
 3. If the newborn or infant is from a multiple birth, the birth order of the newborn or infant;
 4. The first and last names and date of birth of the newborn's or infant's mother;
 5. The name and identification code of the health care facility of birth;
 6. The name and identification code of the health care facility where the initial hearing test was performed or of the health care provider who performed the initial hearing test;
 7. The date of the initial hearing test;
 8. Whether or not the initial hearing test was performed when the newborn or infant was an inpatient;
 9. The audiological equipment used for the initial hearing test and the type of initial hearing test performed; and
 10. The initial hearing test result for each of the newborn's or infant's ears.
- D.** In addition to the information in subsection (C), if the reported results of an initial hearing test on a newborn or infant include an abnormal result, a health care facility's designee, a health care provider, or the health care provider's designee shall submit to the Department, as specified in subsection (G), the following information:
1. Except as provided in subsection (D)(2), the mother's name before first marriage, mailing address, and telephone number;
 2. If the newborn's or infant's mother does not have physical custody of the newborn or infant, the first and last names, mailing address, and telephone number of the person who has physical custody of the newborn or infant;
 3. The name of the health care provider who will be responsible for the coordination of medical services for the newborn or infant after the newborn or infant is discharged from the health care facility;
 4. The name and telephone number of the person to whom the newborn's or infant's mother or other person who has

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- physical custody of the newborn or infant was referred for a subsequent hearing test;
5. The date of the appointment for a subsequent hearing test, if available; and
 6. The health care facility where a subsequent hearing test is scheduled to be performed or the name and address of the health care provider who is scheduled to perform the subsequent test, if available.
- E.** When a subsequent hearing test is performed on a newborn or an infant after an initial hearing test, the designee of the health care facility, health care provider, or other person that performs the subsequent hearing test shall submit to the Department, as specified in subsection (G), the following information:
1. The newborn's or infant's name, date of birth, and gender;
 2. Whether the newborn or infant is from a single or multiple birth;
 3. If the newborn or infant is from a multiple birth, the birth order of the newborn or infant;
 4. The first and last names and date of birth of the newborn's or infant's mother;
 5. The name of the health care facility of birth, if known;
 6. The name of the health care facility where the subsequent hearing test was performed, or the name and address of the health care provider who performed the subsequent hearing test;
 7. The date of the subsequent hearing test;
 8. The audiological equipment used for the subsequent hearing test and type of hearing test performed;
 9. The result, including a quantitative result if applicable, for each of the newborn's or infant's ears on the subsequent hearing test;
 10. The name, address and telephone number of the contact person for the health care facility, health care provider, or other person that performed the subsequent hearing test, if different from the person specified in subsection (E)(6); and
 11. If the subsequent hearing test was a diagnostic evaluation:
 - a. Whether the newborn or infant has a hearing loss and, if so, the type and degree of hearing loss;
 - b. A copy of the narrative that describes the hearing test performed on the newborn or infant to determine that the newborn or infant does not have a hearing loss or diagnose a hearing loss in the newborn or infant, the results of the hearing test, and the analysis of the hearing test results by the audiologist or physician who performed the hearing test;
 - c. Whether the newborn or infant has a medical condition that may affect the hearing test results; and
 - d. Whether the newborn or infant has been referred to early intervention services, including a date of referral.
- F.** In addition to the information in subsection (E), if the reported results of a subsequent hearing test on a newborn or infant include an abnormal result, the person submitting the report on the subsequent hearing test shall submit to the Department, as specified in subsection (G), the following information:
1. Except as provided in subsection (F)(2), the mailing address and telephone number of the newborn's or infant's mother;
 2. If the newborn's or infant's mother does not have physical custody of the newborn or infant, the first and last names, mailing address, and telephone number of the person who has physical custody of the newborn or infant;
 3. The name of the health care provider who is responsible for the coordination of medical services for the newborn or infant; and
 4. If applicable, the name and phone telephone number of the person to whom the newborn's or infant's parent was referred for further hearing tests, evaluation services, specialty care, or early intervention.
- G.** A health care facility's designee, health care provider, health care provider's designee, or other person required to report under subsections (C), (D), (E), or (F) shall submit, in an electronic format specified by the Department, the information specified in subsections (C), (D), (E), or (F) for hearing tests performed each week by the sixth day of the subsequent week.

Historical Note

Effective 11-74; Repealed effective July 16, 1981 (Supp. 81-4). New Section made by final rulemaking at 12 A.A.R. 1166, effective April 4, 2006 (Supp. 06-2). Amended by final rulemaking at 20 A.A.R. 953, effective April 1, 2014 (Supp. 14-2). Amended by final exempt rulemaking at 21 A.A.R. 1083, effective July 1, 2015 (Supp. 15-2).

R9-13-208. Fees

- A.** The fee for a first specimen is \$36.00.
- B.** The fee for a second specimen is \$65.00.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1166, effective April 4, 2006 (Supp. 06-2). Amended by final rulemaking at 20 A.A.R. 953, effective April 1, 2014 (Supp. 14-2). Amended by final rulemaking at 23 A.A.R. 3262, effective November 7, 2017 (Supp. 17-4).

ARTICLE 3. REPEALED**R9-13-301. Repealed****Historical Note**

Effective 11-74; Former Section R9-13-301 repealed, new Section R9-13-301 adopted effective July 16, 1981 (Supp. 81-4). Amended effective December 16, 1996 (Supp. 96-4). Section automatically repealed by final rulemaking at 3 A.A.R. 146, effective September 10, 1997 (Supp. 99-1).

R9-13-302. Repealed**Historical Note**

Effective 11-74; Former Section R9-13-302 repealed, new Section R9-13-302 adopted effective July 16, 1981 (Supp. 81-4). Amended effective December 16, 1996 (Supp. 96-4). Section automatically repealed by final rulemaking at 3 A.A.R. 146, effective September 10, 1997 (Supp. 99-1).

R9-13-303. Repealed**Historical Note**

Effective 11-74; Former Section R9-13-303 repealed, new Section R9-13-303 adopted effective July 16, 1981 (Supp. 81-4). Repealed effective December 16, 1996 (Supp. 96-4).

R9-13-304. Repealed**Historical Note**

Effective 11-74; Former Section R9-13-304 repealed, new Section R9-13-304 adopted effective July 16, 1981 (Supp. 81-4). Amended effective December 16, 1996 (Supp. 96-4). Section automatically repealed by final

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 409
SENATE BILL 1824

AN ACT

AMENDING TITLE 8, CHAPTER 4, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 8-512.02; AMENDING TITLE 20, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 20-126; AMENDING TITLE 23, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-206; AMENDING SECTION 30-654, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 1, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 36-147 AND 36-148; AMENDING SECTIONS 36-446.02, 36-446.04, 36-557, 36-591, 36-592, 36-594 AND 36-672, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 4.2; AMENDING SECTIONS 36-694, 36-694.01 AND 36-1201, ARIZONA REVISED STATUTES; AMENDING TITLE 36, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 31; REPEALING SECTION 41-3021.11, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 27, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-3022.26; AMENDING SECTION 46-452.02, ARIZONA REVISED STATUTES; APPROPRIATING MONIES; RELATING TO HEALTH BUDGET RECONCILIATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 8, chapter 4, article 4, Arizona Revised Statutes,
3 is amended by adding section 8-512.02, to read:

4 8-512.02. Comprehensive health plan expenditure authority
5 fund; reversion

6 A. THE DEPARTMENT SHALL ESTABLISH AND MAINTAIN A COMPREHENSIVE
7 HEALTH PLAN EXPENDITURE AUTHORITY FUND, WHICH IS A SEPARATE FUND TO
8 DISTINGUISH THE DEPARTMENT'S REVENUES AND THE DEPARTMENT'S EXPENDITURES
9 PURSUANT TO SECTION 8-512 FROM OTHER PROGRAMS THAT ARE FUNDED AND
10 ADMINISTERED BY THE DEPARTMENT. THE FUND SHALL BE USED TO PAY
11 ADMINISTRATIVE AND PROGRAM COSTS ASSOCIATED WITH PROVIDING COMPREHENSIVE
12 MEDICAL CARE, DENTAL CARE AND BEHAVIORAL HEALTH SERVICES PURSUANT TO
13 SECTION 8-512. THE COMPREHENSIVE HEALTH PLAN EXPENDITURE AUTHORITY FUND
14 CONSISTS OF:

15 1. MONIES PAID BY THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
16 ADMINISTRATION PURSUANT TO THE CONTRACT.

17 2. AMOUNTS PAID BY THIRD-PARTY PAYORS.

18 3. GIFTS, DONATIONS AND GRANTS FROM ANY SOURCE.

19 4. INTEREST ON MONIES DEPOSITED IN THE COMPREHENSIVE HEALTH PLAN
20 EXPENDITURE AUTHORITY FUND.

21 B. ALL MONIES FROM CAPITATED PAYMENTS IN THE COMPREHENSIVE HEALTH
22 PLAN EXPENDITURE AUTHORITY FUND THAT ARE UNEXPENDED AND UNENCUMBERED AT
23 THE END OF THE FISCAL YEAR REVERT TO THE STATE GENERAL FUND ON OR BEFORE
24 JUNE 30 OF THE FOLLOWING FISCAL YEAR. THE TRANSFER AMOUNT MAY BE ADJUSTED
25 TO PAY NONMEDICAID CLAIMS INCURRED BY THE DEPARTMENT.

26 Sec. 2. Title 20, chapter 1, article 1, Arizona Revised Statutes,
27 is amended by adding section 20-126, to read:

28 20-126. Department; annual medical loss ratio report;
29 posting; definition

30 A. ON OR BEFORE MARCH 31 OF EACH YEAR, THE DEPARTMENT SHALL PREPARE
31 AN ANNUAL REPORT ON THE MEDICAL LOSS RATIO FOR EACH DENTAL INSURER DOING
32 BUSINESS IN THIS STATE. IN CALCULATING THE MEDICAL LOSS RATIO, THE
33 DEPARTMENT SHALL USE DATA SUBMITTED BY DENTAL INSURERS IN EXISTING
34 REQUIRED REGULATORY FILINGS, INCLUDING ALL OF THE FOLLOWING:

35 1. ADJUSTED INCURRED ANNUAL DENTAL CLAIMS IN THIS STATE.

36 2. ANNUAL DENTAL INSURANCE PREMIUMS EARNED IN THIS STATE.

37 3. ANNUAL INCURRED FEDERAL AND STATE TAXES, LICENSING FEES AND
38 REGULATORY FEES ON DENTAL PREMIUMS IN THIS STATE.

39 B. THE DEPARTMENT SHALL POST THE CALCULATED ANNUAL MEDICAL LOSS
40 RATIO FOR EACH DENTAL INSURER ON THE DEPARTMENT'S WEBSITE.

41 C. FOR THE PURPOSES OF THIS SECTION, "DENTAL INSURER" MEANS A
42 DENTAL SERVICE CORPORATION PURSUANT TO CHAPTER 4, ARTICLE 3 OF THIS TITLE,
43 HEALTH CARE SERVICES ORGANIZATION PURSUANT TO CHAPTER 4, ARTICLE 9 OF THIS
44 TITLE, DISABILITY INSURER PURSUANT TO CHAPTER 6, ARTICLE 4 OF THIS TITLE

1 OR GROUP OR BLANKET DISABILITY INSURER PURSUANT TO CHAPTER 6, ARTICLE 5 OF
2 THIS TITLE THAT OFFERS, ISSUES OR RENEWS A CONTRACT, EVIDENCE OF COVERAGE
3 OR POLICY COVERING DENTAL SERVICES.

4 Sec. 3. Title 23, chapter 2, article 1, Arizona Revised Statutes,
5 is amended by adding section 23-206, to read:

6 23-206. Employers; accommodations required

7 IF AN EMPLOYER RECEIVES NOTICE FROM AN EMPLOYEE THAT THE EMPLOYEE'S
8 SINCERELY HELD RELIGIOUS BELIEFS, PRACTICES OR OBSERVANCES PREVENT THE
9 EMPLOYEE FROM TAKING THE COVID-19 VACCINATION, THE EMPLOYER SHALL PROVIDE
10 A REASONABLE ACCOMMODATION UNLESS THE ACCOMMODATION WOULD POSE AN UNDU
11 HARDSHIP AND MORE THAN A DE MINIMUS COST TO THE OPERATION OF THE
12 EMPLOYER'S BUSINESS.

13 Sec. 4. Section 30-654, Arizona Revised Statutes, is amended to
14 read:

15 30-654. Powers and duties of the department

16 A. The department may:

17 1. Accept grants or other contributions from the federal government
18 or other sources, public or private, to be used by the department to carry
19 out any of the purposes of this chapter.

20 2. Do all things necessary, within the limitations of this chapter,
21 to carry out the powers and duties of the department.

22 3. Conduct an information program, including:

23 (a) Providing information on the control and regulation of sources
24 of radiation and related health and safety matters, on request, to members
25 of the legislature, the executive offices, state departments and agencies
26 and county and municipal governments.

27 (b) Providing such published information, audiovisual
28 presentations, exhibits and speakers on the control and regulation of
29 sources of radiation and related health and safety matters to the state's
30 educational system at all educational levels as may be arranged.

31 (c) Furnishing to citizen groups, on request, speakers and such
32 audiovisual presentations or published materials on the control and
33 regulation of sources of radiation and related health and safety matters
34 as may be available.

35 (d) Conducting, sponsoring or cosponsoring and actively
36 participating in the professional meetings, symposia, workshops, forums
37 and other group informational activities concerned with the control and
38 regulation of sources of radiation and related health and safety matters
39 when representation from this state at such meetings is determined to be
40 important by the department.

41 B. The department shall:

42 1. Regulate the use, storage and disposal of sources of radiation.

- 1 2. Establish procedures for purposes of selecting any proposed
2 permanent disposal site located within this state for low-level
3 radioactive waste.
- 4 3. Coordinate with the department of transportation and the
5 corporation commission in regulating the transportation of sources of
6 radiation.
- 7 4. Assume primary responsibility for and provide necessary
8 technical assistance to handle any incidents, accidents and emergencies
9 involving radiation or sources of radiation occurring within this state.
- 10 5. Adopt rules deemed necessary to administer this chapter in
11 accordance with title 41, chapter 6.
- 12 6. Adopt uniform radiation protection and radiation dose standards
13 to be as nearly as possible in conformity with, and in no case
14 inconsistent with, the standards contained in the regulations of the
15 United States nuclear regulatory commission and the standards of the
16 United States public health service. In the adoption of the standards,
17 the department shall consider the total occupational radiation exposure of
18 individuals, including that from sources that are not regulated by the
19 department.
- 20 7. Adopt rules for personnel monitoring under the close supervision
21 of technically competent people in order to determine compliance with
22 safety rules adopted under this chapter.
- 23 8. Adopt a uniform system of labels, signs and symbols and the
24 posting of the labels, signs and symbols to be affixed to radioactive
25 products, especially those transferred from person to person.
- 26 9. By rule, require adequate training and experience of persons
27 using sources of radiation with respect to the hazards of excessive
28 exposure to radiation in order to protect health and safety.
- 29 10. Adopt standards for the storage of radioactive material and for
30 security against unauthorized removal.
- 31 11. Adopt standards for the disposal of radioactive materials into
32 the air, water and sewers and burial in the soil in accordance with 10
33 Code of Federal Regulations part 20.
- 34 12. Adopt rules that are applicable to the shipment of radioactive
35 materials in conformity with and compatible with those established by the
36 United States nuclear regulatory commission, the department of
37 transportation, the United States department of the treasury and the
38 United States postal service.
- 39 13. In individual cases, impose additional requirements to protect
40 health and safety or grant necessary exemptions that will not jeopardize
41 health or safety, or both.
- 42 14. Make recommendations to the governor and furnish such technical
43 advice as required on matters relating to the utilization and regulation
44 of sources of radiation.

1 15. Conduct or cause to be conducted off-site radiological
2 environmental monitoring of the air, water and soil surrounding any fixed
3 nuclear facility, any uranium milling and tailing site and any uranium
4 leaching operation, and maintain and report the data or results obtained
5 by the monitoring as deemed appropriate by the department.

6 16. Develop and utilize information resources concerning radiation
7 and radioactive sources.

8 17. Prescribe by rule a schedule of fees to be charged to
9 categories of licensees and registrants of radiation sources, including
10 academic, medical, industrial, waste, distribution and imaging categories.
11 The fees shall cover a significant portion of the reasonable costs
12 associated with processing the application for license or registration,
13 renewal or amendment of the license or registration and the costs of
14 inspecting the licensee or registrant activities and facilities, including
15 the cost to the department of employing clerical help, consultants and
16 persons possessing technical expertise and using analytical
17 instrumentation and information processing systems.

18 18. Adopt rules establishing radiological standards, personnel
19 standards and quality assurance programs to ensure the accuracy and safety
20 of screening and diagnostic mammography.

21 C. The department shall deposit, pursuant to sections 35-146 and
22 ~~35-147, the first \$300,000 in fees collected each fiscal year pursuant to~~
23 ~~subsection B, paragraph 17 of this section and section 32-2805 in the~~
24 ~~state general fund. The department shall deposit, pursuant to sections~~
25 ~~35-146 and 35-147,~~ ninety percent of the **remaining** monies received from
26 fees collected pursuant to subsection B, paragraph 17 of this section and
27 section 32-2805 in the health services licensing fund established by
28 section 36-414 and ten percent of the **remaining** monies received from fees
29 collected pursuant to subsection B, paragraph 17 of this section and
30 section 32-2805 in the state general fund.

31 Sec. 5. Title 36, chapter 1, article 2, Arizona Revised Statutes,
32 is amended by adding sections 36-147 and 36-148, to read:

33 36-147. Annual expenditure report; medical marijuana fund;
34 justice reinvestment fund

35 ON OR BEFORE JULY 1 OF EACH YEAR, THE DEPARTMENT SHALL SUBMIT TO THE
36 JOINT LEGISLATIVE BUDGET COMMITTEE AN EXPENDITURE REPORT FOR THE PRECEDING
37 FISCAL YEAR ON MONIES TRANSFERRED TO THE DEPARTMENT FROM THE MEDICAL
38 MARIJUANA FUND PURSUANT TO SECTION 36-2817 AND MONIES TRANSFERRED TO THE
39 DEPARTMENT FROM THE JUSTICE REINVESTMENT FUND PURSUANT TO SECTION 36-2863.
40 THE REPORT SHALL INCLUDE EXPENDITURES BY PROGRAM AND A LIST OF GRANTS
41 DISTRIBUTED BY THE DEPARTMENT. THE DEPARTMENT SHALL INDICATE WHEN ALL
42 MONIES FROM TRANSFERS MADE PURSUANT TO SECTION 36-2817 HAVE BEEN SPENT.

1 36-148. Annual distribution report; smart and safe Arizona
2 fund

3 ON OR BEFORE SEPTEMBER 1 OF EACH YEAR, THE STATE TREASURER SHALL
4 REPORT TO THE JOINT LEGISLATIVE BUDGET COMMITTEE AND THE GOVERNOR'S OFFICE
5 OF STRATEGIC PLANNING AND BUDGETING ON DISTRIBUTIONS MADE FROM THE SMART
6 AND SAFE ARIZONA FUND ESTABLISHED BY SECTION 36-2856 TO THE DEPARTMENT OF
7 HEALTH SERVICES, THE DEPARTMENT OF REVENUE, THE SUPREME COURT, THE
8 DEPARTMENT OF PUBLIC SAFETY AND THE STATE TREASURER PURSUANT TO SECTION
9 36-2856, SUBSECTION B. THE REPORT SHALL INCLUDE THE AMOUNT OF ACTUAL
10 DISTRIBUTIONS MADE TO EACH ENTITY IN THE PRIOR FISCAL YEAR AND THE AMOUNT
11 OF ESTIMATED DISTRIBUTIONS FOR THE CURRENT FISCAL YEAR.

12 Sec. 6. Section 36-446.02, Arizona Revised Statutes, is amended to
13 read:

14 36-446.02. Board of examiners; terms; meetings; quorum;
15 effect of vacancies; compensation

16 A. The board of examiners of nursing care institution
17 administrators and assisted living facility managers is established
18 consisting of ~~nine~~ ELEVEN members appointed by the governor.

19 B. The board shall include:

20 1. One administrator who holds an active license issued pursuant to
21 this article.

22 2. One manager who holds an active license issued pursuant to this
23 article.

24 3. One administrator of a nonprofit or faith-based skilled nursing
25 facility.

26 4. One administrator of a proprietary skilled nursing facility.

27 5. Two managers of an assisted living center as defined in section
28 36-401.

29 6. One manager of an assisted living home as defined in section
30 36-401.

31 7. Two public members who are not affiliated with a nursing care
32 institution or an assisted living facility.

33 8. ONE PUBLIC MEMBER WHO REPRESENTS AN ORGANIZATION THAT ADVOCATES
34 FOR THE ELDERLY.

35 9. ONE PERSON WHO IS A FAMILY MEMBER OF A RESIDENT IN EITHER A
36 SKILLED NURSING FACILITY OR AN ASSISTED LIVING FACILITY AT THE TIME THE
37 PERSON IS APPOINTED TO THE BOARD.

38 C. Board members who are not affiliated with a nursing care
39 institution or an assisted living facility shall not have a direct
40 financial interest in nursing care institutions or assisted living
41 facilities.

42 D. A board member shall not serve on any other board relating to
43 long-term care during the member's term with the board.

1 E. The term of a board member automatically ends when that member
2 no longer meets the qualifications for appointment to the board. The
3 board shall notify the governor of the board vacancy.

4 F. Board members who are not affiliated with a nursing care
5 institution or an assisted living facility shall be appointed for ~~two-year~~
6 TWO-YEAR terms. Board members who are the administrator of a nursing care
7 institution or the manager of an assisted living facility shall be
8 appointed for ~~three-year~~ THREE-YEAR terms.

9 G. A board member shall not serve for more than two consecutive
10 terms.

11 H. The board shall meet at least twice a year.

12 I. A majority of the board members constitutes a quorum.

13 J. Board members are eligible to receive compensation as determined
14 pursuant to section 38-611 for each day actually spent performing their
15 duties under this chapter.

16 K. A board member who is absent from three consecutive regular
17 meetings or who fails to attend more than fifty ~~per-cent~~ PERCENT of board
18 meetings over the course of one calendar year vacates the board member's
19 position. The board shall notify the governor of the vacancy.

20 Sec. 7. Section 36-446.04, Arizona Revised Statutes, is amended to
21 read:

22 36-446.04. Qualifications; period of validity; exemption

23 A. The board shall issue a license as a nursing care institution
24 administrator pursuant to its rules to any person who meets the following
25 qualifications:

26 1. Is of good character.

27 2. Has satisfactorily completed a course of instruction and
28 training approved by the board that:

29 (a) Is designed and sufficiently administered to give the applicant
30 knowledge of the proper needs to be served by nursing care institutions.

31 (b) Includes a thorough background in the laws and rules governing
32 the operation of nursing care institutions and the protection of the
33 interests of the patients in nursing care institutions.

34 (c) Includes thorough training in elements of good health care
35 facilities administration.

36 3. Has passed an examination administered by the board designed to
37 test for competency in the subject matter referred to in this subsection.

38 4. Has met one of the following fingerprinting requirements:

39 (a) Has a valid fingerprint clearance card issued pursuant to title
40 41, chapter 12, article 3.1.

41 (b) Has provided proof of the submission of an application for a
42 fingerprint clearance card. An applicant who has been denied a
43 fingerprint clearance card must also provide proof that the applicant

1 qualifies for a good cause exception hearing pursuant to section
2 41-619.55.

3 B. A person who is licensed pursuant to this section must maintain
4 a valid fingerprint clearance card during the valid period of the person's
5 license.

6 C. The board shall issue a certificate as an assisted living
7 facility manager pursuant to its rules to a person who meets the following
8 qualifications:

9 1. Is of good character.

10 2. Has satisfactorily completed a course of instruction and
11 training approved by the board that:

12 (a) Is designed and sufficiently administered to give the applicant
13 knowledge of the proper needs to be served by an assisted living facility.

14 (b) Includes a thorough background in the laws governing the
15 operation of assisted living facilities and the protection of the
16 interests of the patients in assisted living facilities.

17 (c) Includes thorough training in elements of assisted living
18 facility administration.

19 3. Has passed an examination administered by the board that is
20 designed to test for competency in the subject matter prescribed in this
21 subsection.

22 4. Provides documentation satisfactory to the board that the
23 applicant has completed two thousand eighty hours of paid work experience
24 in a health related field within the preceding five years as prescribed by
25 board rule.

26 5. Has met one of the following fingerprinting requirements:

27 (a) Has a valid fingerprint clearance card issued pursuant to title
28 41, chapter 12, article 3.1.

29 (b) Has provided proof of the submission of an application for a
30 fingerprint clearance card. An applicant who has been denied a
31 fingerprint clearance card must also provide proof that the applicant
32 qualifies for a good cause exception hearing pursuant to section
33 41-619.55.

34 D. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, BEGINNING
35 JULY 1, 2021, ALL NEW LICENSES AND CERTIFICATIONS ISSUED BY THE BOARD MUST
36 BE APPROVED BY BOTH THE BOARD AND THE DEPARTMENT OF HEALTH SERVICES.

37 ~~D.~~ E. A person who is certified pursuant to this section must
38 maintain a valid fingerprint clearance card during the valid period of the
39 person's certificate.

40 ~~E.~~ F. In lieu of the requirements contained in subsection A,
41 paragraph 2 or subsection C, paragraph 2, an applicant may present
42 satisfactory evidence to the board of sufficient education and training in
43 the areas listed in that paragraph.

1 C. Contracts between the department and a school district or
2 districts are subject to approval by the department of education.

3 D. This article does not make the department or the state
4 responsible for funding programs beyond the limits of legislative
5 appropriation for the programs. This article does not require a SERVICE
6 provider ~~of services~~ to provide unreimbursed services to the department or
7 its clients.

8 E. Contracts to provide community developmental disability services
9 shall require that:

10 1. The contractor is obligated to operate a program or service in
11 strict accordance with the standards adopted for that program or service
12 by the department.

13 2. If state funding is provided for a particular program the
14 contractor, to the extent of positions available that are being purchased
15 by the department, shall provide services to a client with a developmental
16 disability who has been evaluated and placed by the department.

17 3. All contractors must carry liability insurance in amounts
18 approved by the risk management division of the department of
19 administration and file proof of insurance with the risk management
20 division. The director may waive that requirement on a ~~case by case~~
21 CASE-BY-CASE basis on a finding that insurance for the program or service
22 is not practicably available at affordable rates and that it is necessary
23 that the program or service be provided by the contractor.

24 4. All clients enrolled in programs have all the same specified
25 rights as they would have if enrolled in a program operated directly by
26 the state.

27 5. Except for emergency placement pursuant to section 36-560,
28 subsection N, payment shall not be made based on program services provided
29 to a client if a placement evaluation has not been made, and no individual
30 program has been prepared and when, based on that placement evaluation, no
31 recommendation has been made to enroll the client in the particular
32 program service.

33 F. This article does not require a contracted agency to provide
34 unreimbursed services to the department or a client of the department.

35 G. Contracts ~~for the TO~~ purchase ~~of~~ residential care services other
36 than those community residential settings licensed pursuant to this
37 chapter, in addition to other general requirements applicable to purchase
38 of care contractors, shall:

39 1. Provide for mandatory inspection by the department every two
40 years for facilities other than group homes.

41 2. Provide for mandatory monitoring by the department for health,
42 safety, contractual and programmatic standards at least every six months,
43 unless the department has granted deemed status to the service provider or
44 the service provider received a score of at least ninety-five percent on

1 the most recent monitoring visit. If the department has granted deemed
2 status or awarded the service provider with a score of at least
3 ninety-five percent on the most recent monitoring visit, ~~it~~ THE DEPARTMENT
4 shall monitor that SERVICE provider once each year. On A determination by
5 the department that there is reasonable cause to believe a service
6 provider is not adhering to the department's programmatic or contractual
7 requirements, the department and any duly designated employee or agent of
8 the department may enter on and into the premises at any reasonable time
9 for the purpose of determining the SERVICE PROVIDER'S state of compliance
10 with the DEPARTMENT'S programmatic or contractual requirements ~~of the~~
11 ~~department.~~

12 3. Provide for mandatory investigation by the department in
13 response to complaints within ten working days, except that in those
14 instances that pose a danger to the client, the department shall conduct
15 the investigation immediately. Health and safety complaints related to
16 group homes shall be referred to the department of health services on
17 receipt. The department of health services shall share all incident
18 reports related to health and safety with the division of developmental
19 disabilities.

20 4. Except for group homes licensed by the department of health
21 services, specify the health and safety and sanitation codes and other
22 codes or standards applicable to the facility or to the operation of the
23 facility by the contractor other than group homes.

24 5. Provide for mandatory periodic reports to be filed by the
25 provider contractor with the department with respect to the operation of
26 the facility.

27 6. Provide that the facility and the books and records of the
28 facility and of the provider are subject to inspection at any time by
29 employees of the department or designees of the department.

30 7. Provide that parents and guardians of persons with developmental
31 disabilities residing at the facility, members of the developmental
32 disabilities advisory council, and members of other recognized and ongoing
33 advocacy groups for persons with developmental disabilities may inspect
34 the facility at reasonable times.

35 H. Contracts for the purchase of residential care services shall
36 require a community residential setting to be licensed pursuant to this
37 chapter other than group homes licensed by the department of health
38 services.

39 I. Contracts for the purchase of day program or employment
40 services, in addition to the other general requirements applicable to the
41 purchase of client services, must provide for mandatory monitoring by the
42 department for health, safety, contractual, programmatic and quality
43 assurance standards at least once every six months, unless the department
44 has granted deemed status to the service provider. If the department has

1 granted deemed status to the service provider, the department shall
2 monitor that SERVICE provider once each year. The department and any duly
3 designated employee or agent of the department may enter on or into the
4 service provider's premises at any reasonable time for the purpose of
5 determining the SERVICE PROVIDER'S state of compliance with the
6 department's programmatic, contractual and quality assurance requirements.

7 J. The division shall ensure that all contracted developmental
8 disabilities service providers rendering services pursuant to this chapter
9 are reimbursed in accordance with title XIX of the social security act.

10 K. Contracts for client services issued by the department shall
11 include language outlining the provisions for a grievance and appeal
12 procedure. The director shall provide notice to SERVICE providers not
13 less than thirty days before the issuance of an amendment to a qualified
14 vendor agreement. The decision of the director regarding qualified vendor
15 agreement amendments may be appealed pursuant to title 41, chapter 6,
16 article 10. The grievance process applicable to these contracts shall
17 comply with title XIX requirements.

18 L. As a condition of contracts with any developmental disabilities
19 service provider, the director shall require terms that conform with state
20 and federal laws, title XIX statutes and regulations and quality
21 standards. The director shall further require contract terms that ensure
22 performance by the provider of the provisions of each contract executed
23 pursuant to this article.

24 M. The division shall establish a rate structure that ensures an
25 equitable funding basis for private nonprofit or ~~for-profit~~ FOR-PROFIT
26 agencies for services pursuant to subsection B of this section and section
27 36-2943. In each fiscal year, the division shall review and adjust the
28 rate structure based on section 36-2959. A rate book shall be published
29 and updated by the division to announce the rate structure that shall be
30 incorporated by reference in contracts for client services.

31 N. The division shall disclose to a service provider in the
32 individual program plan, and in all meetings resulting from a response to
33 a vendor call, any historical and behavioral information necessary for the
34 SERVICE provider to be able to anticipate the client's future behaviors
35 and needs, including summary information from the program review
36 committee, unusual incident reports reviewed by the independent oversight
37 committee and behavioral treatment plans. The division shall redact the
38 client's identification from this information.

39 O. Service providers are authorized to engage in the following
40 activities in accordance with a client's individual program plan:

- 41 1. Administer medications, including assisting with the client's
- 42 self-administration of medications.
- 43 2. Log, store, remove and dispose of medications.
- 44 3. Maintain medications and protocols for direct care.

1 4. Serve as the client's representative payee if requested by the
2 client or the client's guardian and approved by the payer.

3 P. The department may adopt rules establishing procedures for
4 engaging in the activities listed in subsection 0 of this section.

5 Q. To protect the health and safety of a client, a SERVICE provider
6 must notify the division within twenty-four hours if an emergency
7 situation exists in which the SERVICE provider is unable to meet the
8 health or safety needs of the client.

9 R. On notification of an emergency situation, the department shall
10 hold an individual program plan meeting within fifteen days after
11 notification to recommend any changes, including whether there is a need
12 for temporary additional staffing to provide appropriate care for a
13 client, and develop a plan within thirty days after notification to
14 resolve the situation.

15 S. SERVICE PROVIDERS SHALL DEVELOP AND IMPLEMENT POLICIES AND
16 PROCEDURES REGARDING THE COMMUNICATION TO RESPONSIBLE PERSONS OF A SERIOUS
17 INCIDENT AFFECTING A CLIENT WHO IS LIVING IN A COMMUNITY RESIDENTIAL
18 SETTING WITHIN TWENTY-FOUR HOURS AFTER THE SERIOUS INCIDENT OCCURS.

19 Sec. 9. Section 36-591, Arizona Revised Statutes, is amended to
20 read:

21 36-591. Group homes; licensing; notification requirements

22 ~~A. An adult developmental home or child developmental home shall be~~
23 ~~licensed pursuant to this article.~~

24 ~~B.~~ A. Group homes, except for those described in subsection ~~E~~ D
25 of this section, shall be licensed for health and safety by the department
26 of health services pursuant to section 36-132.

27 ~~C.~~ B. The division shall notify the department of health services
28 of:

29 1. Service providers ~~who~~ THAT enter into contracts with the
30 division for group homes or intermediate care facilities for individuals
31 with intellectual disabilities.

32 2. Any violation of health and safety standards observed during
33 monitoring visits.

34 ~~D.~~ C. The department of health services shall immediately notify
35 the division:

36 1. When THE LICENSE OF a group home or intermediate care facility
37 for individuals with intellectual disabilities ~~license~~ has been denied,
38 suspended or revoked.

39 2. Of any other licensing action taken on a group home or
40 intermediate care facility for individuals with intellectual disabilities
41 by the department of health services.

42 3. Of substantiated complaints regarding health and safety.

43 ~~E.~~ D. The division shall ensure that state-operated residential
44 settings that are owned or leased facilities operated by the division meet

1 the same standards as group homes unless they are required to be licensed
2 and certified as intermediate care facilities for individuals with
3 intellectual disabilities pursuant to 42 Code of Federal Regulations part
4 483, subpart I. An intermediate care facility for individuals with
5 intellectual disabilities that is operated by the division or a private
6 entity is required to be licensed pursuant to chapter 4 of this title and
7 certified pursuant to 42 Code of Federal Regulations part 483, subpart I.

8 ~~F. The department shall annually visit each adult developmental~~
9 ~~home and child developmental home and inspect the premises used for the~~
10 ~~care of children or vulnerable adults for sanitation, fire and other~~
11 ~~actual and potential hazards.~~

12 E. The department shall take any action it deems necessary to carry
13 out the duties imposed by this section, including ~~the denial of~~ DENYING
14 the application for licensure and ~~the suspension~~ SUSPENDING or ~~revocation~~
15 REVOKING of the home's license.

16 Sec. 10. Section 36-592, Arizona Revised Statutes, is amended to
17 read:

18 36-592. Adult developmental homes; child developmental homes;
19 licensure requirements; inspections;
20 investigations; third-party contractors; rules;
21 definitions

22 A. AN ADULT DEVELOPMENTAL HOME OR CHILD DEVELOPMENTAL HOME SHALL BE
23 LICENSED PURSUANT TO THIS ARTICLE.

24 ~~A.~~ B. An applicant for an adult developmental home or child
25 developmental home license shall submit an application on a form
26 prescribed by the department.

27 ~~B.~~ C. Before issuing or renewing a license to an applicant, the
28 department shall investigate the activities and standards of care within
29 the setting, the financial stability of the applicant, the character and
30 training of the applicant and the adequacy of services. Before issuing or
31 renewing a license, the department shall determine that the applicant is
32 able to meet the emotional, physical, social, developmental, educational,
33 cultural and intellectual needs of clients. The department by rule shall
34 establish standards for licensure. The department shall maintain a system
35 of independent oversight of licensing. The department may contract with
36 third parties to perform services in connection with oversight and
37 licensing. The department may not contract with the same third party for
38 both oversight and licensure under this subsection.

39 ~~C.~~ D. Each license shall state in general terms the kind of
40 setting the licensee is authorized to operate and shall prescribe the
41 number, ages and sex of clients.

42 ~~D.~~ E. A licensee ~~who~~ THAT holds an adult developmental home or
43 child developmental home license shall:

- 1 1. Comply with applicable health, safety and sanitation codes or
2 standards and document its compliance.
- 3 2. File reports as prescribed by the department.
- 4 3. Allow the department to inspect or monitor its services and
5 facility and the facility's books and records.
- 6 4. Comply with rules adopted by the department.
- 7 5. Provide for the health, safety and welfare of the licensee's
8 clients.
- 9 6. Allow the inspection of the developmental home at reasonable
10 times pursuant to section 36-595.01.
- 11 ~~F.~~ F. A license expires one year from the date of issuance.
- 12 ~~F.~~ G. For each adult developmental home and child developmental
13 home, the department shall:
 - 14 ~~1. Conduct an annual licensing home visit.~~
 - 15 1. ANNUALLY VISIT AND INSPECT THE PREMISES USED FOR THE CARE OF
16 CHILDREN OR VULNERABLE ADULTS FOR SANITATION, FIRE AND OTHER ACTUAL AND
17 POTENTIAL HAZARDS. THE DEPARTMENT SHALL TAKE ANY ACTION IT DEEMS
18 NECESSARY TO CARRY OUT THE DUTIES IMPOSED BY THIS SECTION, INCLUDING
19 DENYING THE APPLICATION FOR LICENSURE AND SUSPENDING OR REVOKING THE
20 HOME'S LICENSE.
 - 21 2. Monitor the settings for compliance with health, safety,
22 contractual, programmatic and quality assurance standards at least two
23 times per year. The department shall maintain a system of independent
24 oversight of monitoring. The department may enter into a contract with
25 third parties to perform services in connection with oversight and
26 monitoring. The department may not contract with the same third party for
27 both oversight and monitoring under this paragraph.
 - 28 3. Investigate a complaint within ten working days after receiving
29 notice of the complaint, except that if there is a danger to a client, the
30 department shall conduct the investigation immediately.
 - 31 4. NOTIFY THE PARENT OR GUARDIAN OF A DEVELOPMENTAL HOME RESIDENT
32 OF ANY SERIOUS INCIDENT OR COMPLAINT AT THE DEVELOPMENTAL HOME INVOLVING
33 THE CLIENT FOR WHOM THE PARENT OR GUARDIAN IS RESPONSIBLE.
- 34 ~~G.~~ H. The department shall establish by rule minimum
35 qualifications, responsibilities and oversight for ~~the~~ licensing and
36 monitoring ~~of~~ adult developmental homes and child developmental homes.
37 The rules regarding minimum qualifications shall address professional
38 judgment, conflicts of interest and training. The rules shall establish
39 the frequency and type of visits for licensing and monitoring, maximum
40 caseload ratios for those performing licensing and monitoring services and
41 a system for appropriate public access to information regarding licensing
42 and monitoring findings.

1 DENIAL, SUSPENSION OR REVOCATION OF A DEVELOPMENTAL HOME LICENSE DUE TO
2 THE FAILURE TO OBTAIN OR MAINTAIN A LEVEL I FINGERPRINT CLEARANCE CARD AS
3 REQUIRED BY SECTION 36-594.02 IS NOT AN APPEALABLE AGENCY ACTION.

4 8. An employee, applicant, licensee, volunteer or adult household
5 member of an adult developmental home or child developmental home is
6 alleged to have abused, neglected or exploited a vulnerable adult and the
7 department of economic security intends to enter, pursuant to section
8 46-458, a substantiated finding of abuse, neglect or exploitation of a
9 vulnerable adult in the adult protective services registry.

10 B. For the purposes of this section, "vulnerable adult" has the
11 same meaning prescribed in section 13-3623.

12 Sec. 12. Section 36-672, Arizona Revised Statutes, is amended to
13 read:

14 36-672. Immunizations; department rules; prohibitions

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

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

26 C. ~~Immunization against the human papillomavirus is~~ THE FOLLOWING
27 IMMUNIZATIONS ARE not required for school attendance:

28 1. THE IMMUNIZATION AGAINST THE HUMAN PAPILOMAVIRUS.

29 2. AN IMMUNIZATION FOR WHICH A UNITED STATES FOOD AND DRUG
30 ADMINISTRATION EMERGENCY USE AUTHORIZATION HAS BEEN ISSUED.

31 D. AN IMMUNIZATION MUST BE PRESCRIBED BY A RULE ADOPTED PURSUANT TO
32 SUBSECTION A OF THIS SECTION BEFORE THE IMMUNIZATION MAY BE REQUIRED FOR
33 IN-PERSON SCHOOL ATTENDANCE.

34 E. PURSUANT TO SECTION 1-602, THIS SECTION DOES NOT PRECLUDE A
35 PARENT'S RIGHT TO MAKE HEALTH CARE DECISIONS FOR THE PARENT'S MINOR CHILD.

36 Sec. 13. Title 36, chapter 6, Arizona Revised Statutes, is amended
37 by adding article 4.2, to read:

38 ARTICLE 4.2. VACCINE PASSPORT PROHIBITIONS

39 36-681. COVID-19 vaccine passport; prohibitions

40 A. NOTWITHSTANDING ANY OTHER LAW, THIS STATE AND ANY CITY, TOWN OR
41 COUNTY OF THIS STATE ARE PROHIBITED FROM ESTABLISHING A COVID-19 VACCINE
42 PASSPORT OR REQUIRING EITHER OF THE FOLLOWING:

43 1. ANY PERSON TO BE VACCINATED FOR COVID-19.

1 2. A BUSINESS TO OBTAIN PROOF OF THE COVID-19 VACCINATION STATUS OF
2 ANY PATRON ENTERING THE BUSINESS ESTABLISHMENT.

3 B. ANY LAW OR ORDINANCE ESTABLISHING A COVID-19 VACCINE PASSPORT IS
4 VOID AND IS NOT ENFORCEABLE AGAINST ANY PERSON OR BUSINESS LOCATED IN THIS
5 STATE.

6 36-682. Article application; exceptions

7 THIS ARTICLE DOES NOT DO EITHER OF THE FOLLOWING:

8 1. LIMIT AN INDIVIDUAL'S ABILITY TO REQUEST THAT THE INDIVIDUAL'S
9 OWN VACCINATION RECORDS BE PROVIDED TO THAT INDIVIDUAL OR TO A THIRD PARTY
10 TO WHOM THE INDIVIDUAL REQUESTS THE RECORDS BE RELEASED.

11 2. PROHIBIT A HEALTH CARE INSTITUTION LICENSED PURSUANT TO CHAPTER
12 4 OF THIS TITLE FROM REQUIRING THE INSTITUTION'S EMPLOYEES TO BE
13 VACCINATED.

14 Sec. 14. Section 36-694, Arizona Revised Statutes, is amended to
15 read:

16 36-694. Report of blood tests; newborn screening program;
17 committee; fee; definitions

18 A. When a birth or stillbirth is reported, the attending physician
19 or other person required to ~~make a~~ report ~~of~~ the birth shall state on the
20 certificate whether a blood test for syphilis was made on a specimen of
21 blood taken from the woman who bore the child or from the umbilical cord
22 at delivery, as required by section 36-693, and the approximate date when
23 the specimen was taken.

24 B. When a birth is reported, the attending physician or person who
25 is required to ~~make a~~ report ~~on~~ the birth shall order or cause to be
26 ordered tests for certain congenital disorders, including hearing
27 disorders. The results of tests for these disorders must be reported to
28 the department of health services. The department of health services
29 shall specify in rule the disorders, the process for collecting and
30 submitting specimens and the reporting requirements for test results.

31 C. When a hearing test is performed on a newborn, the initial
32 hearing test results and any subsequent hearing test results must be
33 reported to the department of health services as prescribed by department
34 rules.

35 D. The director of the department of health services shall
36 establish a newborn screening program within the department to ensure that
37 the testing for congenital disorders and the reporting of hearing test
38 results required by this section are conducted in an effective and
39 efficient manner. THE NEWBORN SCREENING PROGRAM SHALL INCLUDE ALL
40 CONGENITAL DISORDERS THAT ARE INCLUDED ON THE RECOMMENDED UNIFORM
41 SCREENING PANEL ADOPTED BY THE SECRETARY OF THE UNITED STATES DEPARTMENT
42 OF HEALTH AND HUMAN SERVICES FOR BOTH CORE AND SECONDARY CONDITIONS.
43 BEGINNING JANUARY 1, 2022, DISORDERS THAT ARE ADDED TO THE CORE AND
44 SECONDARY CONDITIONS LIST OF THE RECOMMENDED UNIFORM SCREENING PANEL SHALL

1 BE ADDED TO THIS STATE'S NEWBORN SCREENING PANEL WITHIN TWO YEARS AFTER
2 THEIR ADDITION TO THE RECOMMENDED UNIFORM SCREENING PANEL. The newborn
3 screening program shall include an education program for the general
4 public, the medical community, parents and professional groups. The
5 director shall designate the state laboratory as the only testing facility
6 for the program, except that the director may designate other laboratory
7 testing facilities for conditions or tests added to the newborn screening
8 program on or after July 24, 2014. If the director designates another
9 laboratory testing facility for any condition or test, the director shall
10 require the facility to follow all of the privacy and sample destruction
11 time frames that are required of the state laboratory.

12 E. The newborn screening program shall establish and maintain a
13 central database of newborns and infants who are tested for hearing loss
14 and congenital disorders that includes information required in rule. Test
15 results are confidential subject to the disclosure provisions of sections
16 12-2801 and 12-2802.

17 F. If tests conducted pursuant to this section indicate that a
18 newborn or infant may have a hearing loss or a congenital disorder, the
19 screening program shall provide follow-up services to encourage the
20 child's family to access evaluation services, specialty care and early
21 intervention services.

22 G. The director shall establish a committee to provide
23 recommendations and advice to the department on at least an annual basis
24 regarding NEWBORN SCREENING BEST PRACTICES AND EMERGING TRENDS. ~~tests that~~
25 ~~the committee believes should be included in the newborn screening~~
26 ~~program. Any recommendation by the committee that a test be added to the~~
27 ~~newborn screening program shall be accompanied by a cost-benefit analysis.~~

28 ~~H. The committee shall include the following members who are~~
29 ~~appointed by the director and who serve without compensation or~~
30 ~~reimbursement of expenses at the pleasure of the director:~~

31 ~~1. Seven physicians who are licensed pursuant to title 32, chapter~~
32 ~~13 or 17 and who represent the medical specialties of endocrinology,~~
33 ~~pediatrics, neonatology, family practice, otology and obstetrics.~~

34 ~~2. A neonatal nurse practitioner who is licensed and certified~~
35 ~~pursuant to title 32, chapter 15.~~

36 ~~3. An audiologist who is licensed pursuant to chapter 17, article 4~~
37 ~~of this title.~~

38 ~~4. A representative of an agency that provides services under part~~
39 ~~6 of the individuals with disabilities education act.~~

40 ~~5. At least one parent of a child with a hearing loss or a~~
41 ~~congenital disorder.~~

42 ~~6. A representative from the insurance industry who is familiar~~
43 ~~with health care reimbursement issues.~~

1 ~~7. The director of the Arizona health care cost containment system~~
2 ~~administration or the director's designee.~~

3 ~~8. A representative of the hospital or health care industry.~~

4 ~~i.~~ H. The director may establish by rule a fee that the department
5 may collect for ~~operation of~~ OPERATING the newborn screening program,
6 including contracting for the testing pursuant to this section. ~~The fee~~
7 ~~for the first specimen and hearing test shall not exceed thirty-six~~
8 ~~dollars.~~ THE DIRECTOR SHALL PRESENT ANY CHANGE TO THE FEE FOR THE NEWBORN
9 SCREENING PROGRAM TO THE JOINT LEGISLATIVE BUDGET COMMITTEE FOR REVIEW.

10 I. NOT LATER THAN SIXTY DAYS AFTER THE DEPARTMENT ADJUSTS THE
11 NEWBORN SCREENING PROGRAM FEE ESTABLISHED PURSUANT TO SUBSECTION H OF THIS
12 SECTION:

13 1. EACH HEALTH INSURER THAT IS SUBJECT TO TITLE 20 SHALL UPDATE ITS
14 HOSPITAL RATES THAT INCLUDE NEWBORN SCREENING TO REFLECT THE INCREASE.

15 2. FOR THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM AND
16 CONTRACTORS ACTING PURSUANT TO CHAPTER 29, ARTICLE 1 OF THIS TITLE THAT
17 ARE NOT SUBJECT TO TITLE 20, THE ARIZONA HEALTH CARE COST CONTAINMENT
18 SYSTEM SHALL UPDATE ITS HOSPITAL RATES THAT INCLUDE NEWBORN SCREENING TO
19 REFLECT THE INCREASE.

20 J. For the purposes of this section:

21 1. "Infant" means a child who is twenty-nine days of age to two
22 years of age.

23 2. "Newborn" means a child who is not more than twenty-eight days
24 of age.

25 Sec. 15. Section 36-694.01, Arizona Revised Statutes, is amended to
26 read:

27 36-694.01. Newborn screening program fund; use; exemption

28 A. The newborn screening program fund is established. The
29 department of health services shall administer the fund. The fund
30 consists of fees collected pursuant to section 36-694 and gifts, GRANTS
31 and donations received by the department.

32 B. Subject to legislative appropriation, the department shall use
33 fund monies to support the operation of the newborn screening program
34 prescribed under section 36-694 and rules adopted under that section.

35 C. Monies in the fund are exempt from the provisions of section
36 35-190 relating to lapsing of appropriations.

37 Sec. 16. Section 36-1201, Arizona Revised Statutes, is amended to
38 read:

39 36-1201. Juvenile group homes; service contracts; registry;
40 definitions

41 A. State agencies that contract directly with group homes or
42 regional behavioral health authorities that, as part of their contracts
43 with the department of health services, subcontract with group homes shall

1 require in each contract awarded, renewed or amended the following minimum
2 provisions:

3 1. The group home shall provide a safe, clean and humane
4 environment for the residents.

5 2. The group home is responsible for ~~the supervision of~~ SUPERVISING
6 the residents while in the group home environment or while residents are
7 engaged in any off-site activities organized or sponsored by and under the
8 direct supervision and control of the group home or affiliated with the
9 group home.

10 3. All group home contractors shall be licensed by either the
11 department of health services, the department of child safety or the
12 department of economic security.

13 4. The award of a group home contract from an appropriate
14 contracting authority is not a guarantee that children will be placed at
15 the group home.

16 5. A ~~license~~ LICENSING violation by the group home that is not
17 corrected pursuant to this section may also be considered a contract
18 violation.

19 6. State agencies and regional behavioral health authorities may
20 share information regarding group home contractors. The shared
21 information shall not include information that personally identifies
22 residents of group homes.

23 7. The following contract remedies:

24 (a) A schedule of financial sanctions in an amount of up to \$500
25 per violation that the contracting authority, after completing an
26 investigation, may assess against the group home contractor for a
27 substantiated contract violation relating to the health, care or safety of
28 a resident or the safety of a neighbor. A financial sanction may be
29 imposed for a contract violation related to the safety of a neighbor only
30 if the conduct that constitutes the violation would be sufficient to form
31 the basis for a civil cause of action for damages on the part of the
32 neighbor whether or not such a civil action has been filed. These
33 sanctions may be imposed by either deducting the amount of the sanction
34 from any payment due or withholding future payments. The deduction or
35 withholding may occur after any hearing available to the contractor.

36 (b) The contracting authority's right to remove residents from the
37 group home or suspend new placements to the group home until the
38 ~~contracting~~ CONTRACT violation is corrected.

39 (c) The contracting authority's right to cancel the contract.

40 8. Within ten business days after the contracting authority
41 receives a complaint relating to a group home, the contracting authority
42 shall notify the group home provider and either initiate an investigation
43 or refer the investigation to the licensing authority. If any complaint
44 concerns an immediate threat to the health and safety of a child, the

1 complaint shall be immediately referred to the licensing authority. If
2 the contracting authority determines that a violation has occurred, it
3 shall:

4 (a) Notify all other contracting authorities of the violation.

5 (b) Coordinate a corrective action plan consistent with the
6 severity of the violation.

7 (c) Require the corrective action plan to be implemented within
8 ninety days.

9 9. If a licensing deficiency is not corrected in a timely manner to
10 the satisfaction of the licensing authority, the contracting authority may
11 cancel the contract immediately on notice to the group home and may remove
12 the residents.

13 10. A person may bring a complaint against any state agency that
14 violates this section pursuant to title 41, chapter 6, article 6 or 10, as
15 applicable. In addition to any costs or fees awarded to a person
16 resulting from a complaint of a violation of this section, the agency
17 shall revert the sum of \$5,000 from its general fund operating
18 appropriation to the state treasurer for deposit in the state general fund
19 for each violation that is upheld by an administrative law judge or
20 hearing officer. The legislature shall appropriate monies that revert
21 under this section to a similar program that provides direct services to
22 children.

23 B. When a licensing authority has determined that a ~~license~~
24 LICENSING violation has occurred or is occurring, the licensing authority
25 shall notify the appropriate contracting authority of the licensing
26 violation.

27 C. A group home's record of contract violations and licensing
28 violations may be considered by any contracting authority when it
29 evaluates any request for proposals.

30 D. The department of health services shall establish a central
31 registry of juvenile group homes licensed by this state. Each agency that
32 is subject to the requirements of this section shall provide updated
33 information for the registry to the department of health services every
34 six months. The registry shall include the following information
35 regarding each group home:

36 1. The location of the group home, including satellite facilities.

37 2. The number of residents at the group home and its satellite
38 facilities.

39 3. The current, updated emergency contacts for the group home and
40 its satellite facilities.

41 4. The current, updated contacts for the group home's licensing
42 authority.

43 E. If the municipality in which a group home is located requests
44 the department of health services to provide information from the

1 registry, the department shall provide the information every six months to
2 the municipality.

3 F. For the purposes of this article:

4 1. "Contract violation" means a licensing violation or a failure of
5 the group home to comply with those provisions of its contract relating to
6 subsection A, paragraphs 1, 2 and 3 of this section.

7 2. "Contracting authority" means a regional behavioral health
8 authority or the state agency or its division, office, section, bureau or
9 program that is responsible for ~~the administration~~ ADMINISTERING and
10 monitoring ~~of~~ contracts with group homes.

11 3. "Group home":

12 (a) Means a residential facility that is licensed to serve more
13 than four minors at any one time, that is licensed by the department of
14 health services pursuant to chapter 4 of this title or section 36-591,
15 subsection ~~B~~ A or by the department of child safety pursuant to title 8,
16 chapter 4, article 4 and that provides services pursuant to a contract for
17 minors determined to be dependent as defined in section 8-201 or
18 delinquent or incorrigible pursuant to section 8-341, or for minors with
19 developmental disabilities, mental health or substance abuse needs. ~~Group~~
20 ~~home~~

21 (b) Does not include hospitals, nursing homes, child crisis and
22 domestic violence shelters, adult homes, foster homes, facilities subject
23 to any transient occupancy tax or behavioral health service agencies that
24 provide twenty-four hour or continuous physician availability.

25 4. "Licensing authority" means the state agency or its division,
26 office, section, bureau or program that is responsible for licensing group
27 homes.

28 5. "Licensing violation" means a determination by the licensing
29 authority that the group home is not in compliance with licensing
30 requirements as prescribed in statute or rule.

31 6. "Neighbor" means a person residing within a one-quarter mile
32 radius of the group home.

33 7. "Resident" means any person who is placed in a group home
34 pursuant to a contract with a contracting authority.

35 Sec. 17. Title 36, Arizona Revised Statutes, is amended by adding
36 chapter 31, to read:

37 CHAPTER 31

38 SEXUAL VIOLENCE SERVICES

39 ARTICLE 1. GENERAL PROVISIONS

40 36-3101. Definitions

41 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

42 1. "DEPARTMENT" MEANS THE DEPARTMENT OF ECONOMIC SECURITY.

1 2. "PROGRAM ADMINISTRATOR" HAS THE SAME MEANING PRESCRIBED IN
2 SECTION 36-3001.

3 36-3102. Sexual violence service fund; purpose; exemption

4 A. THE SEXUAL VIOLENCE SERVICE FUND IS ESTABLISHED CONSISTING OF
5 LEGISLATIVE APPROPRIATIONS, GRANTS AND CONTRIBUTIONS. THE PROGRAM
6 ADMINISTRATOR SHALL ADMINISTER THE FUND FOR THE PURPOSES PRESCRIBED IN
7 THIS ARTICLE. MONIES IN THE FUND ARE SUBJECT TO LEGISLATIVE APPROPRIATION
8 AND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING
9 OF APPROPRIATIONS.

10 B. THE DEPARTMENT, IN CONSULTATION WITH THE FEDERALLY DESIGNATED
11 STATEWIDE COALITION TO END SEXUAL VIOLENCE, SHALL ESTABLISH PROGRAM
12 PRIORITIES FOR THE FUND. THE DEPARTMENT SHALL SPEND MONIES IN THE FUND TO
13 PROVIDE GRANTS TO SERVICE PROVIDERS FOR VICTIMS OF SEXUAL VIOLENCE.

14 36-3103. Sexual violence service providers; requirements;
15 eligibility

16 A. TO BE ELIGIBLE TO RECEIVE A GRANT UNDER THIS ARTICLE, A SEXUAL
17 VIOLENCE SERVICE PROVIDER SHALL ADHERE TO STATEWIDE SERVICE STANDARDS FOR
18 SEXUAL VIOLENCE PROGRAMS THAT ARE APPROVED BY THE DEPARTMENT IN
19 COLLABORATION WITH THE FEDERALLY DESIGNATED STATEWIDE COALITION TO END
20 SEXUAL VIOLENCE.

21 B. A SEXUAL VIOLENCE SERVICE PROVIDER DOES NOT QUALIFY FOR GRANT
22 MONIES IF THE SERVICE PROVIDER DISCRIMINATES IN ITS ADMISSION OR PROVISION
23 OF SERVICES ON THE BASIS OF RACE, GENDER, RELIGION, COLOR, AGE,
24 DISABILITY, MARITAL STATUS, NATIONAL ORIGIN OR ANCESTRY.

25 36-3104. Methodology for allocating grant monies

26 THE DEPARTMENT, IN CONSULTATION WITH THE FEDERALLY DESIGNATED
27 STATEWIDE COALITION TO END SEXUAL VIOLENCE, SHALL DEVELOP A WEIGHTED
28 METHODOLOGY FOR ALLOCATING GRANT MONIES THAT CONSIDERS ALL OF THE
29 FOLLOWING:

- 30 1. THE NEED FOR SERVICES.
- 31 2. EXISTING SERVICES.
- 32 3. GEOGRAPHIC LOCATION.
- 33 4. POPULATION RATIOS.

34 36-3105. Annual report

35 ON OR BEFORE OCTOBER 1 OF EACH YEAR, THE DEPARTMENT SHALL PROVIDE AN
36 ANNUAL REPORT TO THE GOVERNOR, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES
37 AND THE PRESIDENT OF THE SENATE THAT INCLUDES INFORMATION FROM EACH SEXUAL
38 VIOLENCE SERVICE PROVIDER THAT RECEIVES GRANT MONIES PURSUANT TO THIS
39 ARTICLE ON THE POPULATION SERVED. IN PREPARING THE REPORT THE DEPARTMENT
40 SHALL CONSULT WITH THE FEDERALLY DESIGNATED STATEWIDE COALITION TO END
41 SEXUAL VIOLENCE. THE DEPARTMENT SHALL PROVIDE A COPY OF THIS REPORT TO
42 THE SECRETARY OF STATE.

43 Sec. 18. Repeal

44 Section 41-3021.11, Arizona Revised Statutes, is repealed.

1 Sec. 19. Title 41, chapter 27, article 2, Arizona Revised Statutes,
2 is amended by adding section 41-3022.26, to read:

3 41-3022.26. Board of examiners of nursing care institution
4 administrators and assisted living facility
5 managers; termination March 31, 2022

6 A. THE BOARD OF EXAMINERS OF NURSING CARE INSTITUTION
7 ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS TERMINATES ON
8 MARCH 31, 2022.

9 B. TITLE 36, CHAPTER 4, ARTICLE 6 AND THIS SECTION ARE REPEALED ON
10 JANUARY 1, 2023.

11 Sec. 20. Section 46-452.02, Arizona Revised Statutes, is amended to
12 read:

13 46-452.02. State long-term care ombudsman; duties; immunity
14 from liability

15 A. A representative of the office of the state long-term care
16 ombudsman who performs the official duties of the long-term care ombudsman
17 ~~shall~~ IS not ~~be~~ liable under state law for the good faith performance of
18 official duties.

19 B. Official duties of the office of the state long-term care
20 ombudsman include authority to:

21 1. Enter long-term care facilities to communicate with residents.

22 2. Hear, investigate and attempt to resolve complaints by
23 agreement, mediation or conciliation.

24 3. Render advice to residents of facilities.

25 4. Refer cases involving abuse, neglect, exploitation or health and
26 safety to adult protective services or the appropriate licensing agency.

27 5. Make appropriate referrals to legal services or other community
28 services.

29 6. ASSUME such other responsibilities as required pursuant to the
30 older Americans act of 1965, as amended (P.L. ~~100175, sec. 307 (A) (12)~~
31 ~~100-175~~; 42 United States Code ~~3027(A) (12)~~ SECTION 3027(a)(12)).

32 C. SUBJECT TO AVAILABLE MONIES, THE OFFICE OF THE STATE LONG-TERM
33 CARE OMBUDSMAN SHALL VISIT EACH LONG-TERM CARE FACILITY IN THIS STATE
34 WITHOUT PRIOR NOTICE AT LEAST TWO TIMES EACH CALENDAR YEAR TO SPEAK WITH
35 RESIDENTS OF THE LONG-TERM CARE FACILITY, OR THE RESIDENT'S REPRESENTATIVE
36 IF THE RESIDENT IS NONVERBAL, WITHOUT THE PRESENCE OF THE FACILITY'S
37 STAFF. THE REQUIREMENTS OF THIS SUBSECTION ARE IN ADDITION TO ANY
38 FOLLOW-UP IN RESPONSE TO A COMPLAINT.

39 ~~E.~~ D. Official duties of the office of the state long-term care
40 ombudsman do not include activities performed by a licensed health care
41 provider as defined in section 12-561.

1 Sec. 21. Nursing care institution and assisted living
2 facility study committee; membership; duties;
3 report; delayed repeal

4 A. The nursing care institution and assisted living facility study
5 committee is established consisting of the following members:

6 1. Two members of the house of representatives who represent
7 different political parties and who are appointed by the speaker of the
8 house of representatives. The speaker of the house of representatives
9 shall designate one of these members to serve as cochairperson of the
10 study committee.

11 2. Two members of the senate who represent different political
12 parties and who are appointed by the president of the senate. The
13 president of the senate shall designate one of these members to serve as
14 cochairperson of the study committee.

15 3. One representative of the governor's office.

16 4. The director of the department of health services or the
17 director's designee.

18 5. The state long-term care ombudsman or the ombudsman's designee.

19 6. Two representatives from organizations that advocate for the
20 elderly who are appointed by the governor.

21 7. Two licensed nursing care institution administrators who are
22 currently employed as administrators of skilled nursing facilities, one of
23 whom is from a nonprofit facility and one of whom is from a proprietary
24 facility. The president of the senate shall appoint both of these
25 members.

26 8. Two licensed assisted living facility managers who are currently
27 employed as managers of assisted living facilities, one of whom is from a
28 nonprofit facility and one of whom is from a proprietary facility. The
29 speaker of the house of representatives shall appoint both of these
30 members.

31 9. Two licensed assisted living facility managers who are currently
32 employed as managers of assisted living facility homes and who are
33 appointed by the president of the senate.

34 10. Four family members of residents of a skilled nursing facility,
35 assisted living facility or assisted living facility home who are
36 appointed by the governor.

37 11. One health care professional who treats the elderly and who is
38 appointed by the governor.

39 B. The study committee shall:

40 1. Consider whether the board of examiners of nursing care
41 institution administrators and assisted living facility managers should be
42 administered independently or the duties should be moved to the department
43 of health services or another successor agency or licensing board.

1 2. Review and discuss the statutes related to disclosure of all
2 felonies regardless of the applicants' fingerprint clearance card
3 requirement.

4 3. Receive an update from the auditor general's office and the
5 executive director of the board of examiners of nursing care institution
6 administrators and assisted living facility managers on the auditor
7 general's recommendations and the board's compliance with the
8 recommendations to date.

9 4. Hear testimony about operational changes from the executive
10 director of the board.

11 5. Discuss and research best practices to administer licenses.

12 6. Identify any additional efficiencies to make the board more
13 responsive to the public and its licensees.

14 7. Review best practices relating to answering and investigating
15 complaints.

16 8. Review and analyze the regulatory oversight of skilled nursing
17 facilities and assisted living facilities by the state and federal
18 government and the future needs of the industry.

19 C. Public members of the study committee are eligible to receive
20 reimbursement of expenses pursuant to title 38, chapter 4, article 2,
21 Arizona Revised Statutes.

22 D. On or before December 1, 2021, the study committee shall submit
23 a report of its findings and recommendations to the governor, the
24 president of the senate and the speaker of the house of representatives
25 and shall provide a copy of this report to the secretary of state.

26 E. This section is repealed from and after June 30, 2022.

27 Sec. 22. ALICS; county contributions; fiscal year 2021-2022

28 A. Notwithstanding section 11-292, Arizona Revised Statutes, county
29 contributions for the Arizona long-term care system for fiscal year
30 2021-2022 are as follows:

31	1. Apache	\$ 662,900
32	2. Cochise	\$ 4,551,700
33	3. Coconino	\$ 1,990,400
34	4. Gila	\$ 2,327,100
35	5. Graham	\$ 1,328,000
36	6. Greenlee	\$ 0
37	7. La Paz	\$ 357,100
38	8. Maricopa	\$184,272,900
39	9. Mohave	\$ 9,154,300
40	10. Navajo	\$ 2,744,100
41	11. Pima	\$ 44,073,400
42	12. Pinal	\$ 12,109,900
43	13. Santa Cruz	\$ 2,242,800

1	14. Yavapai	\$ 7,677,800
2	15. Yuma	\$ 9,701,600

3 B. If the overall cost for the Arizona long-term care system
4 exceeds the amount specified in the general appropriations act for fiscal
5 year 2021-2022, the state treasurer shall collect from the counties the
6 difference between the amount specified in subsection A of this section
7 and the counties' share of the state's actual contribution. The counties'
8 share of the state's contribution must comply with any federal maintenance
9 of effort requirements. The director of the Arizona health care cost
10 containment system administration shall notify the state treasurer of the
11 counties' share of the state's contribution and report the amount to the
12 director of the joint legislative budget committee. The state treasurer
13 shall withhold from any other monies payable to a county from whatever
14 state funding source is available an amount necessary to fulfill that
15 county's requirement specified in this subsection. The state treasurer
16 may not withhold distributions from the Arizona highway user revenue fund
17 pursuant to title 28, chapter 18, article 2, Arizona Revised Statutes.
18 The state treasurer shall deposit the amounts withheld pursuant to this
19 subsection and amounts paid pursuant to subsection A of this section in
20 the long-term care system fund established by section 36-2913, Arizona
21 Revised Statutes.

22 Sec. 23. AHCCCS; disproportionate share payments; fiscal year
23 2021-2022

24 A. Disproportionate share payments for fiscal year 2021-2022 made
25 pursuant to section 36-2903.01, subsection 0, Arizona Revised Statutes,
26 include:

27 1. \$113,818,500 for a qualifying nonstate operated public hospital.
28 The Maricopa county special health care district shall provide a certified
29 public expense form for the amount of qualifying disproportionate share
30 hospital expenditures made on behalf of this state to the Arizona health
31 care cost containment system administration on or before May 1, 2022 for
32 all state plan years as required by the Arizona health care cost
33 containment system state plan standard terms and conditions. The
34 administration shall assist the district in determining the amount of
35 qualifying disproportionate share hospital expenditures. Once the
36 administration files a claim with the federal government and receives
37 federal financial participation based on the amount certified by the
38 Maricopa county special health care district, if the certification is
39 equal to or less than \$113,818,500 and the administration determines that
40 the revised amount is correct pursuant to the methodology used by the
41 administration pursuant to section 36-2903.01, Arizona Revised Statutes,
42 the administration shall notify the governor, the president of the senate
43 and the speaker of the house of representatives, shall distribute
44 \$4,202,300 to the Maricopa county special health care district and shall

1 deposit the balance of the federal financial participation in the state
2 general fund. If the certification provided is for an amount less than
3 \$113,818,500 and the administration determines that the revised amount is
4 not correct pursuant to the methodology used by the administration
5 pursuant to section 36-2903.01, Arizona Revised Statutes, the
6 administration shall notify the governor, the president of the senate and
7 the speaker of the house of representatives and shall deposit the total
8 amount of the federal financial participation in the state general fund.
9 If the certification provided is for an amount greater than \$113,818,500,
10 the administration shall distribute \$4,202,300 to the Maricopa county
11 special health care district and shall deposit \$75,482,000 of the federal
12 financial participation in the state general fund. The administration may
13 make additional disproportionate share hospital payments to the Maricopa
14 county special health care district pursuant to section 36-2903.01,
15 subsection P, Arizona Revised Statutes, and subsection B of this section.

16 2. \$28,474,900 for the Arizona state hospital. The Arizona state
17 hospital shall provide a certified public expense form for the amount of
18 qualifying disproportionate share hospital expenditures made on behalf of
19 this state to the administration on or before March 31, 2022. The
20 administration shall assist the Arizona state hospital in determining the
21 amount of qualifying disproportionate share hospital expenditures. Once
22 the administration files a claim with the federal government and receives
23 federal financial participation based on the amount certified by the
24 Arizona state hospital, the administration shall deposit the entire amount
25 of federal financial participation in the state general fund. If the
26 certification provided is for an amount less than \$28,474,900, the
27 administration shall notify the governor, the president of the senate and
28 the speaker of the house of representatives and shall deposit the entire
29 amount of federal financial participation in the state general fund. The
30 certified public expense form provided by the Arizona state hospital must
31 contain both the total amount of qualifying disproportionate share
32 hospital expenditures and the amount limited by section 1923(g) of the
33 social security act.

34 3. \$884,800 for private qualifying disproportionate share
35 hospitals. The Arizona health care cost containment system administration
36 shall make payments to hospitals consistent with this appropriation and
37 the terms of the state plan, but payments are limited to those hospitals
38 that either:

39 (a) Meet the mandatory definition of disproportionate share
40 qualifying hospitals under section 1923 of the social security act.

41 (b) Are located in Yuma county and contain at least three hundred
42 beds.

43 B. After the distributions made pursuant to subsection A of this
44 section, the allocations of disproportionate share hospital payments made

1 pursuant to section 36-2903.01, subsection P, Arizona Revised Statutes,
2 shall be made available first to qualifying private hospitals located
3 outside the Phoenix metropolitan statistical area and the Tucson
4 metropolitan statistical area before being made available to qualifying
5 hospitals within the Phoenix metropolitan statistical area and the Tucson
6 metropolitan statistical area.

7 Sec. 24. AHCCCS transfer; counties; federal monies; fiscal
8 year 2021-2022

9 On or before December 31, 2022, notwithstanding any other law, for
10 fiscal year 2021-2022 the Arizona health care cost containment system
11 administration shall transfer to the counties the portion, if any, as may
12 be necessary to comply with section 10201(c)(6) of the patient protection
13 and affordable care act (P.L. 111-148), regarding the counties'
14 proportional share of this state's contribution.

15 Sec. 25. County acute care contributions; fiscal year 2021-2022

16 A. Notwithstanding section 11-292, Arizona Revised Statutes, for
17 fiscal year 2021-2022 for the provision of hospitalization and medical
18 care, the counties shall contribute the following amounts:

19	1. Apache	\$ 268,800
20	2. Cochise	\$ 2,214,800
21	3. Coconino	\$ 742,900
22	4. Gila	\$ 1,413,200
23	5. Graham	\$ 536,200
24	6. Greenlee	\$ 190,700
25	7. La Paz	\$ 212,100
26	8. Maricopa	\$17,603,700
27	9. Mohave	\$ 1,237,700
28	10. Navajo	\$ 310,800
29	11. Pima	\$14,951,800
30	12. Pinal	\$ 2,715,600
31	13. Santa Cruz	\$ 482,800
32	14. Yavapai	\$ 1,427,800
33	15. Yuma	\$ 1,325,100

34 B. If a county does not provide funding as specified in subsection
35 A of this section, the state treasurer shall subtract the amount owed by
36 the county to the Arizona health care cost containment system fund and the
37 long-term care system fund established by section 36-2913, Arizona Revised
38 Statutes, from any payments required to be made by the state treasurer to
39 that county pursuant to section 42-5029, subsection D, paragraph 2,
40 Arizona Revised Statutes, plus interest on that amount pursuant to section
41 44-1201, Arizona Revised Statutes, retroactive to the first day the
42 funding was due. If the monies the state treasurer withholds are
43 insufficient to meet that county's funding requirements as specified in
44 subsection A of this section, the state treasurer shall withhold from any

1 other monies payable to that county from whatever state funding source is
2 available an amount necessary to fulfill that county's requirement. The
3 state treasurer may not withhold distributions from the Arizona highway
4 user revenue fund pursuant to title 28, chapter 18, article 2, Arizona
5 Revised Statutes.

6 C. Payment of an amount equal to one-twelfth of the total amount
7 determined pursuant to subsection A of this section shall be made to the
8 state treasurer on or before the fifth day of each month. On request from
9 the director of the Arizona health care cost containment system
10 administration, the state treasurer shall require that up to three months'
11 payments be made in advance, if necessary.

12 D. The state treasurer shall deposit the amounts paid pursuant to
13 subsection C of this section and amounts withheld pursuant to subsection B
14 of this section in the Arizona health care cost containment system fund
15 and the long-term care system fund established by section 36-2913, Arizona
16 Revised Statutes.

17 E. If payments made pursuant to subsection C of this section exceed
18 the amount required to meet the costs incurred by the Arizona health care
19 cost containment system for the hospitalization and medical care of those
20 persons defined as an eligible person pursuant to section 36-2901,
21 paragraph 6, subdivisions (a), (b) and (c), Arizona Revised Statutes, the
22 director of the Arizona health care cost containment system administration
23 may instruct the state treasurer either to reduce remaining payments to be
24 paid pursuant to this section by a specified amount or to provide to the
25 counties specified amounts from the Arizona health care cost containment
26 system fund and the long-term care system fund established by section
27 36-2913, Arizona Revised Statutes.

28 F. The legislature intends that the Maricopa county contribution
29 pursuant to subsection A of this section be reduced in each subsequent
30 year according to the changes in the GDP price deflator. For the purposes
31 of this subsection, "GDP price deflator" has the same meaning prescribed
32 in section 41-563, Arizona Revised Statutes.

33 Sec. 26. Department of health services; fee reduction

34 The department of health services shall reduce the revenue generated
35 from fees collected for services provided by the bureau of radiation
36 control by \$300,000.

37 Sec. 27. Proposition 204 administration; exclusion; county
38 expenditure limitations

39 County contributions for the administrative costs of implementing
40 sections 36-2901.01 and 36-2901.04, Arizona Revised Statutes, that are
41 made pursuant to section 11-292, subsection 0, Arizona Revised Statutes,
42 are excluded from the county expenditure limitations.

1 operating the newborn screening program, including contracting for
2 testing, not exceed the direct cost of the tests and the direct costs of
3 operating the program, excluding any gifts, grants or donations or state
4 or federal funding received by the department.

5 Sec. 34. Legislative intent; implementation of program

6 The legislature intends that for fiscal year 2021-2022 the Arizona
7 health care cost containment system administration implement a program
8 within the available appropriation.

9 Sec. 35. Purpose

10 Pursuant to section 41-2955, subsection B, Arizona Revised Statutes,
11 the legislature continues the board of examiners of nursing care
12 institution administrators and assisted living facility managers to
13 promote the safe and professional regulation of nursing care institutions
14 and assisted living facilities in this state.

15 Sec. 36. Retroactivity

16 Section 36-446.04, Arizona Revised Statutes, as amended by this act,
17 section 41-3021.11, Arizona Revised Statutes, as repealed by this act, and
18 section 41-3022.26, Arizona Revised Statutes, as added by this act, apply
19 retroactively to from and after July 1, 2021.

APPROVED BY THE GOVERNOR JUNE 30, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 30, 2021.

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

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.
9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.
10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.
11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.
12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.
14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).
15. Recruit and train personnel for state, local and district health departments.
16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.
17. License and regulate health care institutions according to chapter 4 of this title.
18. Issue or direct the issuance of licenses and permits required by law.
19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:
 - (a) Screening in early pregnancy for detecting high-risk conditions.
 - (b) Comprehensive prenatal health care.
 - (c) Maternity, delivery and postpartum care.
 - (d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.
 - (e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.
21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.
 - B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.
 - C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is

charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

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

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. If 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 not 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 fundraising 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) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." 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 complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products 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.
- (i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.
- (j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:
 - (i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.
 - (ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

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 preserving or storing 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 preparing food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.
9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.
10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "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.

36-694. Report of blood tests; newborn screening program; committee; fee; definitions

- A. When a birth or stillbirth is reported, the attending physician or other person required to report the birth shall state on the certificate whether a blood test for syphilis was made on a specimen of blood taken from the woman who bore the child or from the umbilical cord at delivery, as required by section 36-693, and the approximate date when the specimen was taken.
- B. When a birth is reported, the attending physician or person who is required to report the birth shall order or cause to be ordered tests for certain congenital disorders, including hearing disorders. The results of tests for these disorders must be reported to the department of health services. The department of health services shall specify in rule the disorders, the process for collecting and submitting specimens and the reporting requirements for test results.
- C. When a hearing test is performed on a newborn, the initial hearing test results and any subsequent hearing test results must be reported to the department of health services as prescribed by department rules.
- D. The director of the department of health services shall establish a newborn screening program within the department to ensure that the testing for congenital disorders and the reporting of hearing test results required by this section are conducted in an effective and efficient manner. The newborn screening program shall include all congenital disorders that are included on the recommended uniform screening panel adopted by the secretary of the United States department of health and human services for both core and secondary conditions. Beginning January 1, 2022, disorders that are added to the core and secondary conditions list of the recommended uniform screening panel shall be added to this state's newborn screening panel within two years after their addition to the recommended uniform screening panel. The newborn screening program shall include an education program for the general public, the medical community, parents and professional groups. The director shall designate the state laboratory as the only testing facility for the program, except that the director may designate other laboratory testing facilities for conditions or tests added to the newborn screening program on or after July 24, 2014. If the director designates another laboratory testing facility for any condition or test, the director shall require the facility to follow all of the privacy and sample destruction time frames that are required of the state laboratory.
- E. The newborn screening program shall establish and maintain a central database of newborns and infants who are tested for hearing loss and congenital disorders that includes information required in rule. Test results are confidential subject to the disclosure provisions of sections 12-2801 and 12-2802.
- F. If tests conducted pursuant to this section indicate that a newborn or infant may have a hearing loss or a congenital disorder, the screening program shall provide follow-up services to encourage the child's family to access evaluation services, specialty care and early intervention services.
- G. The director shall establish a committee to provide recommendations and advice to the department on at least an annual basis regarding newborn screening best practices and emerging trends.
- H. The director may establish by rule a fee that the department may collect for operating the newborn screening program, including contracting for the testing pursuant to this section. The director shall present any change to the fee for the newborn screening program to the joint legislative budget committee for review.
- I. Not later than sixty days after the department adjusts the newborn screening program fee established pursuant to subsection H of this section:
1. Each health insurer that is subject to title 20 shall update its hospital rates that include newborn screening to reflect the increase.
 2. For the Arizona health care cost containment system and contractors acting pursuant to chapter 29, article 1 of this title that are not subject to title 20, the Arizona health care cost containment system shall update its hospital rates that include newborn screening to reflect the increase.

J. For the purposes of this section:

1. "Infant" means a child who is twenty-nine days of age to two years of age.
2. "Newborn" means a child who is not more than twenty-eight days of age.

ARIZONA MEDICAL BOARD

Title 4, Chapter 16, Arizona Medical Board

Amend: R4-16-201, R4-16-201.1, R4-16-301, R4-16-302, R4-16-303, R4-16-304, R4-16-305



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: December 7, 2021

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

FROM: Council Staff

DATE: November 11, 2021

SUBJECT: ARIZONA MEDICAL BOARD
Title 4, Chapter 16, Article 2, Licensure and Article 3, Dispensing of Drugs

Amend: R4-16-201, R4-16-201.1, R4-16-301, R4-16-302, R4-16-303,
R4-16-304, R4-16-305

Summary:

This regular rulemaking from the Medical Board (Board) relates to rules in Title 4, Chapter 16, Article 2, Licensure and Article 3, Dispensing of Drugs. In this rulemaking, the Board seeks to address issues identified in its 2015 and 2020 Five Year Review Reports (5YRRs) for Article 3 relating to the rules' lack of clarity, incorrect cross-references, and inconsistencies with statute. Further, the Board seeks to address issues identified in its 2021 5YRR for Article 2, where it stated that R4-16-201 was not consistent with statute.

In addition, the Board seeks to amend R4-16-301 to comply with Laws 2018, Ch. 1, which amended A.R.S. § 31-1491(B), relating to dispensing a Schedule II controlled substance that is an opioid.

The Board received an exception from Executive Order 2021-02 to conduct this rulemaking on July 29, 2021 and final approval to submit the rulemaking to the Council on October 18, 2021.

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

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

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

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

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

Yes. As described in Item 7 of the Preamble, the Board reviewed a study in conducting this rulemaking.

4. **Summary of the agency's economic impact analysis:**

The Board believes that improving clarity and correcting references will have a minimal, positive economic impact on those required to comply with the rules. The amendments will also benefit physicians who might be reluctant to obtain needed help for medical conditions that potentially impair practice.

There are currently 29,597 Board-licensed physicians. During the last year, there were 2,163 applicants for initial licensure and 11,966 applicants for renewal. During the last year, 11 of the 2,163 applicants for initial licensure indicated they received treatment during the last five years for a medical condition that might impair their ability to practice. Of the 11,966 applicants for renewal, 59 indicated they received treatment during the last five years for a medical condition that might impair their ability to practice.

Out of the currently licensed physicians, 581 are registered to dispense drugs and will be subject to the new statutory restriction on prescribing Schedule II controlled substances that are opioids.

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

The rulemaking is expected to have a minimal, positive economic impact while imposing minimal costs on the Board to complete and implement the rulemaking. Because the rulemaking is minimally intrusive and minimally costly, no alternative methods were considered.

6. **What are the economic impacts on stakeholders?**

Stakeholders include the Board, applicants, and physicians that the Board licenses and regulates.

The Board incurred the cost of completing this rulemaking and will incur the cost of implementing it. However, the Board has the benefit of rules that are clear, concise, and understandable, consistent with statute, and consistent with the best interests of the state.

Board-licensed applicants and physicians benefit from having to only report whether they currently have a medical condition that impairs their ability to practice. The Board believes this amendment removes a barrier to disclosure and therefore provides an extra protection to public health and safety.

Physicians registered by the Board to dispense drugs will be subject to the new statutory restriction on prescribing Schedule II controlled substances that are opioids. The statutory change was made as part of legislative efforts to address the opioid crisis. The costs and benefits of the restriction result from statute rather than rule.

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

No. The Board did not make any changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

Yes. As indicated in Item 11 of the Preamble, the Board received written comments from eight individuals in conducting this rulemaking. All of the comments that the Board received were in favor of this rulemaking. One of the individuals who submitted a written comment also appeared at the October 6, 2021 oral proceeding.

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

Yes. As indicated in Item 12a of the Preamble, the license, registration, and renewal addressed in this rulemaking are not general permits because pursuant to A.R.S. §§ 32-1422, 32-1430, and 32-1491, the Board is required to issue licenses and registrations only to individuals who meet criteria specified in statute and rule. Therefore, the Board is exempt from the general permit requirement pursuant to A.R.S. § 41-1037(A)(2).

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

No. The Board indicates that while there are numerous federal laws relating to the provision of healthcare, there are no federal laws directly applicable to these rules.

11. Conclusion

In this regular rulemaking, the Board seeks to address issues with the rules' clarity, incorrect cross references, and inconsistencies with statute. These rule amendments would implement courses of action proposed in the Board's previous 5YRRs for these rules. If approved, the rulemaking would be effective 60 days from the date the Board files its Certificate of Approval and the Notice of Final Rulemaking with the Secretary of State. Council staff recommends approval of this rulemaking.



Arizona Medical Board

1740 W. Adams, Suite 4000 • Phoenix, AZ 85007
Telephone: 480-551-2700 • Toll Free: 877-255-2212 • Fax: 480-551-2704
Website: www.azmd.gov • E-Mail: questions@azmd.gov

October 18, 2021

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

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

Dear Ms. Sornsins:

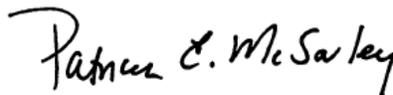
The attached final rule package is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

- A. Close of record date: The rulemaking record was closed on October 6, 2021, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B). Authorization to submit the rulemaking to the Council was provided by Trista Guzman Glover of the Governor's Office by an e-mail dated October 18, 2021.
- B. Relation of the rulemaking to a five-year-review report: The rulemaking relates to multiple five-year-review reports.
- C. New fee: The rulemaking does not establish a new fee.
- D. Fee increase: The rulemaking does not increase an existing fee.
- E. Immediate effective date: An immediate effective date is not requested.
- F. Certification regarding studies: I certify that the preamble accurately discloses the Board reviewed and or relied on the following study in its evaluation of and justification for rules in this rulemaking: *Physician, Heal Thy Double Stigma—Doctors with Mental Illness and Structural Barriers to Disclosure*, by Omar S. Haque, M.D., Ph.D., Michael A. Stein, J.D. Ph.D., and Amelia Marvit, *New England Journal of Medicine*, March 11, 2021.
- G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.

H. List of documents enclosed:

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

Sincerely,

A handwritten signature in black ink that reads "Patricia C. McSorley". The signature is written in a cursive style with a large, looping initial "P".

Patricia McSorley
Executive Director

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

PREAMBLE

- | <u>1. Articles, Parts, and Sections Affected</u> | <u>Rulemaking Action</u> |
|--|--------------------------|
| R4-16-201 | Amend |
| R4-16-201.1 | Amend |
| R4-16-301 | Amend |
| R4-16-302 | Amend |
| R4-16-303 | Amend |
| R4-16-304 | Amend |
| R4-16-305 | Amend |
- 2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**
- Authorizing statute: A.R.S. § 32-1404(D)
Implementing statute: A.R.S. §§ 32-1401(9), 32-1422, 32-1430, and 32-1491
- 3. The effective date for the rules:**
- As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State.
- a. If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**
- Not applicable
- b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**
- Not applicable
- 4. Citation to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**
- Notice of Rulemaking Docket Opening: 27 A.A.R. 1390, September 3, 2021

Notice of Proposed Rulemaking: 27 A.A.R. 1355, September 3, 2021

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

Name: Patricia McSorley, Executive Director

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

Telephone: (480) 551-2700

Fax: (480) 551-2704

E-mail: patricia.mcsorley@azmd.gov

Web site: www.azmd.gov

6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

In 5YRRs completed in 2015 and 2020, the Board indicated it intended to amend the rules in Article 3 to address issues dealing with lack of clarity, incorrect cross references, and inconsistencies with statute. However, higher priority work, turnover of staff, and scarce state resources prevented the Board from completing the plan rulemaking. This rulemaking addresses the issues identified in the previous 5YRRs.

A 5YRR of Article 2 was approved by the Council on February 2, 2021. This rulemaking addresses issues identified in that rulemaking.

Additionally, under Laws 2018, Chapter 1, the legislature amended A.R.S. § 32-1491(B) regarding dispensing a Schedule II controlled substance that is an opioid. R4-16-301 has been amended to reference that change.

Exemptions for this rulemaking from Executive Order 2021-02 were provided by Gabee Lepore of the Governor's Office by e-mails dated July 29, 2021. Authorization to submit the rulemaking to the Council was provided by Trista Guzman Glover of the Governor's Office by an e-mail dated October 18, 2021.

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

The Board reviewed and was informed by the following report on a study: *Physician, Heal Thy Double Stigma—Doctors with Mental Illness and Structural Barriers to Disclosure*, by Omar S. Haque, M.D., PhD., Michael A. Stein, J.D. Ph.D., and Amelia Marvit, New England Journal of Medicine, March 11, 2021. The article can be accessed at:

<https://www.nejm.org/doi/full/10.1056/NEJMp2031013>

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

Not applicable

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

The Board believes that improving clarity and correcting references will have a minimal, positive economic impact on those required to comply with the rules. The amendments to R4-16-201 and R4-16-201.1 will benefit physicians who might be reluctant to obtain needed help for medical conditions that potentially impair practice.

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

The Board made no changes between the proposed and final rulemakings

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

The Board received written comments from eight individuals: Sara Gibson, Mark Carroll, and Aaron Goldman of Health Choice AZ; Teresa Bertsch of The Guidance Center, Inc; Bharat Magu of the Yuma Regional Medical Center; Libby McDannell, Jasleen Chhatwal, and Miriam Anand of the Arizona Psychiatric Society and the Arizona Medical Association. All wrote in support of the application amendments regarding medical conditions that impair an applicant's ability to practice.

Dr. Chhatawal appeared and reiterated her position at the oral proceeding on October 6, 2021.

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

None

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

The license, renewal, and registration addressed in this rulemaking are not general permits because the Board is required by statute (See A.R.S. §§ 32-1422, 32-1430, and 32-1491) to issue licenses and registrations only to individuals who meet criteria specified in statute and rule.

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

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

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

No analysis was submitted.

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

None

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

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

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 16. ARIZONA MEDICAL BOARD

ARTICLE 2. LICENSURE

Section

- R4-16-201. Application for Licensure by Examination or Endorsement
- R4-16-201.1. Application for Renewal of License

ARTICLE 3. DISPENSING OF DRUGS

Section

- R4-16-301. Registration and Renewal
- R4-16-302. Packaging and Inventory; Exception
- R4-16-303. Prescribing and Dispensing Requirements
- R4-16-304. Recordkeeping and Reporting Shortages
- R4-16-305. Inspections; Denial and Revocation

ARTICLE 2. LICENSURE

R4-16-201. Application for Licensure by Examination or Endorsement

- A.** For purposes of this Article, unless otherwise specified:
1. “ABMS” means American Board of Medical Specialties.
 2. “ECFMG” means Educational Commission for Foreign Medical Graduates.
 3. “FCVS” means Federation Credentials Verification Service.
 4. “FLEX” means Federation Licensing Examination.
 5. “LMCC” means Licentiate of the Medical Council of Canada.
 6. “NBME” means National Board of Medical Examiners.
 7. “Primary source” means the original source or an approved agent of the original source of a specific credential that can verify the accuracy of a qualification reported by an applicant.
 8. “SPEX” means Special Purposes Examination.
 9. “USMLE” means United States Medical Licensing Examination.
- B.** An applicant for licensure to practice medicine by Step 3 of the USMLE or endorsement shall submit the following information on an application form available on request from the Board and on the Board’s web site:
1. Applicant’s full name, Social Security number, business and home addresses, primary e-mail address, business and home telephone numbers, and date and place of birth;
 2. Name of the school of medicine from which the applicant graduated and date of graduation;
 3. A complete list of the applicant’s internship, residency, and fellowship training;
 4. List of all licensing examinations taken;
 5. Names of the states, U.S. territories, or provinces in which the applicant has applied for or been granted a license or registration to practice medicine, including license number, date issued, and current status of the license;
 6. A statement of whether the applicant:
 - a. Has had an application for medical licensure denied or rejected by another state or province licensing board, and if so, an explanation;
 - b. Has ever had any disciplinary or rehabilitative action taken against the applicant by another licensing board, including other health professions, and if so, an explanation;
 - c. Has had any disciplinary actions, restrictions, or limitations taken against the applicant while participating in any type of training program or by any health care provider, and if so, an explanation;

- d. Has been found in violation of a statute, rule, or regulation of any domestic or foreign governmental agency, and if so, an explanation;
 - e. Is currently under investigation by any medical board or peer review body, and if so, an explanation;
 - f. Has been subject to discipline resulting in a medical license being revoked, suspended, limited, cancelled during investigation, restricted, or voluntarily surrendered, or resulting in probation or entry into a consent agreement or stipulation and if so, an explanation;
 - g. Has had hospital privileges revoked, denied, suspended, or restricted, and if so, an explanation;
 - h. Has been named as a defendant in a malpractice matter currently pending or that resulted in a settlement or judgment against the applicant, and if so, an explanation;
 - i. Has been subjected to any regulatory disciplinary action, including censure, practice restriction, suspension, sanction, or removal from practice, imposed by any agency of the federal or state government, and if so, an explanation;
 - j. Has had the authority to prescribe, dispense, or administer medications limited, restricted, modified, denied, surrendered, or revoked by a federal or state agency as a result of disciplinary or other adverse action, and if so, an explanation;
 - k. Has been found guilty or entered into a plea of no contest to a felony, a misdemeanor involving moral turpitude in any state, and if so, an explanation;
7. Whether the applicant is currently certified by any of the American Board of Medical Specialties;
 8. The applicant's intended specialty;
 9. Consistent with the Board's authority at A.R.S. § 32-1422(B), other information the Board may deem necessary to evaluate the applicant fully;
 10. Whether the applicant completed a training unit prescribed by the Board regarding the requirements of A.R.S. Title 32, Chapter 13 and this Chapter;
 11. In addition to the answers provided under subsections (B)(1) through (B)(10), the applicant shall answer the following confidential question:
 - a. Whether the applicant currently has ~~received treatment within the last five years for use of alcohol or a controlled substance, prescription only drug, or dangerous drug or narcotic or a physical, mental, emotional, or nervous disorder or a medical~~ condition that currently affects impairs the applicant's ability to exercise the judgment and skills of a medical practice medicine in a competent, ethical, and professional manner;
 - b. If the answer to subsection (B)(11)(a) is yes:

7. A paper or digital headshot photograph of the applicant taken no more than 60 days before the date of application; and
 8. The fee authorized under A.R.S. § 32-1436 and specified in R4-16-205.
- D.** In addition to the requirements of subsections (B) and (C), an applicant for licensure to practice medicine by Step 3 of the USMLE or endorsement shall have the following submitted to the Board, electronically or in hard copy, by the primary source, ECFMG, Veridoc, or FCVS:
1. Official transcript or other authentication of graduation from a school of medicine;
 2. Verification of completion of postgraduate training;
 3. Verification of ECFMG certification if the applicant graduated from an unapproved school of medicine;
 4. Examination and Board history report scores for USMLE, FLEX, NBME, and SPEX;
 5. Verification of LMCC exam score or state written exam score;
 6. Verification of licensure from every state in which the applicant has ever held a medical license;
 7. Verification of all hospital affiliations during the five years before the date of application. Under A.R.S. § 32-1422(A)(11)(b), this verification is required to be on the hospital's official letterhead or the electronic equivalent; and
 8. Verification of all medical employment during the five years before the date of application. Under A.R.S. § 32-1422(A)(11)(b), this verification may be submitted by the employer.
- E.** As provided under A.R.S. § 32-1422(F), the Board may waive a documentation requirement specified under subsections (C)(5) and (D).
1. To obtain a waiver under this subsection, an applicant shall submit a written request that includes the following information:
 - a. Applicant's name;
 - b. Date of request;
 - c. Document required under subsection (C)(5) or (D) for which waiver is requested;
 - d. Detailed description of efforts made by the applicant to provide the document as required under subsection (C)(5) or (D);
 - e. Reason the applicant's inability to provide the document as required under subsection (C)(5) or (D) is due to no fault of the applicant; and
 - f. If applicable, documents that support the request for waiver.
 2. The Board shall consider the request for waiver at its next regularly scheduled meeting.
 3. In determining whether to grant the request for waiver, the Board shall consider whether the applicant:

- a. Made appropriate and sufficient effort to satisfy the requirement under subsection (C)(5) or (D); and
 - b. Demonstrated that compliance with the requirement under subsection (C)(5) or (D) is not possible because:
 - i. The entity responsible for issuing the required document no longer exists;
 - ii. The original of the required document was destroyed by accident or natural disaster;
 - iii. The entity responsible for issuing the required document is unable to provide verification because of armed conflict or political strife; or
 - iv. Another valid reason beyond the applicant's control prevents compliance with the requirement under subsection (C)(5) or (D).
4. In determining whether to grant the request for waiver, the Board shall:
 - a. Consider whether it is possible for the Board to obtain the required document from other source; and
 - b. Request the applicant to obtain and provide additional information the Board believes will facilitate the Board's decision.
 5. If the Board determines the applicant is unable to comply with a requirement under subsection (C)(5) or (D) in spite of the applicant's best effort and for a reason beyond the applicant's control, the Board may grant the request for waiver and include the decision in the Board's official record for the applicant.
 6. The Board shall provide the applicant with written notice of its decision regarding the request for waiver. The Board's decision is not subject to review or appeal.
- F.** As provided under A.R.S. § 32-1426(B), the Board may require an applicant for licensure by endorsement who passed an examination specified in A.R.S. § 32-1426(A) more than ten years before the date of application to provide evidence the applicant is able to engage safely in the practice of medicine. The Board may consider one or more of the following to determine whether the applicant is able to engage safely in the practice of medicine:
1. ~~If an~~ Whether the applicant is board certified by one of the specialties recognized by the ABMS; ~~2. If the applicant holds a current ABMS certification, this criteria criterion is considered met.~~
 2. ~~If an~~ Whether the applicant ~~obtains a passing score on a~~ takes and passes the SPEX examination; ~~2. If the applicant obtains a passing score on the SPEX examination, this criteria criterion is considered met.~~
 3. The Board may also consider any combination of the following:
 - a. The applicant's records,

- b. The applicant's practice history, and
- c. A physical or psychological assessment of the applicant.

R4-16-201.1. Application for Renewal of License

- A. Under A.R.S. § 32-1430(A), an individual licensed under A.R.S. Title 32, Chapter 13, shall renew the license every other year on or before the licensee's birthday.
- B. To renew a license, a licensee shall submit the following information on an application form available on request from the Board and on the Board's web site:
 - 1. The licensee's full name, license number, business and home addresses, primary e-mail address, and business and home telephone numbers;
 - 2. Identification of changes to medical specialties and fields of practice;
 - 3. A statement of whether, since the time of last license issuance, the licensee:
 - a. Has had an application for medical licensure denied or rejected by another state or province licensing board and if so, an explanation;
 - b. Has had any disciplinary or rehabilitative action taken against the licensee by another licensing board, including other health professions and if so, an explanation;
 - c. Has had any disciplinary action, restriction, or limitation taken against the licensee by any program or health care provider and if so, an explanation;
 - d. Has been subject to discipline resulting in a medical license being revoked, suspended, limited, cancelled during an investigation, restricted, or voluntarily surrendered, or resulting in probation or entry into a consent agreement or stipulation and if so, an explanation;
 - e. Has had hospital privileges revoked, denied, suspended, or restricted and if so, an explanation (do not report if the licensee's hospital privileges were suspended due to failure to complete hospital records and reinstated after no more than 90 days);
 - f. Has been subjected to disciplinary action including censure, practice restriction, suspension, sanction, or removal from practice by an agency of the state or federal government and if so, an explanation;
 - g. Has had the authority to prescribe, dispense, or administer medications limited, restricted, modified, denied, surrendered, or revoked by a federal or state agency as a result of disciplinary or other adverse action and if so, an explanation;
 - h. Has been found guilty or entered into a plea of no contest to a felony, a misdemeanor involving moral turpitude, or an alcohol or drug-related offense in any state and if so, an explanation; and

- i. Has failed the SPEX;
 - 4. A statement of whether the licensee understands and complies with the medical records and recordkeeping requirements in A.R.S. §§ 32-3211 and 12-2297;
 - 5. A statement of whether the licensee has completed at least 40 hours of CME as required under A.R.S. § 32-1434 and R4-16-102, including the hour of CME required under R4-16-102(A)(1);
 - 6. A statement of whether the licensee requests that the license be inactivated or cancelled; and
 - 7. A statement of whether the licensee completed a training unit prescribed by the Board regarding the requirements of A.R.S. Title 32, Chapter 13 and this Chapter.
- C. Additionally, the licensee shall answer the following confidential question:
- 1. Whether the ~~applicant~~ licensee currently ~~has received treatment since the last renewal for use of alcohol or a controlled substance, prescription only drug, or dangerous drug or narcotic or a physical, mental, emotional, or nervous disorder or a medical~~ condition that currently affects ~~impairs the applicant's licensee's ability to exercise the judgment and skills of a medical practice medicine in a competent, ethical, and professional manner;~~
 - 2. If the answer to subsection (C)(1) is yes:
 - a. ~~A detailed description of the use, disorder, or condition~~ Provide an explanation of the medical condition; and
 - b. ~~An explanation of whether the use, disorder, or condition is reduced or ameliorated because the applicant receives ongoing treatment and if so, the name and contact information for all current treatment providers and for all monitoring or support programs in which the applicant is currently participating~~ If currently practicing under a monitoring agreement with a licensing board in another state, attach a copy of the monitoring agreement to the application; and
 - 3. ~~A copy of any public or confidential agreement or order relating to the use, disorder, or condition, issued by a licensing agency or health care institution since the last renewal, if applicable.~~
- D. To renew a license, a licensee shall submit the following with the required application form:
- 1. If the document submitted under R4-16-201(C)(3) was a limited form of work authorization issued by the federal government, evidence that the licensee's presence in the U.S. continues to be authorized under federal law;
 - 2. The renewal fee specified under R4-16-205 and, if applicable, the penalty fee for late renewal; and
 - 3. An attestation that all information submitted is correct.

ARTICLE 3. DISPENSING OF DRUGS

R4-16-301. Registration and Renewal

- A. A physician who wishes to dispense a controlled substance, ~~as defined in A.R.S. § 32-1901(12)~~ restricted under A.R.S. § 32-1491(B), a prescription-only drug ~~as defined in A.R.S. § 32-1901(65)~~, or a prescription-only device, ~~as defined in~~ at A.R.S. § 32-1901(64), shall be currently licensed to practice medicine in Arizona and shall ~~register with the Board by provide~~ provide the following to the Board ~~the following~~:
1. A completed registration form, which is available on the Board's web site and that includes the following information:
 - a. The physician's name, license number, and field of practice;
 - b. A list of the types of drugs and devices the physician will dispense; and
 - c. The location or locations where the physician will dispense a controlled substance, a prescription-only drug, or a prescription-only device;
 2. A copy of the physician's current Drug Enforcement Administration Certificate of Registration for each dispensing location from which the physician will dispense a controlled substance; and
 3. The ~~fees~~ fee required ~~in A.R.S. § 32-1436~~ under R4-16-205 unless the physician is exempt under A.R.S. § 32-1921(E) from paying the fee.
- B. A physician shall renew a registration to dispense a controlled substance, as restricted under A.R.S. § 32-1491(B), a prescription-only drug, or a prescription-only device by complying with the requirements in subsection (A) on or before June 30 of each year. If a physician ~~has made~~ makes timely and complete application for the renewal of a registration, the physician may continue to dispense until the Board approves or denies the renewal application.
- C. ~~If the completed annual renewal form, all required documentation, and the fee are not received in the Board's office on or before June 30~~ a physician fails to comply with subsection (B), the physician shall not dispense any controlled substances, prescription-only drugs, or prescription-only devices until ~~re-registered~~ the physician complies fully with subsection (A) and receives notice the Board approves the registration. ~~The physician shall re-register by filing for initial registration under subsection (A) and shall not dispense a controlled substance, a prescription only drug, or a prescription-only device until receipt of the re-registration.~~

R4-16-302. Packaging and Inventory; Exception

- A. A physician shall dispense all controlled substances and prescription-only drugs in prepackaged containers or in light-resistant containers with consumer safety caps; that comply with standards specified in the official compendium, as defined in A.R.S. § 32-1901(49), and state and federal law, unless a patient or ~~a~~ the patient's representative requests a non-safety cap.
- B. ~~All~~ A physician shall ensure a controlled substance and substance or prescription-only drug dispensed ~~shall be~~ is labeled with the following information:
1. The physician's name, address, and telephone number;
 2. The date the controlled substance ~~and or~~ prescription-only drug is dispensed;
 3. The patient's name and date of birth;
 4. The controlled substance ~~and or~~ prescription-only drug name, strength, ~~and~~ dosage, form, name of manufacturer, the quantity dispensed, directions for use, and any cautionary statement necessary for the safe and effective use of the controlled substance ~~and or~~ prescription-only drug; and
 5. A ~~beyond-use date~~ beyond-use date not to exceed one year from the date of dispensing or the manufacturer's expiration date if less than one year.
- C. A physician shall secure all controlled substances in a locked cabinet or room and ~~shall~~ control access to the cabinet or room by a written procedure that includes, at a minimum, designation of the persons who have access to the cabinet or room and procedures for recording requests for access to the cabinet or room. ~~This~~ The physician shall make the written procedure ~~shall be made~~ available on demand to the Board or its authorized representatives for inspection or copying.
- D. ~~Prescription-only~~ A physician shall store prescription-only drugs ~~shall be stored so as not to be the~~ prescription-only drugs are not accessible to patients.
- ~~D.E.~~ Controlled A physician shall store controlled substances and prescription-only drugs not requiring refrigeration ~~shall be maintained~~ in an area where the temperature does not exceed 85° F.
- ~~E.F.~~ A physician shall maintain an ongoing dispensing log for all controlled substances and the prescription-only drug nalbuphine hydrochloride (Nubain) dispensed by the physician. The dispensing log shall include the following:
1. A separate inventory sheet for each controlled substance and prescription-only drug;
 2. The date the drug is dispensed;
 3. The patient's name and date of birth;
 4. The ~~dosage~~, controlled substance ~~and or~~ prescription-only drug name, strength, dosage, form, and name of the manufacturer;

5. The number of dosage units dispensed;
6. A running total of each controlled substance and prescription-only drug dispensed; and
7. The signature of the physician written next to each entry.

F.G. A physician may use a computer to maintain the dispensing log required in subsection ~~(E)~~ (F) if the dispensing log is password protected and quickly accessible through either on-screen viewing or printing ~~of~~ a copy.

G.H. This Section does not apply to a prepackaged manufacturer sample of a controlled substance ~~and~~ or prescription-only drug, unless otherwise provided by federal law.

R4-16-303. Prescribing and Dispensing Requirements

- A.** A physician shall record on the patient's medical record the name, strength, dosage, and form, of ~~the a~~ controlled substance, prescription-only drug, or prescription-only device dispensed, the quantity or volume dispensed, the date the controlled substance, prescription-only drug, or prescription-only device is dispensed, the ~~medical reasons~~ therapeutic reason for dispensing the controlled substance, prescription-only drug, or prescription-only device, and the number of refills authorized.
- B.** Before dispensing a controlled substance, prescription-only drug, or prescription-only device to a patient, a physician shall review the prepared controlled substance, prescription-only drug, or prescription-only device to ensure ~~that~~:
 1. The container label and contents comply with the prescription order, and
 2. The patient is informed of the name of the controlled substance, prescription-only drug, or prescription-only device, directions for use, precautions, and storage requirements.
- C.** A physician shall purchase all dispensed controlled substances, prescription-only drugs, or prescription-only devices from a manufacturer or distributor approved by the United States Food and Drug Administration; or a pharmacy holding a current permit from the Arizona Board of Pharmacy.
- D.** The person who prepares a controlled substance, prescription-only drug, or prescription-only device for dispensing shall countersign and date the original prescription ~~form~~ order for the controlled substance, prescription-only drug, or prescription-only device.
- E.** ~~For purposes of this Article, "dispensing" means the delivery of a controlled substance, a prescription-only drug, or a prescription-only device to a patient for use outside the physician's office.~~

R4-16-304. Recordkeeping and Reporting Shortages

- A.** A physician who dispenses a controlled substance or prescription-only drug shall ensure ~~that~~ an original prescription order for the controlled substance or prescription-only drug dispensed from the

~~physician's office~~ is dated, consecutively numbered in the order in which it is originally dispensed, and filed separately from patient medical records. ~~A~~ The physician shall ensure ~~that an~~ original prescription ~~orders are~~ be maintained in three separate files, as follows:

1. Schedule II controlled substances;
 2. Schedule III, IV, and V controlled substances; and
 3. Prescription-only drugs.
- B.** A physician shall ensure ~~that~~ purchase orders and invoices are maintained for all controlled substances and prescription-only drugs dispensed, whether for profit ~~and or~~ or not for profit, for three years from the date of the purchase order or invoice. Purchase orders and invoices shall be maintained in three separate files as follows:
1. Schedule II controlled substances only;
 2. Schedule III, IV, and V controlled substances and nalbuphine; and
 3. All other prescription-only drugs.
- C.** A physician who discovers a theft or loss of a controlled substance or a dangerous drug, as defined in A.R.S. § 13-3401, from the physician's office shall:
1. Immediately notify the local law enforcement agency,
 2. Provide ~~that~~ the local law enforcement agency with a written report, and
 3. Send a copy of the report provided under subsection (C)(2) to the Drug Enforcement Administration and ~~the~~ Board within seven days of the discovery.
- D.** For purposes of this Section, controlled substances are identified, defined, or listed in A.R.S. Title 36, Chapter 27.

R4-16-305. Inspections; Denial and Revocation

- A.** A physician shall cooperate with and allow access to the physician's office and records for periodic inspection of dispensing practices by the Board or its authorized representative. Failure to cooperate or allow access ~~shall be~~ constitutes grounds for revocation of a physician's registration to dispense a controlled substance, prescription-only drug, or prescription-only device or denial of renewal of the physician's dispensing registration.
- B.** Failure to comply with A.R.S. § 32-1491 or this Article constitutes grounds for denial or revocation of dispensing registration.
- C.** The Board shall revoke a physician's registration to dispense a controlled substance, prescription-only drug, or prescription-only device ~~upon occurrence~~ if any of the following occur:
1. Suspending, revoking, surrendering, or canceling the physician's license;

2. Placing the physician's license on inactive status;
3. Failing to ~~timely~~ renew the physician's license timely; or
4. Restricting the physician's ability to prescribe or administer medication, including loss or expiration of the physician's Drug Enforcement Administration Certificate of Registration.

D. As specified under R4-16-103, if the Board denies a physician's physician who is denied a dispensing registration, ~~the physician~~ may appeal the decision by filing a request, in writing, with the Board, no later than 30 days after receipt of the notice denying the registration.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT¹

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 16. ARIZONA MEDICAL BOARD

1. Identification of the rulemaking:

In 5YRRs completed in 2015 and 2020, the Board indicated it intended to amend the rules in Article 3 to address issues dealing with lack of clarity, incorrect cross references, and inconsistencies with statute. However, higher priority work, turnover of staff, and scarce state resources prevented the Board from completing the plan rulemaking. This rulemaking addresses the issues identified in the previous 5YRRs.

A 5YRR of Article 2 was approved by the Council on February 2, 2021. This rulemaking addresses minor issues identified in that rulemaking. Additionally, by amending the requirement regarding self-reporting of medical conditions that potentially impair the ability to practice, the Board removes a barrier to disclosure.

Additionally, under Laws 2018, Chapter 1, the legislature amended A.R.S. § 32-1491(B) regarding dispensing a Schedule II controlled substance that is an opioid. R4-16-301 has been amended to reference that change.

Exemptions for this rulemaking from Executive Order 2021-02 were provided by Gabee Lepore of the Governor's Office by e-mails dated July 29, 2021.

- a. The conduct and its frequency of occurrence that the rule is designed to change:
The most important changes in this rulemaking relate to removing a barrier to disclosure of medical conditions that potentially impair the ability to practice and incorporate the statutory change regarding restriction of authority to prescribe Schedule II controlled substances that are opioids. Until the rulemaking is completed, these important changes will not be made.
- b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

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

Physicians may be reluctant to disclose a medical condition that potentially impairs the ability to practice. This not only causes harm to the physician but also the physician's patients. Also, physicians may prescribe Schedule II controlled substances that are opioids in a manner inconsistent with statute. This may aggravate the current opioid crisis.

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

When the rulemaking is completed, the risk of the potential harms described will be removed.

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

Improving clarity and correcting references will have a minimal, positive economic impact on those required to comply with the rules. The amendments to R4-16-201 and R4-16-201.1 will benefit physicians who might be reluctant to obtain needed help for medical conditions that potentially impair practice. The cross reference to the restriction at A.R.S. § 32-1491(B) will make the rules consistent with statute.

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

Name: Patricia McSorley, Executive Director

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

Telephone: (480) 551-2700

Fax: (480) 551-2704

E-mail: patricia.mcsorley@azmd.gov

Web site: www.azmd.gov

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

Applicants and physicians regulated by the Board and the Board are directly affected by, bear the costs of, and directly benefits from this rulemaking.

There are currently 26,597 physicians licensed by the Board. During the last year, there were 2,163 applicants for initial licensure and 11,966 applicants for renewal. During the last year,

11 of the 2,163 applicants for initial licensure indicated they had received treatment during the last five years for a medical condition that might impair their ability to practice. Of the 11,966 applicants for renewal, 59 indicated they had received treatment during the last five years for a medical condition that might impair their ability to practice. The rule amendment requires a physician to report only whether the physician currently has a medical condition that impairs ability to practice. The Board believes the amendment may remove a barrier to disclosure and therefore, provide an extra protection to public health and safety.

Of the currently licensed physicians, 581 are registered to dispense drugs and will be subject to the new statutory restriction on prescribing Schedule II controlled substances that are opioids. The statutory change was made as part of legislative efforts to address the opioid crisis. The costs and benefits of the restriction result from statute rather than rule.

The Board incurred the cost of completing this rulemaking and will incur the cost of implementing it. However, the Board has the benefit of rules that are clear, concise, and understandable, consistent with statute, and consistent with the best interests of the state.

5. Cost-benefit analysis:

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

The Board is the only state agency directly affected by the rulemaking. Its costs and benefits are described in item 4. The Board will not need new full-time employees to implement or enforce the rulemaking.

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

No political subdivision is directly affected by the rulemaking.

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

Licensed physicians are businesses directly affected by the rulemaking. Their costs and benefits are described in item 4.

6. Impact on private and public employment:

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

7. Impact on small businesses²:

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

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

Licensed physicians are small businesses subject to the rulemaking.

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

An applicant for initial and renewal licensure who is currently practicing under a monitoring agreement with a licensing board of another state is required to attach a copy of the monitoring agreement to the application.

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

The impact of the rulemaking is minimal. No methods are available to reduce the impact on small business and still achieve the protection of public health and safety.

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

There are no private persons or consumer directly affected by the rulemaking.

9. Probable effects on state revenues:

The rulemaking will have no effect on state revenues.

10. Less intrusive or less costly alternative methods considered:

Because the rulemaking is minimally intrusive and costly, no alternative methods were considered.



Kristina Jensen <kristina.jensen@azmd.gov>

proposed changes in Article 2, Section (B)(11) and the Application for Renewal of License, Section (C)

1 message

Sara Gibson <Sara.Gibson@healthchoicaz.com>

Tue, Oct 5, 2021 at 4:15 PM

To: "communications@azmd.gov" <communications@azmd.gov>, Sara Gibson <Sara.Gibson@healthchoicaz.com>

I am in support of the proposed changes in Article 2, Section (B)(11) and the Application for Renewal of License, Section (C) - related to the confidential reporting of a *"medical condition that impairs the applicant's ability to practice medicine in a competent, ethical, and professional manner"* –

These changes represent a significant step forward in decreasing the stigma and barriers associated with physicians and health professionals seeking, and receiving, mental and behavioral health care.

Thank you for your careful consideration!

Sara Gibson, MD

Psychiatrist, Telemedicine Medical Director

Health Choice
1300 S. Yale St Flagstaff, AZ 86001

www.HealthChoiceAZ.com

www.HealthChoicePathway.com



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Kristina Jensen <kristina.jensen@azmd.gov>

Revisions to Arizona Medical Board's Notice of Proposed Rulemaking for Articles 2 and 3

1 message

Aaron Goldman <Aaron.Goldman@healthchoiceaz.com>
To: "communications@azmd.gov" <communications@azmd.gov>

Tue, Oct 5, 2021 at 4:05 PM

To Whom it May Concern,

I am writing on behalf of myself and not a representative of the agency I current work for. I am a board certified Adult and Child/Adolescent Psychiatrist and have practiced in my field for over 15 years. I am writing in regards to Arizona Medical Board's Notice of Proposed Rulemaking for Articles 2 and 3. This change is a significant step forward in decreasing the stigma and barriers associated with physicians and health professionals seeking, and receiving, mental and behavioral health care.

Having worked with other MDs, DOs, PA, NPs, I have seen that the stress that is inherent in our work may result in adverse psychological conditions. These reactions are normal for any person. Suicides, not the norm, have increased in the US during the pandemic and suicides amongst physicians is already at unacceptable levels. Those that face a medical/psychiatric diagnosis often will not report it due to fear of losing their careers, face ridicule, or stigma. I, myself, had times in my life when I became depressed. Not depressed enough to have it adversely affect my work or patient care but enough to realize I needed help. Seeking help is often what we as "healers" tend to think of as something we can't do. Especially when renewing our licenses I have heard often from my peers that they can't check that box because they don't want to explain that the traumatic experiences that they have witnessed had made them less effective in their workplace. Appreciate you considering these changes, it would be tremendously helpful for our workforce!

Thank you,

Aaron Goldman MD

Behavioral Health Medical Director
Health Choice
[1300 S. Yale St., Flagstaff, AZ 86001](https://www.healthchoiceaz.com)
O: 928-214-1153
www.HealthChoiceAZ.com

www.HealthChoiceGenAZ.com



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Kristina Jensen <kristina.jensen@azmd.gov>

[u] support for rulemaking change Article 2, Section (B)(11)

1 message

Teresa Bertsch <TBertsch@tgcaz.org>

Tue, Oct 5, 2021 at 2:36 PM

To: "communications@azmd.gov" <communications@azmd.gov>

As a physician and psychiatrist, I agree with the proposed changes in Article 2, Section (B)(11) and the Application for Renewal of License, Section (C) - related to the confidential reporting of a *“medical condition that impairs the applicant’s ability to practice medicine in a competent, ethical, and professional manner”* - are a significant step forward in decreasing the stigma and barriers associated with physicians and health professionals seeking, and receiving, mental and behavioral health care.

Please approve them.



Teresa Bertsch MD | Chief Medical Officer

The Guidance Center, Inc | [2695 E Industrial Drive](#) | Flagstaff, AZ 86004

Main 928-527-1899 | Direct 928-714-6479 | Cell 928-853-1623 www.tgcaz.org

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Kristina Jensen <kristina.jensen@azmd.gov>

Support for Arizona Medical Board's Notice of Proposed Rulemaking for Articles 2 and 3

1 message

Bharat Magu <BMagu@yumaregional.org>

Tue, Oct 5, 2021 at 12:28 PM

To: "communications@azmd.gov" <communications@azmd.gov>

Dear Members of the Board

I congratulate you, and support, the proposed changes in Article 2, Section (B)(11) and the Application for Renewal of License, Section (C) - related to the confidential reporting of a *"medical condition that impairs the applicant's ability to practice medicine in a competent, ethical, and professional manner"*. This is a significant step forward in decreasing the stigma and barriers associated with physicians and health professionals seeking/receiving behavioral care and establishes the state as welcoming to providers that may feel stigmatized elsewhere. We believe this step will directly and indirectly help, to a certain extent, in recruiting providers to Arizona. Thank you

Bharat Magu MD FACP

Chief Medical Officer & Vice President of Medical Affairs

Yuma Regional Medical Center

Ph: 928-336-7015

bmagu@yumaregional.org



Kristina Jensen <kristina.jensen@azmd.gov>

Support for AZ Medical Board's Notice of Proposed Rulemaking Articles 2 and 3

1 message

Mark Carroll <Mark.Carroll@healthchoiceaz.com>

Tue, Oct 5, 2021 at 11:41 AM

To: "communications@azmd.gov" <communications@azmd.gov>

On behalf of the Wellbeing Collaborative for Health Professionals, I am writing in strong support of the Arizona Medical Board's Notice of Proposed Rulemaking for Articles 2 and 3. The proposed changes - especially in Article 2, Section (B) (11) and the Application for Renewal of License, Section (C) related to the confidential reporting of a "medical condition that impairs the applicant's ability to practice medicine in a competent, ethical, and professional manner" – represent a significant step forward in decreasing the stigma and barriers associated with physicians and health professionals seeking, and receiving, timely and sometimes lifesaving mental and behavioral health care.

The Wellbeing Collaborative for Health Professionals is a multi-disciplinary and cross-sector collaboration among health systems, professional societies, public health, and diverse organizations across Arizona. We invite continued engagement from additional organizations and stakeholders, and look forward to future partnerships supporting AZ health professional wellbeing, for all health professionals and the communities they serve.

Thank you,

Mark

Mark F. Carroll, MD

Chief Medical Officer

Health Choice Arizona

Health Choice Pathway

[410 North 44th Street, Phoenix, AZ 85008](#)[1300 S. Yale Street, Flagstaff, AZ 86001](#)

O: 928.214.2175 | C: 928.853.4896

www.HealthChoiceAZ.comwww.HealthChoicePathway.com



Kristina Jensen <kristina.jensen@azmd.gov>

Comments on Article 2 Rulemaking

1 message

Libby McDannell <lmcdannell@azmed.org>

Thu, Sep 23, 2021 at 3:24 PM

To: "communications@azmd.gov" <communications@azmd.gov>, Pat Mcorley <patricia.mcorley@azmd.gov>

Cc: Teri <teri@azmed.org>, "Jasleen Chhatwal MBBS MD (jchhatwal@email.arizona.edu)" <jchhatwal@email.arizona.edu>, Miriam Anand <miriamanandmd@cox.net>

On behalf of the Arizona Psychiatric Society and the Arizona Medical Association, I am pleased to submit the attached comments in support of the proposed edits to the MD licensure application. We are submitting these comments in preparation for the Medical Board's session on October 6th.

Please don't hesitate to reach out if ArMA and APS can continue to support this initiative in any way. If you could kindly respond to confirm receipt of my email, that would be appreciated.

Best regards,

Libby



Libby McDannell, CAE

Chief Executive Officer

Arizona Medical Association

Office: 602-347-6920

Email: lmcdannell@AZmed.org

Schedule a meeting with me: <https://calendly.com/lmcdannell>



2 attachments



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ArMA_APS Comments on Rule Making 9.23-21.pdf

10/6/21, 1:24 PM

State of Arizona Mail - Comments on Article 2 Rulemaking

 170K



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

September 23, 2021

Dear Board Members,

On behalf of the Arizona Medical Association (ArMA) and Arizona Psychiatric Society (APS), we are pleased to submit comments on the proposed edits to Article 2 (Licensure), Sections R4-16-201 and R4-16-201.1 related to MD licensure. Collectively, APS and ArMA represent more than 4,500 physicians across the state of Arizona.

Both ArMA and APS have previously communicated the importance of addressing the licensure questions to remove stigma from seeking mental health services and to encourage timely interventions for physicians, without fear of repercussion during initial licensure or renewal. We applaud the AMB for the due diligence and thorough process they employed to consider this issue.

Our physician associations strongly support the recommended changes in language. The revised language promotes the goals of the recent guidelines of the Federation of State Medical Boards, recommending using language only requiring an applicant to disclose a known *current* condition which impairs their ability to practice safely. We believe this proposed language will help send a message to the physician community that our Medical Board supports seeking timely mental health treatment.

Thank you again for your work on this important issue – and for your consideration of our comments via this letter. Our sincere thanks to the Board, the Physician’s Health Committee, and all contributing staff for being a leader in destigmatizing mental health treatment and in promoting physicians to seek care when needed. Your actions have the potential to save lives.

Sincerely,

A handwritten signature in black ink that reads "Jasleen Chhatwal" with "M.D." written below it.

Jasleen Chhatwal, MBBS, MD
President, Arizona Psychiatric Society

A handwritten signature in black ink that reads "Miriam Anand".

Miriam K. Anand, MD
President, Arizona Medical Association



GRRC - ADOA <grrc@azdoa.gov>

Fwd: Comment Supporting Arizona Medical Board ("AMB") Notice of Proposed Rulemaking regarding Article 2. Licensure, Section R4-16-201. Application for Licensure by Examination or Endorsement, and R4-16-201.1

1 message

KRISHNA JHAVERI <krishna.jhaveri@azdoa.gov>
To: GRRC - ADOA <grrc@azdoa.gov>

Mon, Nov 22, 2021 at 10:16 AM

----- Forwarded message -----

From: Teri <teri@azmed.org>

Date: Friday, November 19, 2021 at 4:05:19 PM UTC-7

Subject: Comment Supporting Arizona Medical Board ("AMB") Notice of Proposed Rulemaking regarding Article 2. Licensure, Section R4-16-201. Application for Licensure by Examination or Endorsement, and R4-16-201.1

To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>Cc: Jasleen Chhatwal MBBS MD (jchhatwal@arizona.edu) <jchhatwal@arizona.edu>, Nicholas Ahrendt - UofA COM Tucson (ahrendt.md@gmail.com) <ahrendt.md@gmail.com>, Libby McDannell <lmcdannell@azmed.org>, Miriam Anand <miriamanandmd@cox.net>, Pat McSorley (patricia.mcsorley@azmd.gov) <patricia.mcsorley@azmd.gov>

Governor's Regulatory Review Council

100 North 15th Avenue #305

Phoenix, AZ 85007

grrccomments@azdoa.gov

Dear Honorable Members of the Governor's Regulatory Review Council and Legal Staff,

On behalf of organizations representing over 15,000 physicians in our state, we present for your consideration the attached letter in strong and united support of the Arizona Medical Board ("AMB") Notice of Proposed Rulemaking regarding Article 2. Licensure, Section R4-16-201. Application for Licensure by Examination or Endorsement, and R4-16-201.1. Application for Renewal of License. We believe the AMB Notice of Proposed Rulemaking regarding Article 2 was delivered to your offices on a date the supported placement on the December 7, 2021 Agenda. If the Notice carried forward to a future meeting, we would sincerely appreciate a courtesy of that hearing date and presentation of this letter to GRRC as support for the AMB Notice of Rulemaking.

We thank the Arizona Medical Board for thoughtfully considering the testimony and the evidence-based information presented and moving forward with revised language that is being considered in the Notice of Rulemaking referenced. The changes around licensure questions supports Arizona physicians and aligns with the highest standards aimed to ensure that physicians seek timely mental health treatment, without fear of repercussion during initial licensure or renewal. We truly believe that their actions, and your vote to support the same can save physician lives. We urge you to approve the Arizona Medical Board rulemaking changes.

Thank you for your consideration. Please reach out if you require any additional information or testimony in this matter.

Warm regards,

Teri

Teri Harnisch

Executive Director, Arizona Psychiatric Society

Accreditation Coordinator, Arizona Medical Association

teri@azmed.org, Cell [602-316-3241](tel:602-316-3241)

Office [602-347-6903](tel:602-347-6903), Fax [602-242-6283](tel:602-242-6283)



Licensure 2021 Physician Associations Ltr to GRRC for Final Rule Change Nov 2021.pdf

832K



November 19, 2021

Governor's Regulatory Review Council
 100 North 15th Avenue #305
 Phoenix, AZ 85007
grrccomments@azdoa.gov

Dear Honorable Members of the Governor's Regulatory Review Council and Legal Staff,

The undersigned organizations represent over 15,000 physicians in our state. We write today in strong and united support of the Arizona Medical Board ("AMB") Notice of Proposed Rulemaking regarding Article 2. Licensure, Section R4-16-201. Application for Licensure by Examination or Endorsement, and R4-16-201.1. Application for Renewal of License. As part of its five-year administrative review, our organizations brought forth to the AMB specific concerns around the questions on Arizona's physician licensure application pertaining to mental health treatment and the unintended consequences they may have on those seeking to practice medicine in Arizona.

The Arizona Medical Association, the Arizona Psychiatric Society, and our fellow associations brought forth comments and testimony to the Arizona Medical Board to shed light on the stigmatizing nature of the application questions, which are being amended. As in effect prior to this rulemaking change, the questions as written constitute a well-recognized impediment to physicians seeking appropriate mental health treatment. The impacts of COVID-19 have created a mental health crisis for our nation; physicians who have been on the frontline helping patients for the past year are not spared from this crisis. Unfortunately, physicians have been hesitant to seek mental health treatment specifically

because of the negative impact it may have on their licensure.¹ In some cases, this has been deadly. "Currently, more than one physician in the United States dies by suicide every day.... many continue to suffer in silence out of fear of the professional stigma of seeking help."²

The Federation of State Medical Boards and the National Academy of Sciences, Engineering, and Medicine have acknowledged the language used by many state licensing boards inadvertently discriminates against physicians with mental illness and is not in compliance with the Americans with Disabilities Act.³ These organizations recommend state medical boards begin only using language requesting an applicant to disclose a known *current* condition which impairs their ability to practice.

Our organizations affirm that the language changes in the revised regulation will meet the standards for GRRC approval, and especially satisfies the goal of rulemaking changes creating rules that are clear, concise and understandable to the general public.

We thank the Arizona Medical Board for thoughtfully considering the testimony and the evidence-based information presented and moving forward with revised language that is being considered in the Notice of Rulemaking referenced. The changes around licensure questions supports Arizona physicians and aligns with the highest standards aimed to ensure that physicians seek timely mental health treatment, without fear of repercussion during initial licensure or renewal. We truly believe that their actions, and your vote to support the same can save physician lives. We urge you to approve the Arizona Medical Board rulemaking changes.

Thank you for your consideration of this request.

Sincerely,



Jasleen Chhatwal, MBBS, MD
President, Arizona Psychiatric Society



Miriam Anand, MD
President, Arizona Medical Association

¹ "Doctors forgo mental health care during pandemic over concerns about licensing, stigma," available at: <https://www.aamc.org/news-insights/doctors-forgo-mental-health-care-during-pandemic-over-concerns-about-licensing-stigma>

² Dr. Lorna Breen Heroes' Foundation, available at: <https://drlornabreen.org/the-issue/>

³ Physician Wellness and Burnout, available at: <https://www.fsmb.org/siteassets/advocacy/policies/policy-on-wellness-and-burnout.pdf>

**ARIZONA PSYCHIATRIC SOCIETY AND ARIZONA MEDICAL ASSOCIATION
JOINED BY THE FOLLOWING ASSOCIATIONS AND ORGANIZATIONS:**

ARIZONA ACADEMY OF FAMILY PHYSICIANS

ARIZONA CHAPTER, AMERICAN COLLEGE OF CARDIOLOGY

ARIZONA CHAPTER, AMERICAN COLLEGE OF PHYSICIANS

ARIZONA CHAPTER, AMERICAN COLLEGE OF SURGEONS

ARIZONA COLLEGE OF EMERGENCY PHYSICIANS

ARIZONA GERIATRICS SOCIETY

ARIZONA NEUROLOGICAL SOCIETY

ARIZONA OPHTHALMOLOGICAL SOCIETY

ARIZONA ORTHOPAEDIC SOCIETY

ARIZONA PAIN SOCIETY

ARIZONA SOCIETY OF ANESTHIOLOGISTS

ARIZONA SOCIETY OF CHILD & ADOLESCENT PSYCHIATRY

ARIZONA SOCIETY OF INTERVENTIONAL PAIN PHYSICIANS

ARIZONA RADIOLOGICAL SOCIETY

ARIZONA UROLOGICAL SOCIETY

GENESIS OB/GYN

MARICOPA COUNTY MEDICAL SOCIETY

PIMA COUNTY MEDICAL SOCIETY

THE GUIDANCE CENTER

THE NARBHA INSTITUTE

**UNIVERSITY OF ARIZONA COLLEGE OF MEDICINE – TUCSON
DEPARTMENT OF PSYCHIATRY**

VALLEYWISE HEALTH SYSTEM

CHAPTER 16. ARIZONA MEDICAL BOARD

Historical Note

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Section recodified to R4-16-205 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

ARTICLE 2. LICENSURE**R4-16-201. Application for Licensure by Examination or Endorsement****A.** For purposes of this Article, unless otherwise specified:

1. "ABMS" means American Board of Medical Specialties.
2. "ECFMG" means Educational Commission for Foreign Medical Graduates.
3. "FCVS" means Federation Credentials Verification Service.
4. "FLEX" means Federation Licensing Examination.
5. "LMCC" means Licentiate of the Medical Council of Canada.
6. "NBME" means National Board of Medical Examiners.
7. "Primary source" means the original source or an approved agent of the original source of a specific credential that can verify the accuracy of a qualification reported by an applicant.
8. "SPEX" means Special Purposes Examination.
9. "USMLE" means United States Medical Licensing Examination.

B. An applicant for licensure to practice medicine by Step 3 of the USMLE or endorsement shall submit the following information on an application form available on request from the Board and on the Board's web site:

1. Applicant's full name, Social Security number, business and home addresses, primary e-mail address, business and home telephone numbers, and date and place of birth;
2. Name of the school of medicine from which the applicant graduated and date of graduation;
3. A complete list of the applicant's internship, residency, and fellowship training;
4. List of all licensing examinations taken;
5. Names of the states, U.S. territories, or provinces in which the applicant has applied for or been granted a license or registration to practice medicine, including license number, date issued, and current status of the license;
6. A statement of whether the applicant:
 - a. Has had an application for medical licensure denied or rejected by another state or province licensing board, and if so, an explanation;
 - b. Has ever had any disciplinary or rehabilitative action taken against the applicant by another licensing board, including other health professions, and if so, an explanation;
 - c. Has had any disciplinary actions, restrictions, or limitations taken against the applicant while participating in any type of training program or by any health care provider, and if so, an explanation;
 - d. Has been found in violation of a statute, rule, or regulation of any domestic or foreign governmental agency, and if so, an explanation;
 - e. Is currently under investigation by any medical board or peer review body, and if so, an explanation;
 - f. Has been subject to discipline resulting in a medical license being revoked, suspended, limited, cancelled during investigation, restricted, or voluntarily surrendered, or resulting in probation or entry into a

consent agreement or stipulation and if so, an explanation;

- g. Has had hospital privileges revoked, denied, suspended, or restricted, and if so, an explanation;
 - h. Has been named as a defendant in a malpractice matter currently pending or that resulted in a settlement or judgment against the applicant, and if so, an explanation;
 - i. Has been subjected to any regulatory disciplinary action, including censure, practice restriction, suspension, sanction, or removal from practice, imposed by any agency of the federal or state government, and if so, an explanation;
 - j. Has had the authority to prescribe, dispense, or administer medications limited, restricted, modified, denied, surrendered, or revoked by a federal or state agency as a result of disciplinary or other adverse action, and if so, an explanation;
 - k. Has been found guilty or entered into a plea of no contest to a felony, a misdemeanor involving moral turpitude in any state, and if so, an explanation;
7. Whether the applicant is currently certified by any of the American Board of Medical Specialties;
 8. The applicant's intended specialty;
 9. Consistent with the Board's authority at A.R.S. § 32-1422(B), other information the Board may deem necessary to evaluate the applicant fully;
 10. Whether the applicant completed a training unit prescribed by the Board regarding the requirements of A.R.S. Title 32, Chapter 13 and this Chapter;
 11. In addition to the answers provided under subsections (B)(1) through (B)(10), the applicant shall answer the following confidential question:
 - a. Whether the applicant has received treatment within the last five years for use of alcohol or a controlled substance, prescription-only drug, or dangerous drug or narcotic or a physical, mental, emotional, or nervous disorder or condition that currently affects the applicant's ability to exercise the judgment and skills of a medical professional;
 - b. If the answer to subsection (B)(11)(a) is yes:
 - i. A detailed description of the use, disorder, or condition; and
 - ii. An explanation of whether the use, disorder, or condition is reduced or ameliorated because the applicant receives ongoing treatment and if so, the name and contact information for all current treatment providers and for all monitoring or support programs in which the applicant is currently participating; and
 - c. A copy of any public or confidential agreement or order relating to the use, disorder, or condition, issued by a licensing agency or health care institution within the last five years, if applicable; and
 12. A notarized statement, signed by the applicant, verifying the truthfulness of the information provided, and that the applicant has not engaged in any acts prohibited by Arizona law or Board rules, and authorizing release of any required records or documents to complete application review.
- C.** In addition to the application form required under subsection (B), an applicant for licensure to practice medicine by Step 3 of the USMLE or endorsement shall submit the following:
1. A notarized copy of the applicant's birth certificate or passport;

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2. Evidence of legal name change if the applicant's legal name is different from that shown on the document submitted under subsection (C)(1);
 3. Documentation listed under A.R.S. § 41-1080(A) showing that the applicant's presence in the U.S. is authorized under federal law;
 4. Complete list of all hospital affiliations and medical employment for the five years before the date of application;
 5. Verification of any medical malpractice matter currently pending or resulting in a settlement or judgment against the applicant, including a copy of the complaint and either the agreed terms of settlement or the judgment and a narrative statement specifying the nature of the occurrence resulting in the medical malpractice action. An applicant who is unable to obtain a document required under this subsection may apply under subsection (E) a waiver of the requirement;
 6. A full set of fingerprints and the processing charge specified in R4-16-205;
 7. A paper or digital headshot photograph of the applicant taken no more than 60 days before the date of application; and
 8. The fee authorized under A.R.S. § 32-1436 and specified in R4-16-205.
- D.** In addition to the requirements of subsections (B) and (C), an applicant for licensure to practice medicine by Step 3 of the USMLE or endorsement shall have the following submitted to the Board, electronically or in hard copy, by the primary source, ECFMG, Veridoc, or FCVS:
1. Official transcript or other authentication of graduation from a school of medicine;
 2. Verification of completion of postgraduate training;
 3. Verification of ECFMG certification if the applicant graduated from an unapproved school of medicine;
 4. Examination and Board history report scores for USMLE, FLEX, NBME, and SPEX;
 5. Verification of LMCC exam score or state written exam score;
 6. Verification of licensure from every state in which the applicant has ever held a medical license;
 7. Verification of all hospital affiliations during the five years before the date of application. Under A.R.S. § 32-1422(A)(11)(b), this verification is required to be on the hospital's official letterhead or the electronic equivalent; and
 8. Verification of all medical employment during the five years before the date of application. Under A.R.S. § 32-1422(A)(11)(b), this verification may be submitted by the employer.
- E.** As provided under A.R.S. § 32-1422(F), the Board may waive a documentation requirement specified under subsections (C)(5) and (D).
1. To obtain a waiver under this subsection, an applicant shall submit a written request that includes the following information:
 - a. Applicant's name;
 - b. Date of request;
 - c. Document required under subsection (C)(5) or (D) for which waiver is requested;
 - d. Detailed description of efforts made by the applicant to provide the document as required under subsection (C)(5) or (D);
 - e. Reason the applicant's inability to provide the document as required under subsection (C)(5) or (D) is due to no fault of the applicant; and
 - f. If applicable, documents that support the request for waiver.
2. The Board shall consider the request for waiver at its next regularly scheduled meeting.
 3. In determining whether to grant the request for waiver, the Board shall consider whether the applicant:
 - a. Made appropriate and sufficient effort to satisfy the requirement under subsection (C)(5) or (D); and
 - b. Demonstrated that compliance with the requirement under subsection (C)(5) or (D) is not possible because:
 - i. The entity responsible for issuing the required document no longer exists;
 - ii. The original of the required document was destroyed by accident or natural disaster;
 - iii. The entity responsible for issuing the required document is unable to provide verification because of armed conflict or political strife; or
 - iv. Another valid reason beyond the applicant's control prevents compliance with the requirement under subsection (C)(5) or (D).
 4. In determining whether to grant the request for waiver, the Board shall:
 - a. Consider whether it is possible for the Board to obtain the required document from other source; and
 - b. Request the applicant to obtain and provide additional information the Board believes will facilitate the Board's decision.
 5. If the Board determines the applicant is unable to comply with a requirement under subsection (C)(5) or (D) in spite of the applicant's best effort and for a reason beyond the applicant's control, the Board may grant the request for waiver and include the decision in the Board's official record for the applicant.
 6. The Board shall provide the applicant with written notice of its decision regarding the request for waiver. The Board's decision is not subject to review or appeal.
- F.** As provided under A.R.S. § 32-1426(B), the Board may require an applicant for licensure by endorsement who passed an examination specified in A.R.S. § 32-1426(A) more than ten years before the date of application to provide evidence the applicant is able to engage safely in the practice of medicine. The Board may consider one or more of the following to determine whether the applicant is able to engage safely in the practice of medicine:
1. If an applicant is board certified by one of the specialties recognized by the ABMS, this criteria is considered met.
 2. If an applicant obtains a passing score on a SPEX examination, this criteria is considered met.
 3. The Board may also consider any combination of the following:
 - a. The applicant's records,
 - b. The applicant's practice history,
 - c. A physical or psychological assessment of the applicant.

Historical Note

Adopted effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 2319, effective May 9, 2002 (Supp. 02-2). Former Section R4-16-201 recodified to R4-16-301; New Section R4-16-201 recodified from R4-16-106 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by exempt rulemaking at 20 A.A.R. 1995, effective July 11, 2014 (Supp. 14-3). Amended by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4). Amended by

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final exempt rulemaking at 22 A.A.R. 778, effective January 14, 2016 (Supp. 16-1).

R4-16-201.1. Application for Renewal of License

- A.** Under A.R.S. § 32-1430(A), an individual licensed under A.R.S. Title 32, Chapter 13, shall renew the license every other year on or before the licensee's birthday.
- B.** To renew a license, a licensee shall submit the following information on an application form available on request from the Board and on the Board's web site:
1. The licensee's full name, license number, business and home addresses, primary e-mail address, and business and home telephone numbers;
 2. Identification of changes to medical specialties and fields of practice;
 3. A statement of whether, since the time of last license issuance, the licensee:
 - a. Has had an application for medical licensure denied or rejected by another state or province licensing board and if so, an explanation;
 - b. Has had any disciplinary or rehabilitative action taken against the licensee by another licensing board, including other health professions and if so, an explanation;
 - c. Has had any disciplinary action, restriction, or limitation taken against the licensee by any program or health care provider and if so, an explanation;
 - d. Has been subject to discipline resulting in a medical license being revoked, suspended, limited, cancelled during an investigation, restricted, or voluntarily surrendered, or resulting in probation or entry into a consent agreement or stipulation and if so, an explanation;
 - e. Has had hospital privileges revoked, denied, suspended, or restricted and if so, an explanation (do not report if the licensee's hospital privileges were suspended due to failure to complete hospital records and reinstated after no more than 90 days);
 - f. Has been subjected to disciplinary action including censure, practice restriction, suspension, sanction, or removal from practice by an agency of the state or federal government and if so, an explanation;
 - g. Has had the authority to prescribe, dispense, or administer medications limited, restricted, modified, denied, surrendered, or revoked by a federal or state agency as a result of disciplinary or other adverse action and if so, an explanation;
 - h. Has been found guilty or entered into a plea of no contest to a felony, a misdemeanor involving moral turpitude, or an alcohol or drug-related offense in any state and if so, an explanation; and
 - i. Has failed the SPEX;
 4. A statement of whether the licensee understands and complies with the medical records and recordkeeping requirements in A.R.S. §§ 32-3211 and 12-2297;
 5. A statement of whether the licensee has completed at least 40 hours of CME as required under A.R.S. § 32-1434 and R4-16-102, including the hour of CME required under R4-16-102(A)(1);
 6. A statement of whether the licensee requests that the license be inactivated or cancelled; and
 7. A statement of whether the licensee completed a training unit prescribed by the Board regarding the requirements of A.R.S. Title 32, Chapter 13 and this Chapter.
- C.** Additionally, the licensee shall answer the following confidential question:

1. Whether the applicant has received treatment since the last renewal for use of alcohol or a controlled substance, prescription-only drug, or dangerous drug or narcotic or a physical, mental, emotional, or nervous disorder or condition that currently affects the applicant's ability to exercise the judgment and skills of a medical professional;
 2. If the answer to subsection (C)(1) is yes:
 - a. A detailed description of the use, disorder, or condition; and
 - b. An explanation of whether the use, disorder, or condition is reduced or ameliorated because the applicant receives ongoing treatment and if so, the name and contact information for all current treatment providers and for all monitoring or support programs in which the applicant is currently participating; and
 3. A copy of any public or confidential agreement or order relating to the use, disorder, or condition, issued by a licensing agency or health care institution since the last renewal, if applicable.
- D.** To renew a license, a licensee shall submit the following with the required application form:
1. If the document submitted under R4-16-201(C)(3) was a limited form of work authorization issued by the federal government, evidence that the licensee's presence in the U.S. continues to be authorized under federal law;
 2. The renewal fee specified under R4-16-205 and, if applicable, the penalty fee for late renewal; and
 3. An attestation that all information submitted is correct.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4).
Amended by final rulemaking at 24 A.A.R. 182, effective March 10, 2018 (Supp. 18-1).

R4-16-202. Application and Reapplication for Pro Bono Registration

- A.** An applicant for a pro bono registration to practice medicine for a maximum of 60 days in a calendar year in Arizona shall submit the following information on an application form available on request from the Board and on the Board's web site:
1. Applicant's full name, Social Security number, business and home addresses, primary e-mail address, and business and home telephone numbers;
 2. List of all states, U.S. territories, and provinces in which the applicant is or has been licensed to practice medicine;
 3. A statement verifying that the applicant:
 - a. Agrees to render all medical services without accepting a fee or salary; or
 - b. Agrees to perform only initial or follow-up examinations at no cost to the patient or the patient's family through a charitable organization,
- B.** In addition to the application form required under subsection (A), an applicant for a pro bono registration to practice medicine shall submit documentation listed under A.R.S. § 41-1080(A) showing that the applicant's presence in the U.S. is authorized under federal law.
- C.** An applicant may make application for a pro bono registration annually. A previously registered applicant may apply for a pro bono registration by submitting the following information on an application form available on request from the Board and on the Board's web site:
1. Applicant's full name, home address and telephone number, and primary e-mail address;
 2. Number of previous pro bono registration;
 3. Name of each state, U.S. territory, and province in which the applicant holds an active medical license;

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4. A statement whether since issuance of the last pro bono registration:
 - a. Any disciplinary action has been taken against the applicant, and
 - b. Any unresolved complaints are currently pending against the applicant with any state board; and
5. If the document submitted under R4-16-202(B) was a limited form of work authorization issued by the federal government, evidence that the applicant's presence in the U.S. continues to be authorized under federal law.

Historical Note

Adopted effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 2319, effective May 9, 2002 (Supp. 02-2). Former Section R4-16-202 recodified to R4-16-302; New Section R4-16-202 recodified from R4-16-107 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4).

R4-16-203. Application for Locum Tenens Registration

- A. An applicant for a locum tenens registration to practice medicine for a maximum of 180 consecutive days in Arizona shall submit an application form available on request from the Board and on the Board's web site that provides the information required under R4-16-201(B).
- B. In addition to the application form required under subsection (A), an applicant for a locum tenens registration to practice medicine shall have the following submitted directly to the Board, electronically or in hard copy, by the primary source, ECFMG, Veridoc, or FCVS:
 1. Official transcript or other authentication of graduation from a school of medicine;
 2. Verification of completion of postgraduate training;
 3. A statement completed by the sponsoring Arizona-licensed physician giving the reason for the request for issuance of the registration;
 4. Verification of ECFMG certification if the applicant graduated from an unapproved school of medicine; and
 5. Verification of licensure from every state in which the applicant has ever held a medical license.
- C. In addition to the application form required under subsection (A), an applicant for a locum tenens registration to practice medicine shall submit the following:
 1. Documentation listed under A.R.S. § 41-1080(A) showing that the applicant's presence in the U.S. is authorized under federal law;
 2. A full set of fingerprints and the charge specified in R4-16-205;
 3. A copy of a government-issued photo identification; and
 4. The fee specified under R4-16-205.

Historical Note

Adopted effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 2319, effective May 9, 2002 (Supp. 02-2). Former Section R4-16-203 recodified to R4-16-303; New Section R4-16-203 recodified from R4-16-108 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4).

R4-16-204. Repealed**Historical Note**

Adopted effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 2319, effective May 9, 2002 (Supp. 02-2). Former Section R4-16-204

recodified to R4-16-304; New Section R4-16-204 recodified from R4-16-103 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Repealed by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4).

R4-16-205. Fees and Charges

- A. As specifically authorized under A.R.S. § 32-1436(A), the Board establishes and shall collect the following fees:
 1. Application for a license through endorsement, USMLE Step 3, or Endorsement with SPX Examination, \$500;
 2. Issuance of an initial license, \$500, prorated from date of issuance to date of license renewal;
 3. Renewal of license for two years, \$500;
 4. Application to reactivate an inactive license, \$500;
 5. Locum tenens registration, \$350;
 6. Annual registration of an approved internship, residency, clinical fellowship program, or short-term residency program, \$50;
 7. Annual teaching license at an approved school of medicine or at an approved hospital internship, residency, or clinical fellowship program, \$250;
 8. Five-day teaching permit at an approved school of medicine or at an approved hospital internship, residency, or clinical fellowship program, \$100;
 9. Initial registration to dispense drugs and devices, \$200;
 10. Annual renewal to dispense drugs and devices, \$150;
 11. Penalty fee for late renewal of an active license, \$350; and
 12. Application for temporary license, \$250.
- B. Under the specific authority provided by A.R.S. § 36-3606(A)(3), the Board establishes and shall collect the following fee to register as an out-of-state health care provider of telehealth services: \$500.
- C. The fees specified in subsections (A) and (B) are nonrefundable unless A.R.S. §§ 32-1436(C) or 41-1077 applies.
- D. As specifically authorized under A.R.S. § 32-1436(B), the Board establishes the following charges for the services listed:
 1. Processing fingerprints to conduct a criminal background check, \$50;
 2. Providing a duplicate license, \$50;
 3. Verifying a license, \$10 per request;
 4. Providing a copy of records, documents, letters, minutes, applications, and files, \$1 for the first three pages and 25¢ for each additional page;
 5. Providing a copy of annual allopathic medical directory, \$30; and
 6. Providing an electronic medium containing public information about licensed physicians, \$100.

Historical Note

Adopted effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 2319, effective May 9, 2002 (Supp. 02-2). Former Section R4-16-205 recodified to R4-16-305; New Section R4-16-205 recodified from R4-16-109 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking 19 A.A.R. 1300, effective July 6, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 2569, effective September 2, 2014 (Supp. 14-3). Amended by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4). Amended by final exempt rulemaking at 22 A.A.R. 778, effective January 14, 2016 (Supp. 16-1). Amended by final exempt rulemaking at 23 A.A.R. 2056, effective August 9, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 182, effective March 10, 2018 (Supp. 18-1). Amended by final exempt

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rulemaking at 27 A.A.R. 1645, with an immediate effective date of September 22, 2021 (Supp. 21-3).

R4-16-205.1. Mandatory Reporting Requirement

- A. As required under A.R.S. § 32-3208, an applicant, licensee, permit holder, or registrant who is charged with a misdemeanor involving conduct that may affect patient safety or a felony shall provide written notice of the charge to the Board within 10 working days after the charge is filed.
- B. An applicant, licensee, permit holder, or registrant may obtain a list of reportable misdemeanors on request from the Board and on the Board's web site.
- C. Failure to comply with A.R.S. § 32-3208 and this Section is unprofessional conduct.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4).

R4-16-206. Time Frames for Licenses, Permits, and Registrations

- A. For each type of license, permit, or registration issued by the Board, the overall time frame under A.R.S. § 41-1072(2) is shown on Table 1.
- B. For each type of license, permit, or registration issued by the Board, the administrative completeness review time frame under A.R.S. § 41-1072(1) is shown on Table 1 and begins on the date the Board receives an application and all required documentation and information.
 - 1. If the required application is not administratively complete, the Board shall send a written deficiency notice to the applicant.
 - a. In the deficiency notice, the Board shall state each deficiency and the information required to complete the application or supporting documentation required to complete the application. In the deficiency notice, the Board shall include a written notice that the application is withdrawn if the applicant does not submit the additional required information or documentation within the time provided for response.
 - b. Within the time provided in Table 1 for response to a deficiency notice, the applicant shall submit to the Board the documentation or information specified in the notice. The time frame for the Board to finish the administrative completeness review is suspended from the date of the notice until the date the Board receives the documentation or information from the applicant.
 - 2. Within 30 days after receipt of a deficiency notice, an applicant who disagrees with the deficiency notice may submit to the Board a written request for a hearing regarding the deficiency notice.
 - 3. The Board shall schedule and conduct the applicant's deficiency hearing according to provisions prescribed under A.R.S. § 32-1427(E).
 - 4. In addition to hearing provisions prescribed under subsection (B)(3), the Board shall send the following to the applicant in writing:
 - a. A notice of the scheduled hearing at least 21 days before the hearing date; and
 - b. The Board's decision within 30 days after the hearing and notice of any applicable right of appeal.

- C. For each type of license, permit, or registration issued by the Board, the substantive review time frame under A.R.S. § 41-1072(3) is shown on Table 1.

- 1. The Board may request make a comprehensive written request for additional information from an applicant according to provisions prescribed under A.R.S. § 41-1075 during the substantive review time frame. In any request for additional information, the Board shall include a written notice that the application is withdrawn if the applicant does not submit the additional information within the time provided for response.
- 2. In response to a single comprehensive written request from the Board under A.R.S. § 41-1075(A), the applicant shall submit the information identified to the Board within the time to respond specified in Table 1. The time frame for the Board to finish the substantive review is suspended from the date the Board sends the comprehensive written request for additional information until the date the Board receives the additional information from the applicant.
- 3. If the Board determines the applicant does not meet all substantive criteria for a license, permit, or registration as required under A.R.S. Title 32, Chapter 13 or this Chapter, the Board shall send written notice of denial to the applicant. The Board shall include notice of any applicable right of appeal in the denial notice.
- 4. If the applicant meets all substantive criteria for a license, permit, or registration required under A.R.S. Title 32, Chapter 13 and this Chapter, the Board shall issue the applicable license, permit, or registration to the applicant.
- D. An applicant may receive a 30-day extension of the time provided under subsection (B)(1) or (C)(2) by providing written notice to the Board's Executive Director before the time expires.
- E. If a licensee does not apply for license renewal according to the biennial renewal requirement, the licensee's license expires according to provisions prescribed under A.R.S. § 32-1430(A) unless the licensee is under investigation according to provisions under A.R.S. § 32-3202. If a licensee makes timely application according to the biennial renewal requirement but fails to respond timely to a deficiency notice under subsection (B)(1) or a request for additional information under subsection (C)(2) and fails to request from the Executive Director an extension of time to respond, the licensee's license expires according to provisions prescribed under A.R.S. § 32-1430(A).

Historical Note

New Section recodified from R4-16-104 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking at 11 A.A.R. 2944, effective September 10, 2005 (Supp. 05-3). Amended by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4).

R4-16-207. Repealed**Historical Note**

New Section recodified from R4-16-105 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking at 11 A.A.R. 2944, effective September 10, 2005 (Supp. 05-3). Repealed by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4).

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Table 1. Time Frames

Time Frames (in calendar days)					
Type of License	Overall Time Frame	Administrative Review Time Frame	Time to Respond to Deficiency Notice	Substantive Review Time Frame	Time to Respond to Request for Additional Information
Initial License by Examination or Endorsement	240	120	365	120	90
Biennial License Renewal	90	45	60	45	60
Locum Tenens or Pro Bono Registration	120	60	90	60	30
Teaching License	40	20	30	20	30
Educational Teaching Permit	20	10	30	10	10
Training Permit	40	20	30	20	30
Short-term Training Permit	40	20	30	20	30
One-year Training Permit	40	20	30	20	30
Annual Registration to Dispense Drugs and Devices	150	45	30	105	30
Registration as an Out-of-state Health Care Provider of Telehealth Services	40	20	30	20	30

Historical Note

Table 1 recodified from Article 1 to end of Article 2 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking at 11 A.A.R. 2944, effective September 10, 2005 (Supp. 05-3). Amended by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4). Amended by final exempt rulemaking at 27 A.A.R. 1645, with an immediate effective date of September 22, 2021 (Supp. 21-3).

ARTICLE 3. DISPENSING OF DRUGS

R4-16-301. Registration and Renewal

- A. A physician who wishes to dispense a controlled substance as defined in A.R.S. § 32-1901(12), a prescription-only drug as defined in A.R.S. § 32-1901(65), or a prescription-only device as defined in A.R.S. § 32-1901(64) shall be currently licensed to practice medicine in Arizona and shall provide to the Board the following:
 - 1. A completed registration form that includes the following information:
 - a. The physician’s name, license number, and field of practice;
 - b. A list of the types of drugs and devices the physician will dispense; and
 - c. The location or locations where the physician will dispense a controlled substance, a prescription-only drug, or a prescription-only device.
 - 2. A copy of the physician’s current Drug Enforcement Administration Certificate of Registration for each dispensing location from which the physician will dispense a controlled substance.
 - 3. The fees required in A.R.S. § 32-1436.
- B. A physician shall renew a registration to dispense a controlled substance, a prescription-only drug, or a prescription-only device by complying with the requirements in subsection (A) on or before June 30 of each year. If a physician has made timely and complete application for the renewal of a registration, the physician may continue to dispense until the Board approves or denies the renewal application.
- C. If the completed annual renewal form, all required documentation, and the fee are not received in the Board’s office on or before June 30, the physician shall not dispense any controlled substances, prescription-only drugs, or prescription-only devices until re-registered. The physician shall re-register by filing for initial registration under subsection (A) and shall not dispense a controlled substance, a prescription-only drug, or a prescription-only device until receipt of the re-registration.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 751, effective February 2, 2000 (Supp. 00-1). Former Section R4-16-301 recodified to R4-16-401; New Section R4-16-301 recodified from R4-16-201 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-302. Packaging and Inventory; Exception

- A. A physician shall dispense all controlled substances and prescription-only drugs in prepackaged containers or in light-resistant containers with consumer safety caps, that comply with standards specified in the official compendium as defined in A.R.S. § 32-1901(49) and state and federal law, unless a patient or a patient’s representative requests a non-safety cap.
- B. All controlled substances and prescription-only drugs dispensed shall be labeled with the following information:
 - 1. The physician’s name, address, and telephone number;
 - 2. The date the controlled substance and prescription-only drug is dispensed;
 - 3. The patient’s name;
 - 4. The controlled substance and prescription-only drug name, strength, and dosage, form, name of manufacturer, the quantity dispensed, directions for use, and any cautionary statement necessary for the safe and effective use of the controlled substance and prescription-only drug; and
 - 5. A beyond-use-date not to exceed one year from the date of dispensing or the manufacturer’s expiration date if less than one year.
- C. A physician shall secure all controlled substances in a locked cabinet or room and shall control access to the cabinet or room by a written procedure that includes, at a minimum, designation of the persons who have access to the cabinet or room and procedures for recording requests for access to the cabinet or room. This written procedure shall be made available on demand to the Board or its authorized representatives for inspection or copying. Prescription-only drugs shall be stored so as not to be accessible to patients.

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- D. Controlled substances and prescription-only drugs not requiring refrigeration shall be maintained in an area where the temperature does not exceed 85° F.
- E. A physician shall maintain an ongoing dispensing log for all controlled substances and the prescription-only drug nalbuphine hydrochloride (Nubain) dispensed by the physician. The dispensing log shall include the following:
1. A separate inventory sheet for each controlled substance and prescription-only drug;
 2. The date the drug is dispensed;
 3. The patient's name;
 4. The dosage, controlled substance and prescription-only drug name, strength, dosage, form, and name of the manufacturer;
 5. The number of dosage units dispensed;
 6. A running total of each controlled substance and prescription-only drug dispensed; and
 7. The signature of the physician written next to each entry.
- F. A physician may use a computer to maintain the dispensing log required in subsection (E) if the log is quickly accessible through either on-screen viewing or printing of a copy.
- G. This Section does not apply to a prepackaged manufacturer sample of a controlled substance and prescription-only drug, unless otherwise provided by federal law.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 751, effective February 2, 2000 (Supp. 00-1). Former Section R4-16-302 recodified to R4-16-402; New Section R4-16-302 recodified from R4-16-202 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-303. Prescribing and Dispensing Requirements

- A. A physician shall record on the patient's medical record the name, strength, dosage, and form, of the controlled substance, prescription-only drug, or prescription-only device dispensed, the quantity or volume dispensed, the date the controlled substance, prescription-only drug, or prescription-only device is dispensed, the medical reasons for dispensing the controlled substance, prescription-only drug, or prescription-only device, and the number of refills authorized.
- B. Before dispensing a controlled substance, prescription-only drug, or prescription-only device to a patient, a physician shall review the prepared controlled substance, prescription-only drug, or prescription-only device to ensure that:
1. The container label and contents comply with the prescription, and
 2. The patient is informed of the name of the controlled substance, prescription-only drug, or prescription-only device, directions for use, precautions, and storage requirements.
- C. A physician shall purchase all dispensed controlled substances, prescription-only drugs, or prescription-only devices from a manufacturer or distributor approved by the United States Food and Drug Administration, or a pharmacy holding a current permit from the Arizona Board of Pharmacy.
- D. The person who prepares a controlled substance, prescription-only drug, or prescription-only device for dispensing shall countersign and date the original prescription form for the controlled substance, prescription-only drug, or prescription-only device.
- E. For purposes of this Article, "dispensing" means the delivery of a controlled substance, a prescription-only drug, or a prescription-only device to a patient for use outside the physician's office.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 751, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 6 A.A.R. 4585, effective November 14, 2000 (Supp. 00-4). Former Section R4-16-303 recodified to R4-16-403; New Section R4-16-303 recodified from R4-16-203 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-304. Recordkeeping and Reporting Shortages

- A. A physician who dispenses a controlled substance or prescription-only drug shall ensure that an original prescription dispensed from the physician's office is dated, consecutively numbered in the order in which it is originally dispensed, and filed separately from patient medical records. A physician shall ensure that an original prescription be maintained in three separate files, as follows:
1. Schedule II controlled substances;
 2. Schedule III, IV, and V controlled substances; and
 3. Prescription-only drugs.
- B. A physician shall ensure that purchase orders and invoices are maintained for all controlled substances and prescription-only drugs dispensed for profit and not for profit for three years from the date of the purchase order or invoice. Purchase orders and invoices shall be maintained in three separate files as follows:
1. Schedule II controlled substances only;
 2. Schedule III, IV, and V controlled substances and nalbuphine; and
 3. All other prescription-only drugs.
- C. A physician who discovers a theft or loss of a controlled substance or a dangerous drug, as defined in A.R.S. § 13-3401, from the physician's office shall:
1. Immediately notify the local law enforcement agency,
 2. Provide that agency with a written report, and
 3. Send a copy to the Drug Enforcement Administration and the Board within seven days of the discovery.
- D. For purposes of this Section, controlled substances are identified, defined, or listed in A.R.S. Title 36, Chapter 27.

Historical Note

New Section recodified from R4-16-204 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-305. Inspections; Denial and Revocation

- A. A physician shall cooperate with and allow access to the physician's office and records for periodic inspection of dispensing practices by the Board or its authorized representative. Failure to cooperate or allow access shall be grounds for revocation of a physician's registration to dispense a controlled substance, prescription-only drug, or prescription-only device or denial of renewal of the physician's dispensing registration.
- B. Failure to comply with A.R.S. § 32-1491 or this Article constitutes grounds for denial or revocation of dispensing registration.
- C. The Board shall revoke a physician's registration to dispense a controlled substance, prescription-only drug, or prescription-only device upon occurrence of the following:
1. Suspending, revoking, surrendering, or canceling the physician's license;
 2. Placing the physician's license on inactive status;
 3. Failing to timely renew the physician's license; or
 4. Restricting the physician's ability to prescribe or administer medication, including loss or expiration of the physician's Drug Enforcement Administration Certificate of Registration.
- D. If the Board denies a physician's dispensing registration, the physician may appeal the decision by filing a request, in writ-

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ing, with the Board, no later than 30 days after receipt of the notice denying the registration.

Historical Note

New Section recodified from R4-16-205 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

ARTICLE 4. MEDICAL ASSISTANTS**R4-16-401. Medical Assistant Training Requirements**

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

Historical Note

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Former Section R4-16-401 recodified to R4-16-501; New Section R4-16-401 recodified from R4-16-301 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Former Section R4-16-401 repealed; New Section R4-16-401 renumbered from R4-16-402 and amended by final rulemaking at 12 A.A.R. 823, effective February 23, 2006 (Supp. 06-1). Amended by final rulemaking at 25 A.A.R. 145, effective March 9, 2019 (Supp. 19-1).

R4-16-402. Authorized Procedures for Medical Assistants

- A. A medical assistant may perform, under the direct supervision of a physician or a physician assistant, the medical procedures listed in Appendix B, Core Curriculum for Medical Assistants, 2015 edition of Standards and Guidelines for the Accreditation of Educational Programs in Medical Assisting, published by the Commission on Accreditation of Allied Health Education Programs. This material is incorporated by reference, does not include later amendments or editions, and may be obtained from the publisher at 25400 U.S. Highway 19 N, Suite 158, Clearwater, FL 33763, www.caahep.org, or the Board.
- B. In addition to the medical procedures in subsection (A), a medical assistant may administer the following under the direct supervision of a physician or physician assistant:
1. Whirlpool treatments,
 2. Diathermy treatments,
 3. Electronic galvanation stimulation treatments,
 4. Ultrasound therapy,
 5. Massage therapy,
 6. Traction treatments,
 7. Transcutaneous Nerve Stimulation unit treatments,
 8. Hot and cold pack treatments, and
 9. Small volume nebulizer treatments.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Former Section R4-16-402 recodified to R4-16-502; New Section R4-16-402 recodified from R4-16-302 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Former Section R4-16-402 renumbered to R4-16-401; New Section R4-16-402 renumbered from R4-16-403 and amended by final rulemaking at 12 A.A.R. 823, effective February 23, 2006 (Supp. 06-1). Amended by final rulemaking at 25 A.A.R. 145, effective March 9, 2019 (Supp. 19-1).

R4-16-403. Renumbered**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Former Section R4-16-403 recodified to R4-16-503; New Section R4-16-403 recodified from R4-16-303 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Former Section R4-16-403 renumbered to R4-16-402 by final rulemaking at 12 A.A.R. 823, effective February 23, 2006 (Supp. 06-1).

R4-16-404. Recodified**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Section recodified to R4-16-504 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-405. Recodified**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Section recodified to R4-16-505 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-406. Recodified**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Section recodified to R4-16-506 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-407. Recodified**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Section recodified to R4-16-507 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-408. Recodified**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Section recodified to R4-16-508 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-409. Recodified**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18,

As of February 15, 2020

32-1401. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a valid and existing license to practice medicine.
2. "Adequate records" means legible medical records, produced by hand or electronically, containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.
3. "Advisory letter" means a nondisciplinary letter to notify a licensee that either:
 - (a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.
 - (b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.
 - (c) While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.
4. "Approved hospital internship, residency or clinical fellowship program" means a program at a hospital that at the time the training occurred was legally incorporated and that had a program that was approved for internship, fellowship or residency training by the accreditation council for graduate medical education, the association of American medical colleges, the royal college of physicians and surgeons of Canada or any similar body in the United States or Canada approved by the board whose function is that of approving hospitals for internship, fellowship or residency training.
5. "Approved school of medicine" means any school or college offering a course of study that, on successful completion, results in the degree of doctor of medicine and whose course of study has been approved or accredited by an educational or professional association, recognized by the board, including the association of American medical colleges, the association of Canadian medical colleges or the American medical association.
6. "Board" means the Arizona medical board.
7. "Completed application" means that the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board.
8. "Direct supervision" means that a physician, physician assistant licensed pursuant to chapter 25 of this title or nurse practitioner certified pursuant to chapter 15 of this title is within the same room or office suite as the medical assistant in order to be available for consultation regarding those tasks the medical assistant performs pursuant to section 32-1456.
9. "Dispense" means the delivery by a doctor of medicine of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and

includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

10. "Doctor of medicine" means a natural person holding a license, registration or permit to practice medicine pursuant to this chapter.

11. "Full-time faculty member" means a physician who is employed full time as a faculty member while holding the academic position of assistant professor or a higher position at an approved school of medicine.

12. "Health care institution" means any facility as defined in section 36-401, any person authorized to transact disability insurance, as defined in title 20, chapter 6, article 4 or 5, any person who is issued a certificate of authority pursuant to title 20, chapter 4, article 9 or any other partnership, association or corporation that provides health care to consumers.

13. "Immediate family" means the spouse, natural or adopted children, father, mother, brothers and sisters of the doctor and the natural or adopted children, father, mother, brothers and sisters of the doctor's spouse.

14. "Letter of reprimand" means a disciplinary letter that is issued by the board and that informs the physician that the physician's conduct violates state or federal law and may require the board to monitor the physician.

15. "Limit" means taking a nondisciplinary action that alters the physician's practice or professional activities if the board determines that there is evidence that the physician is or may be mentally or physically unable to safely engage in the practice of medicine.

16. "Medical assistant" means an unlicensed person who meets the requirements of section 32-1456, has completed an education program approved by the board, assists in a medical practice under the supervision of a doctor of medicine, physician assistant or nurse practitioner and performs delegated procedures commensurate with the assistant's education and training but does not diagnose, interpret, design or modify established treatment programs or perform any functions that would violate any statute applicable to the practice of medicine.

17. "Medically incompetent" means a person who the board determines is incompetent based on a variety of factors, including:

(a) A lack of sufficient medical knowledge or skills, or both, to a degree likely to endanger the health of patients.

(b) When considered with other indications of medical incompetence, failing to obtain a scaled score of at least seventy-five percent on the written special purpose licensing examination.

18. "Medical peer review" means:

(a) The participation by a doctor of medicine in the review and evaluation of the medical management of a patient and the use of resources for patient care.

(b) Activities relating to a health care institution's decision to grant or continue privileges to practice at that institution.

19. "Medicine" means allopathic medicine as practiced by the recipient of a degree of doctor of medicine.
20. "Office based surgery" means a medical procedure conducted in a physician's office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center.
21. "Physician" means a doctor of medicine who is licensed pursuant to this chapter.
22. "Practice of medicine" means the diagnosis, the treatment or the correction of or the attempt or the claim to be able to diagnose, treat or correct any and all human diseases, injuries, ailments, infirmities or deformities, physical or mental, real or imaginary, by any means, methods, devices or instrumentalities, except as the same may be among the acts or persons not affected by this chapter. The practice of medicine includes the practice of medicine alone or the practice of surgery alone, or both.
23. "Restrict" means taking a disciplinary action that alters the physician's practice or professional activities if the board determines that there is evidence that the physician is or may be medically incompetent or guilty of unprofessional conduct.
24. "Special purpose licensing examination" means an examination that is developed by the national board of medical examiners on behalf of the federation of state medical boards for use by state licensing boards to test the basic medical competence of physicians who are applying for licensure and who have been in practice for a considerable period of time in another jurisdiction and to determine the competence of a physician who is under investigation by a state licensing board.
25. "Teaching hospital's accredited graduate medical education program" means that the hospital is incorporated and has an internship, fellowship or residency training program that is accredited by the accreditation council for graduate medical education, the American medical association, the association of American medical colleges, the royal college of physicians and surgeons of Canada or a similar body in the United States or Canada that is approved by the board and whose function is that of approving hospitals for internship, fellowship or residency training.
26. "Teaching license" means a valid license to practice medicine as a full-time faculty member of an approved school of medicine or a teaching hospital's accredited graduate medical education program.
27. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:
 - (a) Violating any federal or state laws, rules or regulations applicable to the practice of medicine.
 - (b) Intentionally disclosing a professional secret or intentionally disclosing a privileged communication except as either act may otherwise be required by law.
 - (c) Committing false, fraudulent, deceptive or misleading advertising by a doctor of medicine or the doctor's staff, employer or representative.
 - (d) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by any court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.
 - (e) Failing or refusing to maintain adequate records on a patient.

- (f) Exhibiting a pattern of using or being under the influence of alcohol or drugs or a similar substance while practicing medicine or to the extent that judgment may be impaired and the practice of medicine detrimentally affected.
- (g) Using controlled substances except if prescribed by another physician for use during a prescribed course of treatment.
- (h) Prescribing or dispensing controlled substances to members of the physician's immediate family.
- (i) Prescribing, dispensing or administering schedule II controlled substances as defined in section 36-2513, including amphetamines and similar schedule II sympathomimetic drugs in the treatment of exogenous obesity for a period in excess of thirty days in any one year, or the nontherapeutic use of injectable amphetamines.
- (j) Prescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes.
- (k) Dispensing a schedule II controlled substance that is an opioid, except as provided in section 32-1491.
- (l) Signing a blank, undated or predated prescription form.
- (m) Committing conduct that the board determines is gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.
- (n) Representing that a manifestly incurable disease or infirmity can be permanently cured, or that any disease, ailment or infirmity can be cured by a secret method, procedure, treatment, medicine or device, if this is not true.
- (o) Refusing to divulge to the board on demand the means, method, procedure, modality of treatment or medicine used in the treatment of a disease, injury, ailment or infirmity.
- (p) Having action taken against a doctor of medicine by another licensing or regulatory jurisdiction due to that doctor's mental or physical inability to engage safely in the practice of medicine or the doctor's medical incompetence or for unprofessional conduct as defined by that jurisdiction and that corresponds directly or indirectly to an act of unprofessional conduct prescribed by this paragraph. The action taken may include refusing, denying, revoking or suspending a license by that jurisdiction or a surrendering of a license to that jurisdiction, otherwise limiting, restricting or monitoring a licensee by that jurisdiction or placing a licensee on probation by that jurisdiction.
- (q) Having sanctions imposed by an agency of the federal government, including restricting, suspending, limiting or removing a person from the practice of medicine or restricting that person's ability to obtain financial remuneration.
- (r) Committing any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.
- (s) Violating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under this chapter.
- (t) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision of this chapter.

(u) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of medicine or if applying for privileges or renewing an application for privileges at a health care institution.

(v) Charging a fee for services not rendered or dividing a professional fee for patient referrals among health care providers or health care institutions or between these providers and institutions or a contractual arrangement that has the same effect. This subdivision does not apply to payments from a medical researcher to a physician in connection with identifying and monitoring patients for a clinical trial regulated by the United States food and drug administration.

(w) Obtaining a fee by fraud, deceit or misrepresentation.

(x) Charging or collecting a clearly excessive fee. In determining whether a fee is clearly excessive, the board shall consider the fee or range of fees customarily charged in this state for similar services in light of modifying factors such as the time required, the complexity of the service and the skill requisite to perform the service properly. This subdivision does not apply if there is a clear written contract for a fixed fee between the physician and the patient that has been entered into before the provision of the service.

(y) Committing conduct that is in violation of section 36-2302.

(z) Using experimental forms of diagnosis and treatment without adequate informed patient consent, and without conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee as approved by the United States food and drug administration or its successor agency.

(aa) Engaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the physician-patient relationship, was in a dating or engagement relationship with the licensee. For the purposes of this subdivision, "sexual conduct" includes:

(i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual.

(ii) Making sexual advances, requesting sexual favors or engaging in any other verbal conduct or physical contact of a sexual nature.

(iii) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.

(bb) Procuring or attempting to procure a license to practice medicine or a license renewal by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another person or an agency.

(cc) Representing or claiming to be a medical specialist if this is not true.

(dd) Maintaining a professional connection with or lending one's name to enhance or continue the activities of an illegal practitioner of medicine.

(ee) Failing to furnish information in a timely manner to the board or the board's investigators or representatives if legally requested by the board.

(ff) Failing to allow properly authorized board personnel on demand to examine and have access to documents, reports and records maintained by the physician that relate to the physician's medical practice or medically related activities.

(gg) Knowingly failing to disclose to a patient on a form that is prescribed by the board and that is dated and signed by the patient or guardian acknowledging that the patient or guardian has read and understands that the doctor has a direct financial interest in a separate diagnostic or treatment agency or in nonroutine goods or services that the patient is being prescribed if the prescribed treatment, goods or services are available on a competitive basis. This subdivision does not apply to a referral by one doctor of medicine to another doctor of medicine within a group of doctors of medicine practicing together.

(hh) Using chelation therapy in the treatment of arteriosclerosis or as any other form of therapy, with the exception of treatment of heavy metal poisoning, without:

(i) Adequate informed patient consent.

(ii) Conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee.

(iii) Approval by the United States food and drug administration or its successor agency.

(ii) Prescribing, dispensing or administering anabolic-androgenic steroids to a person for other than therapeutic purposes.

(jj) Exhibiting a lack of or inappropriate direction, collaboration or direct supervision of a medical assistant or a licensed, certified or registered health care provider employed by, supervised by or assigned to the physician.

(kk) Knowingly making a false or misleading statement to the board or on a form required by the board or in a written correspondence, including attachments, with the board.

(ll) Failing to dispense drugs and devices in compliance with article 6 of this chapter.

(mm) Committing conduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient.

(nn) Making a representation by a doctor of medicine or the doctor's staff, employer or representative that the doctor is boarded or board certified if this is not true or the standing is not current or without supplying the full name of the specific agency, organization or entity granting this standing.

(oo) Refusing to submit to a body fluid examination or any other examination known to detect the presence of alcohol or other drugs as required by the board pursuant to section 32-1452 or pursuant to a board investigation into a doctor of medicine's alleged substance abuse.

(pp) Failing to report in writing to the Arizona medical board or the Arizona regulatory board of physician assistants any evidence that a doctor of medicine or a physician assistant is or may be medically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely practice medicine or to perform as a physician assistant.

(qq) As a physician who is the chief executive officer, the medical director or the medical chief of staff of a health care institution, failing to report in writing to the board that the hospital privileges of a doctor of

medicine have been denied, revoked, suspended, supervised or limited because of actions by the doctor that appear to show that the doctor is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be unable to engage safely in the practice of medicine.

(rr) Claiming to be a current member of the board or its staff or a board medical consultant if this is not true.

(ss) Failing to make patient medical records in the physician's possession promptly available to a physician assistant, a nurse practitioner, a person licensed pursuant to this chapter or a podiatrist, chiropractor, naturopathic physician, osteopathic physician or homeopathic physician licensed under chapter 7, 8, 14, 17 or 29 of this title on receipt of proper authorization to do so from the patient, a minor patient's parent, the patient's legal guardian or the patient's authorized representative or failing to comply with title 12, chapter 13, article 7.1.

(tt) Prescribing, dispensing or furnishing a prescription medication or a prescription-only device as defined in section 32-1901 to a person unless the licensee first conducts a physical or mental health status examination of that person or has previously established a doctor-patient relationship. The physical or mental health status examination may be conducted during a real-time telemedicine encounter with audio and video capability, unless the examination is for the purpose of obtaining a written certification from the physician for the purposes of title 36, chapter 28.1. This subdivision does not apply to:

(i) A physician who provides temporary patient supervision on behalf of the patient's regular treating licensed health care professional or provides a consultation requested by the patient's regular treating licensed health care professional.

(ii) Emergency medical situations as defined in section 41-1831.

(iii) Prescriptions written to prepare a patient for a medical examination.

(iv) Prescriptions written or prescription medications issued for use by a county or tribal public health department for immunization programs or emergency treatment or in response to an infectious disease investigation, public health emergency, infectious disease outbreak or act of bioterrorism. For the purposes of this item, "bioterrorism" has the same meaning prescribed in section 36-781.

(v) Prescriptions written or antimicrobials dispensed to a contact as defined in section 36-661 who is believed to have had significant exposure risk as defined in section 36-661 with another person who has been diagnosed with a communicable disease as defined in section 36-661 by the prescribing or dispensing physician.

(vi) Prescriptions written or prescription medications issued for administration of immunizations or vaccines listed in the United States centers for disease control and prevention's recommended immunization schedule to a household member of a patient.

(vii) Prescriptions for epinephrine auto-injectors written or dispensed for a school district or charter school to be stocked for emergency use pursuant to section 15-157 or for an authorized entity to be stocked pursuant to section 36-2226.01.

(viii) Prescriptions written by a licensee through a telemedicine program that is covered by the policies and procedures adopted by the administrator of a hospital or outpatient treatment center.

(ix) Prescriptions for naloxone hydrochloride or any other opioid antagonist approved by the United States food and drug administration that are written or dispensed for use pursuant to section 36-2228 or 36-2266.

(uu) Performing office based surgery using sedation in violation of board rules.

(vv) Practicing medicine under a false or assumed name in this state.

32-1402. Board; appointment; qualifications; term; removal; compensation; immunity; report

A. The Arizona medical board is established. The board consists of twelve members, four of whom shall represent the public and eight of whom shall be actively practicing medicine. One of the four public members shall be a licensed practical nurse or a professional nurse, as defined in chapter 15 of this title, with at least five years' experience. The eight physicians must be from at least three different counties of the state. Not more than five of the board members may be from any one county. Members of the board are appointed by the governor. All appointments shall be made promptly. The governor shall make all appointments pursuant to section 38-211.

B. Each doctor of medicine who is appointed to the board shall have been a resident of this state and actively engaged in the practice of medicine as a licensed physician in this state for at least the five years before appointment.

C. The term of office of a member of the board is five years, commencing on July 1 and terminating on July 1 of the fifth year. Each member is eligible for reappointment for not more than one additional term. However, the term of office for a member of the board appointed to fill a vacancy occasioned other than by expiration of a full term is for the unexpired portion of that term. Each member may be appointed only once to fill a vacancy caused other than by expiration of a term. The governor may reappoint that member to not more than two additional full terms. Each member of the board shall continue to hold office until the appointment and qualification of that member's successor, subject to the following exceptions:

1. A member of the board, after notice and a hearing before the governor, may be removed on a finding by the governor of continued neglect of duty, incompetence, or unprofessional or dishonorable conduct, in which event that member's term shall end when the governor makes this finding.

2. The term of any member automatically ends:

(a) On death.

(b) On written resignation submitted to the board chairman or to the governor.

(c) On absence from the state for a period of more than six months.

(d) For failure to attend three consecutive meetings of the board.

(e) Five years after retirement from the active practice of medicine.

D. The board shall annually elect, from among its membership, a chairman, a vice-chairman and a secretary, who shall hold their respective offices at the pleasure of the board.

E. Board members are eligible to receive compensation in the amount of up to two hundred fifty dollars per day for each day of actual service in the business of the board, including time spent in preparation for

and attendance at board meetings, and all expenses necessarily and properly incurred in attending meetings of the board.

F. Members of the board are personally immune from suit with respect to all acts done and actions taken in good faith and in furtherance of the purposes of this chapter.

G. The board shall submit a written report to the governor, the Arizona regulatory board of physician assistants and the members of the health and human services committee of the senate and the health committee of the house of representatives, or their successor committees, no later than August 31 of each year on the board's licensing and disciplinary activities for the previous fiscal year. The report must include both of the following:

1. Information regarding staff turnover that indicates whether the person was temporary, part-time or full-time and in which department or division the person worked.

2. The number of investigators who have been hired and how many of them have completed the investigator training program required by section 32-1405.

H. Public members appointed to the board may submit a separate written report to the governor by August 31 of each year setting forth their comments relative to the board's licensing and disciplinary activities for the previous fiscal year.

32-1403. Powers and duties of the board; compensation; immunity; committee on executive director selection and retention

A. The primary duty of the board is to protect the public from unlawful, incompetent, unqualified, impaired or unprofessional practitioners of allopathic medicine through licensure, regulation and rehabilitation of the profession in this state. The powers and duties of the board include:

1. Ordering and evaluating physical, psychological, psychiatric and competency testing of licensed physicians and candidates for licensure as may be determined necessary by the board.

2. Initiating investigations and determining on its own motion whether a doctor of medicine has engaged in unprofessional conduct or provided incompetent medical care or is mentally or physically unable to engage in the practice of medicine.

3. Developing and recommending standards governing the profession.

4. Reviewing the credentials and the abilities of applicants whose professional records or physical or mental capabilities may not meet the requirements for licensure or registration as prescribed in article 2 of this chapter in order for the board to make a final determination whether the applicant meets the requirements for licensure pursuant to this chapter.

5. Disciplining and rehabilitating physicians.

6. Engaging in a full exchange of information with the licensing and disciplinary boards and medical associations of other states and jurisdictions of the United States and foreign countries and the Arizona medical association and its components.

7. Directing the preparation and circulation of educational material the board determines is helpful and proper for licensees.

8. Adopting rules regarding the regulation and the qualifications of doctors of medicine.
 9. Establishing fees and penalties as provided pursuant to section 32-1436.
 10. Delegating to the executive director the board's authority pursuant to section 32-1405 or 32-1451. The board shall adopt substantive policy statements pursuant to section 41-1091 for each specific licensing and regulatory authority the board delegates to the executive director.
 11. Determining whether a prospective or current Arizona licensed physician has the training or experience to demonstrate the physician's ability to treat and manage opiate-dependent patients as a qualifying physician pursuant to 21 United States Code section 823(g)(2)(G)(ii).
- B. The board may appoint one of its members to the jurisdiction arbitration panel pursuant to section 32-2907, subsection B.
- C. There shall be no monetary liability on the part of and no cause of action shall arise against the executive director or such other permanent or temporary personnel or professional medical investigators for any act done or proceeding undertaken or performed in good faith and in furtherance of the purposes of this chapter.
- D. In conducting its investigations pursuant to subsection A, paragraph 2 of this section, the board may receive and review staff reports relating to complaints and malpractice claims.
- E. The board shall establish a program that is reasonable and necessary to educate doctors of medicine regarding the uses and advantages of autologous blood transfusions.
- F. The board may make statistical information on doctors of medicine and applicants for licensure under this article available to academic and research organizations.
- G. The committee on executive director selection and retention is established consisting of the Arizona medical board and the chairperson and vice chairperson of the Arizona regulatory board of physician assistants. The committee is a public body and is subject to the requirements of title 38, chapter 3, article 3.1. The committee is responsible for appointing the executive director pursuant to section 32-1405. All members of the committee are voting members of the committee. The committee shall elect a chairperson and a vice chairperson when the committee meets but no more frequently than once a year. The chairperson shall call meetings of the committee as necessary, and the vice chairperson may call meetings of the committee that are necessary if the chairperson is not available. The presence of eight members of the committee at a meeting constitutes a quorum. The committee meetings may be held using communications equipment that allows all members who are participating in the meeting to hear each other. If any discussions occur in an executive session of the committee, notwithstanding the requirement that discussions made at an executive session be kept confidential as specified in section 38-431.03, the chairperson and vice chairperson of the Arizona regulatory board of physician assistants may discuss this information with the Arizona regulatory board of physician assistants in executive session. This disclosure of executive session information to the Arizona regulatory board of physician assistants does not constitute a waiver of confidentiality or any privilege, including the attorney-client privilege.
- H. The officers of the Arizona medical board and the Arizona regulatory board of physician assistants shall meet twice a year to discuss matters of mutual concern and interest.

I. The board may accept and expend grants, gifts, devises and other contributions from any public or private source, including the federal government. Monies received under this subsection do not revert to the state general fund at the end of a fiscal year.

32-1403.01. Licensees; profiles; required information; updates; civil penalty

A. The board shall make available to the public a profile of each licensee. The board shall make this information available through an internet website and, if requested, in writing. The profile available to the public may not contain any information received from the federal bureau of investigation relating to a federal criminal records check. The profile shall contain the following information:

1. A description of any conviction of a felony. For purposes of this paragraph, a licensee is deemed to be convicted if the licensee pled guilty, pled no contest or was found guilty by a court of competent jurisdiction.
2. A description of any conviction of a misdemeanor involving moral turpitude that results in disciplinary action. For purposes of this paragraph, a licensee is deemed to be convicted if the licensee pled guilty, pled no contest or was found guilty by a court of competent jurisdiction.
3. All final board disciplinary actions.
4. Any medical malpractice court judgments and any medical malpractice awards or settlements in which a payment is made to a complaining party that results in disciplinary action.
5. The name and location of the licensee's medical school and the date of graduation.
6. The name and location of the institution from which the licensee received graduate medical education and the date that education was completed.
7. The licensee's primary practice location.

B. Each licensee shall submit the information required pursuant to subsection A of this section each year as directed by the board. An applicant for licensure shall submit this information at the time of application. The applicant and licensee shall submit the information on a form prescribed by the board. A licensee shall submit immediately any changes in information required pursuant to subsection A, paragraphs 1, 2 and 4 of this section. The board shall update immediately its internet website to reflect changes in information relating to subsection A, paragraphs 1 through 4 of this section. The board shall update the internet website information at least annually.

C. The board shall provide each licensee with the licensee's profile on request and shall make valid and verifiable corrections to the profile on notification at any time by the licensee. A change made by a licensee to an address or telephone number is subject to the requirements of section 32-1435.

D. It is an act of unprofessional conduct for a licensee to provide erroneous information pursuant to this section. In addition to other disciplinary action, the board may impose a civil penalty of not more than one thousand dollars for each erroneous statement.

E. If the board issues a nondisciplinary order or action against a licensee, the record of the nondisciplinary order or action is available to the public but may not appear on the board's website, except that a practice limitation or restriction, and documentation relating to that action, may appear on the board's website. On

request, the board shall send within five business days, either electronically or by mail, information relating to any nondisciplinary order or action against a licensee to a person requesting the information.

32-1404. Meetings; quorum; committees; rules; posting

A. The board shall hold regular quarterly meetings on a date and at the time and place designated by the chairman. The board shall hold special meetings, including meetings using communications equipment that allows all members participating in the meeting to hear each other, as the chairman determines are necessary to carry out the functions of the board. The board shall hold special meetings on any day that the chairman determines are necessary to carry out the functions of the board. The vice-chairman may call meetings and special meetings if the chairman is not available.

B. The presence of seven board members at a meeting constitutes a quorum. A majority vote of the quorum is necessary for the board to take any action.

C. The chairman may establish committees from the membership of the board and define committee duties necessary to carry out the functions of the board.

D. The board may adopt rules pursuant to title 41, chapter 6 that are necessary and proper to carry out the purposes of this chapter.

E. Meetings held pursuant to subsection A of this section shall be audio and video recorded. Beginning September 2, 2014, the board shall post the video recording on the board's website within five business days after the meeting.

32-1405. Executive director; compensation; duties; appeal to the board

A. Subject to title 41, chapter 4, article 4, the committee on executive director selection and retention established by section 32-1403 shall appoint an executive director of the board who shall serve at the pleasure of the committee. The executive director shall not be a board member, except that the board may authorize the executive director to represent the board and to vote on behalf of the board at meetings of the federation of state medical boards of the United States.

B. The executive director is eligible to receive compensation set by the board within the range determined under section 38-611.

C. The executive director or the executive director's designee shall:

1. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, employ, evaluate, dismiss, discipline and direct professional, clerical, technical, investigative and administrative personnel necessary to carry on the work of the board. An investigator shall complete a nationally recognized investigator training program within one year of date of hire. Until an investigator completes a training program, the investigator shall work under the supervision of an investigator who has completed a training program.

2. Set compensation for board employees within the range determined under section 38-611.

3. As directed by the board, prepare and submit recommendations for amendments to the medical practice act for consideration by the legislature.

4. Subject to title 41, chapter 4, article 4, employ medical consultants and agents necessary to conduct investigations, gather information and perform those duties the executive director determines are necessary and appropriate to enforce this chapter.
5. Issue licenses, registrations and permits to applicants who meet the requirements of this chapter.
6. Manage the board's offices.
7. Prepare minutes, records, reports, registries, directories, books and newsletters and record all board transactions and orders.
8. Collect all monies due and payable to the board.
9. Pay all bills for authorized expenditures of the board and its staff.
10. Prepare an annual budget.
11. Submit a copy of the budget each year to the governor, the speaker of the house of representatives and the president of the senate.
12. Initiate an investigation if evidence appears to demonstrate that a physician may be engaged in unprofessional conduct or may be medically incompetent or mentally or physically unable to safely practice medicine.
13. Issue subpoenas if necessary to compel the attendance and testimony of witnesses and the production of books, records, documents and other evidence.
14. Provide assistance to the attorney general in preparing and sign and execute disciplinary orders, rehabilitative orders and notices of hearings as directed by the board.
15. Enter into contracts for goods and services pursuant to title 41, chapter 23 that are necessary to carry out board policies and directives.
16. Execute board directives.
17. Manage and supervise the operation of the Arizona regulatory board of physician assistants.
18. Issue licenses to physician assistant applicants who meet the requirements of chapter 25 of this title.
19. Represent the board with the federal government, other states or jurisdictions of the United States, this state, political subdivisions of this state, the news media and the public.
20. On behalf of the Arizona medical board, enter into stipulated agreements with persons under the jurisdiction of either the Arizona medical board or the Arizona regulatory board of physician assistants for the treatment, rehabilitation and monitoring of chemical substance abuse or misuse.
21. Review all complaints filed pursuant to section 32-1451. The executive director shall submit all medical complaints alleging harm as a result of patient care to a medical consultant for review. The executive director shall submit to the medical consultant only those medical complaints that involve a standard of care issue and that require medical training and expertise to determine whether a violation has occurred. If delegated by the board, the executive director may also dismiss a complaint if the complaint is without merit. The executive director shall not dismiss a complaint if a court has entered a medical

malpractice judgment against a physician. The executive director shall submit a report of the cases dismissed with the complaint number, the name of the physician and the investigation timeline to the board for review at its regular board meetings.

22. If delegated by the board, directly refer cases to a formal hearing.

23. If delegated by the board, close cases resolved through mediation.

24. If delegated by the board, issue advisory letters.

25. If delegated by the board, enter into a consent agreement if there is evidence of danger to the public health and safety.

26. If delegated by the board, grant uncontested requests for inactive status and cancellation of a license pursuant to sections 32-1431 and 32-1433.

27. If delegated by the board, refer cases to the board for a formal interview.

28. Perform all other administrative, licensing or regulatory duties required by the board.

29. Disseminate any information received from the office of ombudsman-citizens aide to the board at its regular board meetings.

D. Medical consultants and agents appointed pursuant to subsection C, paragraph 4 of this section are eligible to receive compensation determined by the executive director in an amount not to exceed two hundred dollars for each day of service.

E. A person who is aggrieved by an action taken by the executive director pursuant to subsection C, paragraphs 21 through 27 of this section or section 32-1422, subsection E may request the board to review that action by filing with the board a written request within thirty days after that person is notified of the executive director's action by personal delivery or, if the notification is mailed to that person's last known residence or place of business, within thirty-five days after the date on the notification. At the next regular board meeting, the board shall review the executive director's action. On review, the board shall approve, modify or reject the executive director's action.

32-1406. Arizona medical board fund

A. The Arizona medical board fund is established. Pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies collected under the provisions of this chapter in the state general fund and deposit the remaining ninety per cent in the Arizona medical board fund.

B. Monies deposited in the fund are subject to section 35-143.01.

32-1407. Jurisdiction arbitration panel

A. When the board receives a complaint concerning a physician who is also licensed pursuant to chapter 29 of this title, the board shall immediately notify the board of homeopathic and integrated medicine examiners. If the boards disagree and if both boards continue to claim jurisdiction over the dual licensee, an arbitration panel shall decide jurisdiction pursuant to section 32-2907, subsections B, C, D and E.

B. If the licensing boards decide without resorting to arbitration which board or boards shall conduct the investigation, the board or boards conducting the investigation shall transmit all investigation materials,

findings and conclusions to the other board with which the physician is licensed. The board or boards shall review this information to determine if disciplinary action shall be taken against the physician.

[32-1421. Exemptions from licensing requirements](#)

A. This article does not apply to any person while engaged in:

1. The provision of medical assistance in case of an emergency.
2. The administration of family remedies including the sale of vitamins, health foods or health food supplements or any other natural remedies, except drugs or medicines for which an authorized prescription is required by law.
3. The practice of religion, treatment by prayer or the laying on of hands as a religious rite or ordinance.
4. The practice of any of the healing arts of and by Indian tribes in this state.
5. The lawful practice of any of the healing arts to the extent authorized by a license issued by this state.
6. Activities or functions that do not require the exercise of a doctor of medicine's judgment for their performance, are not in violation of the laws of this state and are usually or customarily delegated by a doctor of medicine under the doctor's direction or supervision or are performed in accordance with the approval of a committee of physicians in a licensed health care institution.
7. The official duties of a medical officer in the armed forces of the United States, the United States department of veterans affairs or the United States public health service or their successor agencies, if the duties are restricted to federal lands.
8. Any act, task or function competently performed by a physician assistant in the proper performance of the physician assistant's duties.
9. The emergency harvesting of donor organs by a doctor of medicine or team of doctors of medicine licensed to practice medicine in another state or country for use in another state or country.

B. This article does not apply to:

1. A doctor of medicine residing in another jurisdiction who is authorized to practice medicine in that jurisdiction, if the doctor engages in actual single or infrequent consultation with a doctor of medicine licensed in this state and if the consultation regards a specific patient or patients.
2. A doctor of medicine who is licensed to practice in another jurisdiction if the doctor engages in the practice of medicine that is limited to patients with whom the doctor has an already established doctor-patient relationship and who reside outside this jurisdiction when both the doctor and the patient are physically in this state for not more than sixty consecutive days. For the purposes of this paragraph, "patient" means a person who is not a resident of this state and who is an athlete or a professional entertainer.

[32-1422. Basic requirements for granting a license to practice medicine; credentials verification](#)

A. An applicant for a license to practice medicine in this state pursuant to this article shall meet each of the following basic requirements:

1. Graduate from an approved school of medicine or receive a medical education that the board deems to be of equivalent quality.
 2. Successfully complete an approved twelve-month hospital internship, residency or clinical fellowship program.
 3. Have the physical and mental capability to safely engage in the practice of medicine.
 4. Have a professional record that indicates that the applicant has not committed any act or engaged in any conduct that would constitute grounds for disciplinary action against a licensee under this chapter.
 5. Not have had a license to practice medicine revoked by a medical regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.
 6. Not be currently under investigation, suspension or restriction by a medical regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter. If the applicant is under investigation by a medical regulatory board in another jurisdiction, the board shall suspend the application process and may not issue or deny a license to the applicant until the investigation is resolved.
 7. Not have surrendered a license to practice medicine in lieu of disciplinary action by a medical regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
 8. Pay all fees required by the board.
 9. Complete the application as required by the board.
 10. Complete a training unit as prescribed by the board relating to the requirements of this chapter and board rules. The applicant shall submit proof with the application form of having completed the training unit.
 11. Have submitted directly to the board, electronically or by hard copy, verification of the following:
 - (a) Licensure from every state in which the applicant has ever held a medical license.
 - (b) All medical employment for the five years preceding application. If the applicant is employed by a hospital or medical group or organization, the board shall accept the confirmation required under this subdivision from the applicant's employer. For the purposes of this subdivision, medical employment includes all medical professional activities.
 12. Have submitted a full set of fingerprints to the board for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
- B. The board may require the submission of credentials or other evidence, written and oral, and make any investigation it deems necessary to adequately inform itself with respect to an applicant's ability to meet the requirements prescribed by this section, including a requirement that the applicant for licensure undergo a physical examination, a mental evaluation and an oral competence examination and interview, or any combination thereof, as the board deems proper.

C. In determining if the requirements of subsection A, paragraph 4 of this section have been met, if the board finds that the applicant committed an act or engaged in conduct that would constitute grounds for disciplinary action, the board shall determine to its satisfaction that the conduct has been corrected, monitored and resolved. If the matter has not been resolved, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.

D. In determining if the requirements of subsection A, paragraph 6 of this section have been met, if another jurisdiction has taken disciplinary action against an applicant, the board shall determine to its satisfaction that the cause for the action was corrected and the matter resolved. If the matter has not been resolved by that jurisdiction, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.

E. The board may delegate authority to the executive director to deny licenses if applicants do not meet the requirements of this section.

F. Any credential information required to be submitted to the board pursuant to this article must be submitted, electronically or by hard copy, from the primary source where the document or information originated, except that the board may accept primary-source verified credentials from a credentials verification service approved by the board. The board is not required to verify any documentation or information received by the board from a credentials verification service that has been approved by the board. If an applicant is unable to provide a document or information from the primary source due to no fault of the applicant, the executive director shall forward the issue to the full board for review and determination. The board shall adopt rules establishing the criteria that must be met in order to waive a documentation requirement of this article.

32-1422.01. Expedited licensure; medical licensure compact; fingerprinting

Beginning September 1, 2017, applicants for expedited licensure pursuant to section 32-3241 shall submit a full set of fingerprints to the board for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation. Communication between the board and the interstate medical licensure compact commission regarding verification of physician eligibility for licensure under the medical licensure compact may not include any information received from the federal bureau of investigation relating to a state and federal criminal records check performed for the purposes of section 32-3241, section 5, subsection B, paragraph 2.

32-1423. Additional requirements for students graduating from an unapproved allopathic school of medicine

In addition to the basic requirements for licensure prescribed in section 32-1422, any applicant who has graduated from an unapproved school of medicine shall meet each of the following requirements:

1. Be able to read, write, speak, understand and be understood in the English language.
2. Hold a standard certificate issued by the educational council for foreign medical graduates, complete a fifth pathway program as provided in section 32-1424, subsection A, or complete thirty-six months as a full-time assistant professor or in a higher position in an approved school of medicine.
3. Successfully complete an approved twenty-four month hospital internship, residency or clinical fellowship program, in addition to the twelve months required in section 32-1422, subsection A,

paragraph 2, for a total of thirty-six months of training unless the applicant successfully completed a fifth pathway program as provided by section 32-1424 or has served as a full-time assistant professor or in a higher position in an approved school of medicine for a total of thirty-six months.

32-1424. Fifth pathway program; licensure

A. In addition to the requirements for licensure prescribed in sections 32-1422 and 32-1423, an applicant for licensure under this article who attended a foreign school of medicine and successfully completed all the formal requirements to receive the degree of doctor of medicine except internship or social service, and is accordingly not eligible for certification by the educational council for foreign medical graduates, may be considered for licensure under this chapter if the applicant meets the following conditions:

1. Satisfactorily completes an approved fifth pathway program of one academic year of supervised clinical training under the direction of an approved school of medicine in the United States.
2. Successfully completes an approved twenty-four month internship, residency or clinical fellowship program upon completion of the fifth pathway program.

B. A document granted by a foreign school of medicine signifying completion of all the formal requirements for graduation from such foreign medical school except internship or social service training, or both, along with certification by the approved school of medicine in the United States of successful completion of the fifth pathway program is deemed the equivalent of a degree of doctor of medicine for purposes of licensure and practice as a physician in this state.

32-1425. Initial licensure

A. An applicant who meets the applicable requirements provided in section 32-1422, 32-1423 or 32-1424, has passed steps one and two of the United States medical licensing examination or one of the examination combinations prescribed in section 32-1426, subsection A, paragraph 6, subdivision (c), items (i) and (ii), has paid the fees required by this chapter and has filed a completed application found by the board to be true and correct is eligible for licensure as a doctor of medicine upon successful passage of step three of the United States medical licensing examination with a scaled score of at least seventy-five if the applicant has passed all three steps within a seven year period.

B. An applicant for licensure applying pursuant to section 32-1422, 32-1423 or 32-1424 may take the examination only after successfully completing six months of a board approved hospital internship, residency or clinical fellowship or fifth pathway program or serving as a full-time assistant professor or in a higher position in a board approved school of medicine in this state.

C. The board shall not grant a license until the applicant meets the requirements for licensure pursuant to this chapter.

32-1426. Licensure by endorsement

A. An applicant who is licensed in another jurisdiction or whose license under this chapter has been revoked or surrendered or has expired and who meets the applicable requirements prescribed in section 32-1422, 32-1423 or 32-1424, has paid the fees required by this chapter and has filed a completed application found by the board to be true and correct is eligible to be licensed to engage in the practice of medicine in this state through endorsement under any one of the following conditions:

1. The applicant is certified by the national board of medical examiners or its successor entity as having successfully passed all three parts of the United States medical licensing examination or its successor examination.
 2. The applicant has successfully passed a written examination that the board determines is equivalent to the United States medical licensing examination and that is administered by any state, territory or district of the United States, a province of Canada or the medical council of Canada.
 3. The applicant successfully completed the three-part written federation of state medical boards licensing examination administered by any jurisdiction before January 1, 1985 and obtained a weighted grade average of at least seventy-five on the complete examination. Successful completion of the examination shall be achieved in one sitting.
 4. The applicant successfully completed the two component federation licensing examination administered after December 1, 1984 and obtained a scaled score of at least seventy-five on each component within a five-year period.
 5. The applicant's score on the United States medical licensing examination was equal to the score required by this state for licensure pursuant to section 32-1425.
 6. The applicant successfully completed one of the following combinations of examinations:
 - (a) Parts one and two of the national board of medical examiners examination, administered either by the national board of medical examiners or the educational commission for foreign medical graduates, with a successful score determined by the national board of medical examiners and passed either step three of the United States medical licensing examination or component two of the federation licensing examination with a scaled score of at least seventy-five.
 - (b) The federation licensing examination component one examination and the United States medical licensing step three examination with scaled scores of at least seventy-five.
 - (c) Each of the following:
 - (i) Part one of the national board of medical examiners licensing examination with a passing grade as determined by the national board of medical examiners or step one of the United States medical licensing examination with a scaled score of at least seventy-five.
 - (ii) Part two of the national board of medical examiners licensing examination with a passing grade as determined by the national board of medical examiners or step two of the United States medical licensing examination with a scaled score of at least seventy-five.
 - (iii) Part three of the national board of medical examiners licensing examination with a passing grade as determined by the national board of medical examiners or step three of the United States medical licensing examination with a scaled score of at least seventy-five or component two of the federation licensing examination with a scaled score of at least seventy-five.
- B. The board may require an applicant seeking licensure by endorsement based on successful passage of a written examination or combination of examinations, the most recent of which precedes by more than ten years the application for licensure by endorsement in this state, to take and pass a special purpose licensing examination to assist the board in determining the applicant's ability to safely engage in the practice of medicine. The board may also conduct a records review and physical and psychological

assessments, if appropriate, and may review practice history to determine the applicant's ability to safely engage in the practice of medicine.

32-1427. Application; hearing on deficiencies in application; interview; probationary license

A. Each applicant for licensure shall submit a completed application as prescribed by the board together with the fee prescribed in this article. The board may require the submission of any evidence, credentials and other proof necessary for it to verify and determine if the applicant meets the requirements for licensure.

B. Each application submitted pursuant to this section shall contain the oath of the applicant that:

1. All of the information contained in the application and accompanying evidence or other credentials submitted are true.
2. The credentials submitted with the application were procured without fraud or misrepresentation or any mistake of which the applicant is aware and that the applicant is the lawful holder of the credentials.
3. The applicant authorizes the release of any information from any source requested by the board necessary for initial and continued licensure in this state.

C. All applications, completed or otherwise, together with all attendant evidence, credentials and other proof submitted with the applications are the property of the board.

D. The board, promptly and in writing, shall inform an applicant of any deficiency in the application that prevents the application from being processed.

E. On request the board shall grant an applicant who disagrees with the statement of deficiency a hearing before the board at its next regular meeting if there is time at that meeting to hear the matter. The board shall not delay this hearing beyond one regularly scheduled meeting. At any hearing granted pursuant to this subsection, the burden of proof is on the applicant to demonstrate that the alleged deficiencies do not exist.

F. Applications are considered withdrawn:

1. On the applicant's written request.
2. Except for good cause shown, if the applicant does not appear for an interview with the board.
3. If the applicant does not submit within one year of notification the necessary evidence, credentials or other proof identified by the board as being deficient pursuant to subsection D of this section.

G. The board may deny a license to an applicant who does not meet the requirements of this article.

H. If an applicant does not meet the requirements of section 32-1422, subsection A, paragraph 3 the board may issue a license subject to any of the following probationary conditions:

1. Require the licensee's practice to be supervised by another physician.
2. Restrict the licensee's practice.
3. Require the licensee to continue medical or psychiatric treatment.

4. Require the licensee to participate in a specified rehabilitation program.

5. Require the licensee to abstain from alcohol and other drugs.

I. If the board offers a probationary license to an applicant pursuant to subsection H of this section, it shall notify the applicant in writing of the following:

1. The applicant's specific deficiencies.

2. The probationary period.

3. The applicant's right to reject the terms of probation.

4. If the applicant rejects the terms of probation, the applicant's right to a hearing on the board's denial of the application.

32-1428. Pro bono registration

A. The board may issue a pro bono registration to allow a doctor who is not a licensee to practice in this state for a total of up to sixty days each calendar year if the doctor:

1. Holds an active and unrestricted license to practice medicine in a state, territory or possession of the United States or an inactive license pursuant to section 32-1431.

2. Has never had the license revoked or suspended.

3. Is not the subject of an unresolved complaint.

4. Applies for registration on a yearly basis as prescribed by the board.

5. Agrees to render all medical services without accepting a fee or salary or performs only initial or follow-up examinations at no cost to the patient and the patient's family through a charitable organization.

B. The sixty days of practice prescribed pursuant to subsection A of this section may be performed consecutively or cumulatively during each calendar year.

C. For the purpose of meeting the requirements of subsection A of this section, an applicant shall provide the board the name of each state in which the person is licensed or has held a license and the board shall verify with the applicable regulatory board of each state that the applicant is licensed or has held a license, has never had a license revoked or suspended and is not the subject of an unresolved complaint. The board may accept the verification of the information required by subsection A, paragraphs 1, 2 and 3 of this section from each of the other state's regulatory board either electronically or by hard copy.

32-1429. Locum tenens registration

A. The board may issue a registration to allow a doctor of medicine who is not a licensee to provide locum tenens medical services to substitute for or temporarily assist a doctor of medicine who holds an active license pursuant to this chapter or a doctor of osteopathy who holds an active license pursuant to chapter 17 of this title under the following conditions:

1. The applicant holds an active license to practice medicine issued by a state, district, territory or possession of the United States.

2. The applicant provides on forms and in a manner prescribed by the board proof that the applicant meets the applicable requirements of section 32-1422, 32-1423 or 32-1424.

3. The license of the applicant from the jurisdiction in which the applicant regularly practices medicine is current and unrestricted and has not been revoked or suspended for any reason and there are no unresolved complaints or formal charges filed against the applicant with any licensing board.

4. The doctor of medicine or doctor of osteopathy for whom the applicant for registration under this section is substituting or assisting provides to the board a written request for locum tenens registration of the applicant.

5. The applicant pays the fee prescribed under section 32-1436.

B. Locum tenens registration granted pursuant to this section is valid for a period of one hundred eighty consecutive days. A doctor of medicine is eligible to apply for and be granted locum tenens registration once every three years.

32-1430. License renewal; expiration

A. Except as provided in section 32-4301, each person holding an active license to practice medicine in this state shall renew the license every other year on or before the licensee's birthday and shall pay the fee required by this article, accompanied by a completed renewal form. The board shall provide the renewal form online and, on request, shall mail the form to the licensee. A licensee who does not renew an active license as required by this subsection on or before thirty days after the licensee's birthday must also pay a penalty fee as required by this article for late renewal. A licensee's license automatically expires if the licensee does not renew an active license within four months after the licensee's birthday. A person who practices medicine in this state after that person's active license has expired is in violation of this chapter.

B. A person renewing an active license to practice medicine in this state shall provide to the board as part of the renewal process a report of disciplinary actions, restrictions or any other action placed on or against that person's license or practice by another state licensing or disciplinary board or an agency of the federal government. This action may include denying a license or failing the special purpose licensing examination. The report shall include the name and address of the sanctioning agency or health care institution, the nature of the action taken and a general statement of the charges leading to the action taken.

C. The licensee shall submit proof with the renewal form of having completed a training unit as prescribed by the board relating to the requirements of this chapter and board rules.

D. A person whose license has expired may reapply for a license to practice medicine as provided in this chapter.

32-1431. Inactive license; application; practice prohibitions

A. A person holding a current active license to practice medicine in this state may request an inactive license from the board if both of the following are true:

1. The licensee is not presently under investigation by the board.

2. The board has not commenced any disciplinary proceeding against the licensee.

B. The board may grant an inactive license and waive the renewal fees and requirements for continuing medical education specified by section 32-1434 if the licensee provides evidence to the board's satisfaction that the licensee has totally retired from the practice of medicine in this state and any state, territory and district of the United States or any foreign country and has paid all of the fees required by this chapter before the request. The board may grant pro bono registration pursuant to section 32-1428 to a physician who holds an inactive license under this section.

C. During any period in which a medical doctor holds an inactive license, that person shall not engage in the practice of medicine or continue to hold or maintain a drug enforcement administration controlled substances registration certificate, except as permitted by a pro bono registration pursuant to section 32-1428. Any person who engages in the practice of medicine while on inactive license status is considered to be a person who practices medicine without a license or without being exempt from licensure as provided in this chapter.

D. The board may convert an inactive license to an active license if the applicant pays the renewal fee and presents evidence satisfactory to the board that the applicant possesses the medical knowledge and is physically and mentally able to safely engage in the practice of medicine. The board may require any combination of physical examination, psychiatric or psychological evaluation or successful passage of the special purpose licensing examination or interview it finds necessary to assist it in determining the ability of a physician holding an inactive license to return to the active practice of medicine.

32-1432. Teaching license

A. A board approved school of medicine in this state or a teaching hospital's accredited graduate medical education program in this state may invite a doctor of medicine to provide and promote professional education through lectures, clinics or demonstrations. The doctor of medicine is prohibited from opening an office or designating a place to meet patients or receive calls relating to the practice of medicine in this state outside of the facilities and programs of the approved school or teaching hospital.

B. To receive a teaching license, the doctor of medicine shall:

1. Complete an application as prescribed by the board.
2. Pay all required fees.
3. Meet the basic requirements of section 32-1422 except for those relating to completing an approved hospital internship, residency or clinical fellowship program.

C. A teaching license is limited to a one year period. The doctor of medicine may reapply annually for no more than a total of four years. With each reapplication the doctor of medicine must submit all required fees and a petition from the school or teaching hospital asking the board for continuation of the teaching license.

D. The holder of a teaching license is not exempt from the requirements of this chapter with the exception of the training and examination requirements of this article.

E. A doctor of medicine holding a current teaching license at an approved school of medicine may convert that license into an active license by filing an application and meeting all applicable requirements of this article.

32-1432.01. Education teaching permit

A. The dean of a board approved school of medicine or the chairman of a teaching hospital's accredited graduate medical education program may invite a doctor of medicine who is not licensed in this state to demonstrate and perform medical procedures and surgical techniques for the sole purpose of promoting professional education for students, interns, residents, fellows and doctors of medicine in this state.

B. The chairman or dean of the inviting institution shall provide to the board evidence that an applicant for an educational permit has malpractice insurance in an amount that meets the requirements of the institution and that the applicant accepts all responsibility and liability for the procedures he performs within the scope of his permit. In a letter to the board, the chairman or the dean of the inviting institution shall outline the procedures and techniques that the doctor of medicine shall perform or demonstrate and the dates that this activity will occur. The letter shall also include a summary of the doctor's of medicine educational and professional background and be accompanied by the fee required pursuant to section 32-1436.

C. The inviting institution shall submit the fees and documents required pursuant to subsection B of this section no later than two weeks before the scheduled activity.

D. The board or its staff shall issue an educational teaching permit for no more than five days for each approved activity.

32-1432.02. Training permit; short-term permits; discipline

A. The board shall grant a one year renewable training permit to a person participating in a teaching hospital's accredited internship, residency or clinical fellowship training program to allow that person to function only in the supervised setting of that program. Before the board issues the permit, the person shall comply with the applicable registration requirements of this article and pay the fee prescribed in section 32-1436.

B. If a person who is participating in a teaching hospital's accredited internship, residency or clinical fellowship program must repeat or make up time in the program due to resident progression or other issues, the board may grant that person a training permit if requested to do so by the program's director of medical education or a person who holds an equivalent position. The permit limits the permittee to practicing only in the supervised setting of that program.

C. The board shall grant a training permit to a person who is not licensed in this state and who is participating in a short-term training program of four months or less conducted in an approved school of medicine or a hospital that has an accredited hospital internship, residency or clinical fellowship program in this state for the purpose of continuing medical education. Before the board issues the permit, the person shall comply with the applicable registration requirements of this article and pay the fee prescribed in section 32-1436.

D. A permittee is subject to the disciplinary regulation of article 3 of this chapter.

32-1432.03. Training permits; approved schools

The executive director may grant a one year training permit to a person who:

1. Participates in a program at an approved school of medicine or a hospital that has an approved hospital internship, residency or clinical fellowship program if the purpose of the program is to exchange technical and educational information.

2. Pays the prescribed fee.

3. Submits a written statement from the dean of the approved school of medicine or from the chairman of a teaching hospital's accredited graduate medical education program that:

(a) Includes a request for the permit and describes the purpose of the exchange program.

(b) Specifies that the host institution will provide liability coverage.

(c) Provides the name of a doctor of medicine who will serve as the preceptor of the host institution and provide appropriate supervision of the participant.

(d) States that the host institution has advised the participant that the participant may serve as a member of an organized medical team but shall not practice medicine independently and that this training does not accrue toward postgraduate training requirements for licensure.

32-1433. Cancellation of active license

On request of an active licensee, the board may cancel that person's license if both of the following are true:

1. The licensee is not presently under investigation by the board.

2. The board has not commenced any disciplinary proceeding against the licensee.

32-1434. Continuing medical education; audit

A. A person who holds an active license to practice medicine in this state shall satisfy a continuing medical education requirement that is designed to provide the necessary understanding of current developments, skills, procedures or treatment related to the practice of medicine in such amount and during such period as the board establishes by rule.

B. Compliance with subsection A of this section shall be documented at such times and in such manner as the board shall establish.

C. Failure of a person holding an active license to practice medicine to comply with this section without adequate cause being shown is grounds for probation, suspension or revocation of such person's license.

D. The board shall randomly audit, once every two years, at least ten per cent of physicians to verify continuing medical education compliance.

32-1435. Change of address; costs; penalties

A. Each active licensee shall promptly and in writing inform the board of the licensee's current residence address, office address and telephone number and of each change in residence address, office address or telephone number that may later occur.

B. The board may assess the costs incurred by the board in locating a licensee and in addition a penalty of not to exceed one hundred dollars against a licensee who fails to comply with subsection A within thirty

days from the date of change. Notwithstanding any law to the contrary, monies collected pursuant to this subsection shall be deposited in the Arizona medical board fund.

32-1436. Fees and penalty

A. The board shall by a formal vote, at its annual fall meeting, establish nonrefundable fees and penalties that do not exceed the following:

1. For processing an application for an active license, seven hundred dollars.
2. For issuance of an active license, seven hundred dollars.
3. For an application to reactivate an inactive status license, five hundred dollars.
4. For issuance of a duplicate license, fifty dollars.
5. For renewal of an active license, seven hundred dollars.
6. For late renewal of an active license, an eight hundred dollar penalty.
7. For annual registration of an approved internship, residency, clinical fellowship program or short-term residency program, fifty dollars.
8. For an annual teaching license at an approved school of medicine or at an approved teaching hospital's accredited graduate medical education program, four hundred dollars.
9. For a five day educational teaching permit at an approved school of medicine or at an approved teaching hospital's accredited graduate medical education program, one hundred dollars.
10. For locum tenens registration, five hundred dollars.
11. For the sale of those copies of the annual medical directory that are not distributed free of charge, thirty dollars.
12. For the sale of the annual medical directory on CD-ROM, one hundred dollars.
13. For the sale of computerized tapes or diskettes not requiring programming, one hundred dollars.
14. For verification of a license, ten dollars.
15. For a copy of the minutes to board meetings during the current calendar year, twenty-five dollars for each set of minutes.
16. For copying records, documents, letters, minutes, applications and files, one dollar for the first three pages and twenty-five cents for each additional page.
17. For initial and annual registration to dispense drugs and devices, two hundred dollars.
18. For renewal applications that the board returns to the licensee for proper completion, a fee that does not exceed the cost of processing the incomplete application.

B. The board shall charge additional fees for services that are not required to be provided by this chapter but that the board deems necessary and appropriate to carry out its intent and purpose, except that these fees shall not exceed the actual cost of providing those services.

C. Notwithstanding subsection A of this section, the board may return the license renewal fee on special request.

D. The board shall provide computerized tapes or diskettes free to the management information systems office of the Arizona health care cost containment system.

E. The fee for minutes provided pursuant to this section includes postage. Annual subscription requests and fees for minutes shall be paid before February 1 of each year. Subscriptions for minutes of board meetings are not available for past years.

F. The fee for copying provided in this section includes postage. Copying fees for subpoenaed records shall be as prescribed in section 12-351.

G. The board may collect from the drawer of a dishonored check, draft order or note an amount allowed pursuant to section 44-6852.

32-1437. Training permits; qualified military health professionals

A. The board shall issue a training permit to a qualified military health professional who is practicing allopathic medicine in the United States armed forces and who is discharging the health professional's official duties by participating in a clinical training program based at a civilian hospital affiliated with the United States department of defense.

B. Before the board issues the training permit, the qualified military health professional must submit a written statement from the United States department of defense that the applicant:

1. Is a member of the United States armed forces who is performing duties for and at the direction of the United States department of defense at a location in this state approved by the United States department of defense.

2. Has a current license or is credentialed to practice allopathic medicine in a jurisdiction of the United States.

3. Meets all required qualification standards prescribed pursuant to 10 United States Code section 1094(d) relating to the licensure requirements for health professionals.

4. Has not had a license to practice revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

5. Is not currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

6. Has not surrendered, relinquished or given up a license in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter. This paragraph does not prevent the board

from considering the request for a training permit of a qualified military health professional who surrendered, relinquished or gave up a license in lieu of disciplinary action by a regulatory board in another jurisdiction if that regulatory board subsequently reinstated the qualified military health professional's license.

C. The qualified military health professional may not open an office or designate a place to meet patients or receive calls relating to the practice of allopathic medicine in this state outside of the facilities and programs of the approved civilian hospital.

D. The qualified military health professional may not practice outside of the professional's scope of practice.

E. A training permit issued pursuant to this section is valid for one year. The qualified military health professional may apply annually to the board to renew the permit. With each application to renew the qualified military health professional must submit a written statement from the United States department of defense asking the board for continuation of the training permit.

F. The board may not impose a fee to issue or renew a training permit to a qualified military health professional pursuant to this section.

[32-1438. Temporary licensure; requirements; fee](#)

A. Beginning July 1, 2017, the board may issue a temporary license, which may not be renewed or extended, to allow a physician who is not a licensee to practice in this state for a total of up to two hundred fifty consecutive days if the physician meets all of the following requirements:

1. Holds an active and unrestricted license to practice medicine in a state, territory or possession of the United States.
2. Has applied for a license pursuant to section 32-1422 and meets the requirements specified in section 32-1422, subsection A, paragraphs 1 through 7.
3. Has paid any applicable fees.

B. The physician shall submit to the board a notarized affidavit attesting that the physician meets the requirements of subsection A, paragraphs 1 and 2 of this section. The physician shall notify the board immediately if any circumstance specified in subsection A, paragraphs 1 and 2 of this section changes during the application period for a temporary license or while holding a temporary license, at which time the board may suspend, deny or revoke the temporary license. The board may suspend, deny or revoke a temporary license and withdraw the application for initial licensure if the applicant has made a misrepresentation in the attestation required by this section or any other portion of the application pursuant to this chapter.

C. The board shall approve or deny an application under this section within thirty days after an applicant files a complete application. The approval of a temporary license pursuant to this section allows the physician to practice in this state without restriction.

D. If granted, the physician's temporary license expires the earlier of two hundred fifty days after the date the temporary license is granted or on approval or denial of the physician's license application submitted pursuant to section 32-1422.

E. For the purpose of meeting the requirements of subsection A of this section, an applicant shall provide the board the name of each state, territory or possession of the United States in which the person is licensed or has held a license and the board shall verify with the applicable regulatory board that the applicant holds an active and unrestricted license to practice medicine and has never had a license revoked or suspended or surrendered a license for disciplinary reasons. An applicant shall also provide the board with all medical employment as required by section 32-1422, subsection A. The board may accept the confirmation of this information from each other regulatory board verbally, in writing or through the use of the other regulatory board's website, which shall be followed by either an electronic or hard copy of the verification required by section 32-1422, subsection F before the physician's permanent license is granted. If the board is unable to verify the information within the initial thirty days as required by subsection C of this section, the board may extend the time frame by an additional thirty days to receive the necessary verification.

F. The board may establish a fee in rule for temporary licensure under this section.

32-1439. Specialty certification; prohibited requirement for licensure; definition

A. The board may not require an applicant for licensure pursuant to this article to hold or maintain a specialty certification as a condition of licensure in this state. This subsection does not prohibit the board from considering an applicant's specialty certification as a factor in whether to grant a license to the applicant.

B. For the purposes of this section, "specialty certification" means certification by a board that specializes in one particular area of medicine and that may require examinations in addition to those required by this state to be licensed to practice medicine.

32-1451. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice requirements

A. The board on its own motion may investigate any evidence that appears to show that a doctor of medicine is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of medicine. On written request of a complainant, the board shall review a complaint that has been administratively closed by the executive director and take any action it deems appropriate. Any person may, and a doctor of medicine, the Arizona medical association, a component county society of that association and any health care institution shall, report to the board any information that appears to show that a doctor of medicine is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of medicine. The board or the executive director shall notify the doctor as to the content of the complaint as soon as reasonable. Any person or entity that reports or provides information to the board in good faith is not subject to an action for civil damages. If requested, the board shall not disclose the name of a person who supplies information regarding a licensee's drug or alcohol impairment. It is an act of unprofessional conduct for any doctor of medicine to fail to report as required by this section. The board shall report any health care institution that fails to report as required by this section to that institution's licensing agency.

B. The chief executive officer, the medical director or the medical chief of staff of a health care institution shall inform the board if the privileges of a doctor to practice in that health care institution are denied, revoked, suspended or limited because of actions by the doctor that appear to show that the doctor is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or

physically unable to safely engage in the practice of medicine, along with a general statement of the reasons, including patient chart numbers, that led the health care institution to take the action. The chief executive officer, the medical director or the medical chief of staff of a health care institution shall inform the board if a doctor under investigation resigns or if a doctor resigns in lieu of disciplinary action by the health care institution. Notification shall include a general statement of the reasons for the resignation, including patient chart numbers. The board shall inform all appropriate health care institutions in this state as defined in section 36-401 and the Arizona health care cost containment system administration of a resignation, denial, revocation, suspension or limitation, and the general reason for that action, without divulging the name of the reporting health care institution. A person who reports information in good faith pursuant to this subsection is not subject to civil liability.

C. The board or, if delegated by the board, the executive director shall require, at the doctor's expense, any combination of mental, physical or oral or written medical competency examinations and conduct necessary investigations, including investigational interviews between representatives of the board and the doctor to fully inform itself with respect to any information filed with the board under subsection A of this section. These examinations may include biological fluid testing and other examinations known to detect the presence of alcohol or other drugs. The board or, if delegated by the board, the executive director may require the doctor, at the doctor's expense, to undergo assessment by a board approved rehabilitative, retraining or assessment program. This subsection does not establish a cause of action against any person, facility or program that conducts an assessment, examination or investigation in good faith pursuant to this subsection.

D. If the board finds, based on the information it receives under subsections A and B of this section, that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the board may restrict a license or order a summary suspension of a license pending proceedings for revocation or other action. If the board takes action pursuant to this subsection, it shall also serve the licensee with a written notice that states the charges and that the licensee is entitled to a formal hearing before the board or an administrative law judge within sixty days.

E. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is not of sufficient seriousness to merit disciplinary action against the license of the doctor, the board or a board committee may take any of the following actions:

1. Dismiss if, in the opinion of the board, the information is without merit.
2. Require the licensee to complete designated continuing medical education courses.
3. File an advisory letter. The licensee may file a written response with the board within thirty days after receiving the advisory letter.

F. If the board finds that it can take rehabilitative or disciplinary action without the presence of the doctor at a formal interview, it may enter into a consent agreement with the doctor to limit or restrict the doctor's practice or to rehabilitate the doctor in order to protect the public and ensure the doctor's ability to safely engage in the practice of medicine. The board may also require the doctor to successfully complete a board approved rehabilitative, retraining or assessment program at the doctor's own expense.

G. The board shall not disclose the name of the person who provided information regarding a licensee's drug or alcohol impairment or the name of the person who files a complaint if that person requests anonymity.

H. If after completing its investigation the board believes that the information is or may be true, it may request a formal interview with the doctor. If the doctor refuses the invitation for a formal interview or accepts and the results indicate that grounds may exist for revocation or suspension of the doctor's license for more than twelve months, the board shall issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If after completing a formal interview the board finds that the protection of the public requires emergency action, it may order a summary suspension of the license pending formal revocation proceedings or other action authorized by this section.

I. If after completing the formal interview the board finds the information provided under subsection A of this section is not of sufficient seriousness to merit suspension for more than twelve months or revocation of the license, it may take the following actions:

1. Dismiss if, in the opinion of the board, the complaint is without merit.
2. Require the licensee to complete designated continuing medical education courses.
3. File an advisory letter. The licensee may file a written response with the board within thirty days after the licensee receives the advisory letter.
4. Enter into an agreement with the doctor to restrict or limit the doctor's practice or professional activities or to rehabilitate, retrain or assess the doctor in order to protect the public and ensure the doctor's ability to safely engage in the practice of medicine. The board may also require the doctor to successfully complete a board approved rehabilitative, retraining or assessment program at the doctor's own expense pursuant to subsection F of this section.
5. File a letter of reprimand.
6. Issue a decree of censure. A decree of censure is an official action against the doctor's license and may include a requirement for restitution of fees to a patient resulting from violations of this chapter or rules adopted under this chapter.
7. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the doctor concerned. Probation may include temporary suspension for not to exceed twelve months, restriction of the doctor's license to practice medicine, a requirement for restitution of fees to a patient or education or rehabilitation at the licensee's own expense. If a licensee fails to comply with the terms of probation, the board shall serve the licensee with a written notice that states that the licensee is subject to a formal hearing based on the information considered by the board at the formal interview and any other acts or conduct alleged to be in violation of this chapter or rules adopted by the board pursuant to this chapter, including noncompliance with the term of probation, a consent agreement or a stipulated agreement. A licensee shall pay the costs associated with probation monitoring each year during which the licensee is on probation. The board may adjust this amount on an annual basis. The board may allow a licensee to make payments on an installment plan if a financial hardship occurs. A licensee who does not pay these costs within thirty days after the due date prescribed by the board violates the terms of probation.

J. If the board finds that the information provided in subsection A of this section warrants suspension or revocation of a license issued under this chapter, it shall initiate formal proceedings pursuant to title 41, chapter 6, article 10.

K. In a formal interview pursuant to subsection H of this section or in a hearing pursuant to subsection J of this section, the board in addition to any other action may impose a civil penalty in the amount of not less than one thousand dollars nor more than ten thousand dollars for each violation of this chapter or a rule adopted under this chapter.

L. An advisory letter is a public document.

M. Any doctor of medicine who after a formal hearing is found by the board to be guilty of unprofessional conduct, to be mentally or physically unable safely to engage in the practice of medicine or to be medically incompetent is subject to censure, probation as provided in this section, suspension of license or revocation of license or any combination of these, including a stay of action, and for a period of time or permanently and under conditions as the board deems appropriate for the protection of the public health and safety and just in the circumstance. The board may charge the costs of formal hearings to the licensee who it finds to be in violation of this chapter.

N. If the board acts to modify any doctor of medicine's prescription writing privileges, the board shall immediately notify the state board of pharmacy of the modification.

O. If the board, during the course of any investigation, determines that a criminal violation may have occurred involving the delivery of health care, it shall make the evidence of violations available to the appropriate criminal justice agency for its consideration.

P. The board may divide into review committees of not less than three members, including a public member. The committees shall review complaints not dismissed by the executive director and may take the following actions:

1. Dismiss the complaint if a committee determines that the complaint is without merit.
2. Issue an advisory letter. The licensee may file a written response with the board within thirty days after the licensee receives the advisory letter.
3. Conduct a formal interview pursuant to subsection H of this section. This includes initiating formal proceedings pursuant to subsection J of this section and imposing civil penalties pursuant to subsection K of this section.
4. Refer the matter for further review by the full board.

Q. Pursuant to sections 35-146 and 35-147, the board shall deposit all monies collected from civil penalties paid pursuant to this chapter in the state general fund.

R. Notice of a complaint and hearing is effective by a true copy of it being sent by certified mail to the doctor's last known address of record in the board's files. Notice of the complaint and hearing is complete on the date of its deposit in the mail. The board shall begin a formal hearing within one hundred twenty days of that date.

S. A physician who submits an independent medical examination pursuant to an order by a court or pursuant to section 23-1026 is not subject to a complaint for unprofessional conduct unless, in the case of a court-ordered examination, the complaint is made or referred by a court to the board, or in the case of an examination conducted pursuant to section 23-1026, the complaint alleges unprofessional conduct based on some act other than a disagreement with the findings and opinions expressed by the physician as a result of the examination. For the purposes of this subsection, "independent medical examination" means

a professional analysis of medical status that is based on a person's past and present physical, medical and psychiatric history and conducted by a licensee or group of licensees on a contract basis for a court or for a workers' compensation carrier, self-insured employer or claims processing representative if the examination was conducted pursuant to section 23-1026.

T. The board may accept the surrender of an active license from a person who admits in writing to any of the following:

1. Being unable to safely engage in the practice of medicine.
2. Having committed an act of unprofessional conduct.
3. Having violated this chapter or a board rule.

U. In determining the appropriate disciplinary action under this section, the board shall consider all previous nondisciplinary and disciplinary actions against a licensee.

V. In determining the appropriate action under this section, the board may consider a direct or indirect competitive relationship between the complainant and the respondent as a mitigating factor.

32-1451.01. Right to examine and copy evidence; witnesses; documents; testimony; representation

A. In connection with the investigation by the board on its own motion, or as the result of information received pursuant to section 32-1451, subsection A, the board or its duly authorized agents or employees at all reasonable times may examine and copy any documents, reports, records or other physical evidence of the person it is investigating or that is in possession of any hospital, clinic, physician's office, laboratory, pharmacy, public or private agency, health care institution as defined in section 36-401 and health care provider and that relates to medical competence, unprofessional conduct or the mental or physical ability of a licensee to safely practice medicine.

B. For the purpose of all investigations and proceedings conducted by the board:

1. The board on its own initiative or on application of any person involved in the investigation may issue subpoenas to require the attendance and testimony of witnesses or to demand the production for examination or copying of documents or any other physical evidence that relates to medical competence, unprofessional conduct or the mental or physical ability of a licensee to safely practice medicine. Within five days after a person is served with a subpoena that person may petition the board to revoke, limit or modify the subpoena. The board shall do so if in its opinion the evidence required does not relate to unlawful practices covered by this chapter, is not relevant to the charge that is the subject matter of the hearing or investigation or does not describe with sufficient particularity the physical evidence whose production is required. Any member of the board or any agent designated by the board may administer oaths or affirmations, examine witnesses and receive evidence.

2. Any person appearing before the board may be represented by counsel.

3. On application by the board or by the person subpoenaed, the superior court may issue an order to either:

(a) Require the subpoenaed person to appear before the board or the duly authorized agent to produce evidence relating to the matter under investigation.

(b) Revoke, limit or modify the subpoena if in the court's opinion the evidence demanded does not relate to unlawful practices covered by this chapter, is not relevant to the charge which is the subject matter of the hearing or investigation or does not describe with sufficient particularity the evidence whose production is required.

C. Patient records, including clinical records, medical reports, laboratory statements and reports, any file, film, other report or oral statement relating to diagnostic findings or treatment of patients, any information from which a patient or the patient's family might be identified or any information received and records or reports kept by the board as a result of the investigation procedure outlined in this chapter are not available to the public.

D. This section and any other law making communications between a physician and a physician's patient privileged does not apply to investigations or proceedings conducted pursuant to this chapter. The board and its employees, agents and representatives shall keep in confidence the names of any patients whose records are reviewed during the course of investigations and proceedings pursuant to this chapter.

E. Hospital records, medical staff records, medical staff review committee records and testimony concerning these records and proceedings related to the creation of these records are not available to the public, shall be kept confidential by the board and are subject to the same provisions concerning discovery and use in legal actions as are the original records in the possession and control of hospitals, their medical staffs and their medical staff review committees. The board shall use such records and testimony during the course of investigations and proceedings pursuant to this chapter.

F. The court may find a person who does not comply with a subpoena issued pursuant to this section in contempt of court.

32-1451.02. Disciplinary action; reciprocity

A. The board shall initiate an investigation pursuant to section 32-1451 if a medical regulatory board in another jurisdiction in the United States has taken disciplinary action against a licensee for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

B. The board shall order the summary suspension of a license pending proceedings for revocation or other action if a medical regulatory board in another jurisdiction in the United States has taken the same action because of its belief that the public health, safety or welfare imperatively required emergency action.

32-1451.03. Complaints; requirements; confidentiality; exception

A. The board shall not act on its own motion or on any complaint received by the board in which an allegation of unprofessional conduct or any other violation of this chapter against a professional who holds an Arizona license occurred more than four years before the complaint is received by the board. The time limitation does not apply to:

1. Medical malpractice settlements or judgments or allegations of sexual misconduct or if an incident or occurrence involved a felony, diversion of a controlled substance or impairment while practicing by the licensee.
2. A board's consideration of the specific unprofessional conduct related to a licensee's failure to disclose conduct or a violation as required by law.

B. If a complainant wishes to have the complainant's identifying information withheld from the physician against whom the allegation of unprofessional conduct is being made, the board shall enter into a written agreement with the complainant stating that the complainant's identifying information will not be provided to the physician against whom the allegation of unprofessional conduct is being made to the extent consistent with the administrative appeals process. The board shall post this policy on the board's website where a person would submit a complaint online.

C. The board shall not open an investigation if identifying information regarding the complainant is not provided.

32-1451.04. Burden of proof

Except for disciplinary matters brought pursuant to section 32-1401, paragraph 27, subdivision (aa), the board has the burden of proof by clear and convincing evidence for disciplinary matters brought pursuant to this chapter.

32-1452. Substance abuse treatment and rehabilitation; confidential program; private contract; funding; license restrictions; immunity

A. The board may establish a confidential program for the treatment and rehabilitation of doctors of medicine who are licensed pursuant to this chapter and physician assistants who are licensed pursuant to chapter 25 of this title and who are impaired by alcohol or drug abuse. This program shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. The board may contract with other organizations to operate the program established pursuant to subsection A of this section. A contract with a private organization shall include the following requirements:

1. Periodic reports to the board regarding treatment program activity.
2. Release to the board on demand of all treatment records.
3. Immediate reporting to the board of the name of an impaired doctor or physician assistant whom the treating organization believes to be misusing chemical substances.
4. Reports to the board, as soon as possible, of the name of a doctor or physician assistant who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.

C. The board may allocate an amount of not to exceed forty dollars from each fee it collects from the biennial renewal of active licenses pursuant to section 32-1436 for the operation of the program established by this section.

D. A doctor of medicine or physician assistant who commits unprofessional conduct as defined in section 32-1401, paragraph 27, subdivision (f) shall agree to enter into a consent agreement with the board or the doctor or physician assistant shall be placed on probation or shall be subject to other action as provided by law.

E. In order to determine that a doctor of medicine or physician assistant who has been placed on probationary order or who has entered into a consent agreement pursuant to this section has not committed unprofessional conduct as defined in section 32-1401, paragraph 27, subdivision (f) after that order is no longer in effect, the board or its designee may require the doctor of medicine or physician

assistant to submit to body fluid examinations and other examinations known to detect the presence of alcohol or other drugs at any time within five consecutive years following termination of the probationary order or consent agreement.

F. A doctor of medicine or physician assistant who is or was under a consent agreement or probationary order that is no longer in effect and who commits unprofessional conduct as defined in section 32-1401, paragraph 27, subdivision (f) shall request the board to place the license on inactive status with cause. If the doctor or physician assistant fails to do this, the board shall summarily suspend the license pursuant to section 32-1451, subsection D. In order to reactivate the license, the doctor or physician assistant shall successfully complete a long-term care residential program, an inpatient hospital treatment program, an intensive outpatient treatment program or any combination of these programs and shall meet the applicable requirements of section 32-1431, subsection D. After the doctor or physician assistant completes treatment, the board shall determine whether it should refer the matter for a formal hearing for the purpose of suspending or revoking the license or to place the licensee on probation for a minimum of five years with restrictions necessary to ensure the public's safety.

G. The board shall revoke the license of a doctor of medicine or physician assistant if that licensee commits unprofessional conduct as defined in section 32-1401, paragraph 27, subdivision (f) and was previously placed on probation pursuant to subsection D of this section and the probation is no longer in effect. The board may accept the surrender of the license if the licensee admits in writing to being impaired by alcohol or drug abuse.

H. An evaluator, teacher, supervisor or volunteer in the board's substance abuse treatment and rehabilitation program who acts in good faith within the scope of that program is not subject to civil liability, including malpractice liability, for the actions of a doctor or physician assistant who is attending the program pursuant to board action.

32-1452.01. Mental, behavioral and physical health evaluation and treatment; confidential program; private contract; immunity

A. The board may establish a confidential program for the evaluation, treatment and monitoring of persons who are licensed pursuant to this chapter and chapter 25 of this title and who have medical, psychiatric, psychological or behavioral health disorders that may impact their ability to safely practice medicine or perform health care tasks. The program shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. A licensee who has a medical, psychiatric, psychological or behavioral health disorder described in subsection A of this section may agree to enter into a consent agreement for participation in a program established pursuant to this section.

C. The board may contract with other organizations to operate a program established pursuant to this section. A contract with a private organization must include the following requirements:

1. Periodic reports to the board regarding treatment program activity.
2. Release to the board on demand of all treatment records.
3. Immediate reporting to the Arizona medical board of the name of a licensee who the treating organization believes is incapable of safely practicing medicine or performing health care tasks. If the

licensee is a physician assistant, the Arizona medical board shall immediately report this information to the Arizona regulatory board of physician assistants.

D. An evaluator, teacher, supervisor or volunteer in a program established pursuant to this section who acts in good faith within the scope of that program is not subject to civil liability, including malpractice liability, for the actions of a licensee who is attending the program pursuant to board action.

32-1453. Judicial review

Except as provided in section 41-1092.08, subsection H, an appeal to the superior court in Maricopa county may be taken from final decisions of the board pursuant to title 12, chapter 7, article 6.

32-1454. Injunction

A. An injunction shall issue forthwith to enjoin the practice of medicine by either of the following:

1. One not licensed to practice medicine or exempt from the requirement therefor pursuant to this chapter.
2. A doctor of medicine whose continued practice will or well might cause irreparable damage to the public health and safety prior to the time proceedings under section 32-1451 could be instituted and completed.

B. In a petition for injunction pursuant to the paragraph numbered 1 of subsection A of this section it shall be sufficient to charge that the respondent on a day certain in a named county engaged in the practice of medicine without a license and without being exempt from the requirements therefor pursuant to this chapter. No showing of damage or injury as the result thereof shall be required.

C. In a petition for injunction pursuant to the paragraph numbered 2 of subsection A of this section there shall be set forth with particularity the facts which make it appear that irreparable damage to the public health and safety will or well might occur prior to the time proceedings under section 32-1451 could be instituted and completed.

D. An injunction shall issue forthwith to enjoin any act specified in section 32-1455, subsection B.

E. Such petition shall be filed by the board in the superior court of Maricopa county or in the county where the defendant resides or is found.

F. Issuance of injunction shall not relieve the respondent from being subject to any other proceedings under law provided for in this chapter or otherwise, and violation of an injunction shall be punished as for contempt of court.

G. In all other respects injunction proceedings under this section shall be governed as near as may be by the law otherwise applicable to injunctions.

32-1455. Violation; classification

A. The following acts are class 5 felonies:

1. The practice of medicine by a person not licensed or exempt from licensure pursuant to this chapter.
2. Securing a license to practice medicine pursuant to this chapter by fraud or deceit.

3. Impersonating a member of the board in issuing a license to practice medicine to another.

B. The following acts if committed by a person not licensed under this chapter or exempt from licensure pursuant to section 32-1421 are class 2 misdemeanors:

1. The use of the designation "M.D." in a way that would lead the public to believe that a person was licensed to practice medicine in this state.

2. The use of the designation "doctor of medicine", "physician", "surgeon", "physician and surgeon" or any combination thereof unless such designation additionally contains the description of another branch of the healing arts.

3. The use of the designation "doctor" by a member of another branch of healing arts unless there is set forth with each such designation the other branch of the healing arts concerned.

4. The use of any other words, initials, symbols or combination thereof which would lead the public to believe such person is licensed to practice medicine in this state.

32-1456. Medical assistants; use of title; violation; classification

A. A medical assistant may perform the following medical procedures under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner:

1. Take body fluid specimens.

2. Administer injections.

B. The board by rule may prescribe other medical procedures which a medical assistant may perform under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner on a determination by the board that the procedures may be competently performed by a medical assistant.

C. Without the direct supervision of a doctor of medicine, physician assistant or nurse practitioner, a medical assistant may perform the following tasks:

1. Billing and coding.

2. Verifying insurance.

3. Making patient appointments.

4. Scheduling.

5. Recording a doctor's findings in patient charts and transcribing materials in patient charts and records.

6. Performing visual acuity screening as part of a routine physical.

7. Taking and recording patient vital signs and medical history on medical records.

D. The board by rule shall prescribe medical assistant training requirements.

E. A person who uses the title medical assistant or a related abbreviation is guilty of a class 3 misdemeanor unless that person is working as a medical assistant under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner.

32-1457. Acquired immune deficiency syndrome; disclosure of patient information; immunity; definition

A. Notwithstanding section 32-1401, it is not an act of unprofessional conduct for a doctor of medicine to report to the department of health services the name of a patient's spouse or sex partner or a person with whom the patient has shared hypodermic needles or syringes if the doctor of medicine knows that the patient has contracted or tests positive for the human immunodeficiency virus and that the patient has not or will not notify these people and refer them to testing. Before making the report to the department of health services, the doctor of medicine shall first consult with the patient and ask the patient to release this information voluntarily.

B. It is not an act of unprofessional conduct for a doctor of medicine who knows or has reason to believe that a significant exposure has occurred between a patient who has contracted or tests positive for the human immunodeficiency virus and a health care or public safety employee to inform the employee of the exposure. Before informing the employee, the doctor of medicine shall consult with the patient and ask the patient to release this information voluntarily. If the patient does not release this information the doctor of medicine may do so in a manner that does not identify the patient.

C. This section does not impose a duty to disclose information. A doctor of medicine is not civilly or criminally liable for either disclosing or not disclosing information.

D. If a doctor of medicine decides to make a disclosure pursuant to this section, he may request that the department of health services make the disclosure on his behalf.

E. For the purposes of this section, "significant exposure" means contact of a person's ruptured or broken skin or mucous membranes with another person's blood or body fluids, other than tears, saliva or perspiration, of a magnitude that the centers for disease control of the United States public health service have epidemiologically demonstrated can result in transmission of the human immunodeficiency virus.

32-1458. Reinstatement of revoked or surrendered license

A. On written application, the board may issue a new license to a physician whose license was previously revoked by the board or surrendered by the applicant if the applicant demonstrates to the board's satisfaction that the applicant is completely rehabilitated with respect to the conduct that was the basis for the revocation or the surrender. In making its decision, the board shall determine:

1. That the applicant has not engaged in any conduct during the revocation or surrender period that would have constituted a basis for revocation pursuant to section 32-1451.

2. If a criminal conviction was a basis of the revocation or surrender that the applicant's civil rights have been fully restored pursuant to statute or any other applicable recognized judicial or gubernatorial order.

3. That the applicant has made restitution to any aggrieved person as ordered by a court of competent jurisdiction.

4. That the applicant demonstrates any other standard of rehabilitation the board determines is appropriate.

B. Except as provided in subsection C of this section, a person shall not submit an application for reinstatement less than five years after the date of revocation or surrender.

C. The board shall vacate its previous order to revoke a license if that revocation was based on a conviction of a felony or an offense involving moral turpitude and that conviction has been reversed on appeal. The physician may submit an application for reinstatement as soon as the court enters the reversal.

D. An applicant for reinstatement shall comply with all licensing requirements prescribed by this chapter.

32-1471. Health care provider and any other person; emergency aid; nonliability

Any health care provider licensed or certified to practice as such in this state or elsewhere, or a licensed ambulance attendant, driver or pilot as defined in section 41-1831, or any other person who renders emergency care at a public gathering or at the scene of an emergency occurrence gratuitously and in good faith shall not be liable for any civil or other damages as the result of any act or omission by such person rendering the emergency care, or as the result of any act or failure to act to provide or arrange for further medical treatment or care for the injured persons, unless such person, while rendering such emergency care, is guilty of gross negligence.

32-1472. Limited liability for emergency health care at amateur athletic events

A health care provider licensed or certified pursuant to title 32 who agrees with any person or school to voluntarily attend an amateur athletic practice, contest or other event to be available to render emergency health care within the provider's authorized scope of practice and without compensation to an athlete injured during such event is not liable for any civil or other damages as the result of any act or omission by the provider rendering the emergency care, or as the result of any act or failure to act to provide or arrange for further medical treatment or care for the injured athlete, if the provider acts in good faith without gross negligence.

32-1481. Limitation of liability

A. No physician, surgeon, hospital or person who assists a physician, surgeon or hospital in obtaining, preparing, injecting or transfusing blood or its components from one or more human beings to another human being shall be liable on the basis of implied warranty or strict tort liability for any such activity but such person or entity shall be liable for his or its negligent or wilful misconduct.

B. No nonprofit blood bank, tissue bank, donor or entity who donates, obtains, processes or preserves blood or its components from one or more human beings for the purpose of transfusing or transferring blood or its components to another human being shall be liable on the basis of implied warranty or strict tort liability for any such activity but such person or entity shall be liable for his or its negligent or wilful misconduct.

32-1482. Reporting of hepatitis cases

The director of the department of health services for the purposes of reducing the transmission of hepatitis by injection or transfusion of blood and its components shall adopt rules and regulations for reporting of cases of hepatitis and provide for the dissemination of information about such hepatitis cases to all federally licensed blood banks in the state and health care institutions which request such information.

32-1483. Notification to donors

Pursuant to rules promulgated by the director of the department of health services, all federally registered blood banks, blood centers and plasma centers in this state shall notify blood donors of any test results with significant evidence suggestive of syphilis, HIV or hepatitis B.

32-1491. Dispensing of drugs and devices; exception; civil penalty; conditions; definition

A. Except as provided in subsection B of this section, a doctor of medicine may dispense drugs and devices kept by the doctor if:

1. All drugs are dispensed in packages labeled with the following information:

(a) The dispensing doctor's name, address and telephone number.

(b) The date the drug is dispensed.

(c) The patient's name.

(d) The name and strength of the drug, directions for its use and any cautionary statements.

2. The dispensing doctor enters into the patient's medical record the name and strength of the drug dispensed, the date the drug is dispensed and the therapeutic reason.

3. The dispensing doctor keeps all drugs in a locked cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.

4. The doctor registers with the board to dispense drugs and devices and pays the registration fee prescribed by section 32-1436.

B. A doctor of medicine may not dispense a schedule II controlled substance that is an opioid, except for an implantable device or an opioid that is for medication-assisted treatment for substance use disorders.

C. Except in an emergency situation, a doctor who dispenses drugs without being registered by the board to do so is subject to a civil penalty by the board of not less than three hundred dollars and not more than one thousand dollars for each transaction and is prohibited from further dispensing for a period of time as prescribed by the board.

D. Before a physician dispenses a drug pursuant to this section, the physician shall give the patient a prescription and inform the patient that the prescription may be filled by the prescribing physician or by a pharmacy of the patient's choice.

E. A doctor shall dispense only to the doctor's own patient and only for conditions being treated by that doctor. The doctor shall provide direct supervision of a medical assistant, nurse or attendant involved in the dispensing process. For the purposes of this subsection, "direct supervision" means that a doctor is present and makes the determination as to the legitimacy or the advisability of the drugs or devices to be dispensed.

F. This section shall be enforced by the board, which shall establish rules regarding labeling, recordkeeping, storage and packaging of drugs that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic reviews of dispensing practices to ensure compliance with this section and applicable rules.

G. For the purposes of this section, "dispense" means the delivery by a doctor of medicine of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

32-3248. Health professionals; controlled substances; initial prescriptions; limits; exceptions; definition

A. A health professional who is authorized under this title to prescribe controlled substances shall limit the initial prescription for a patient for a schedule II controlled substance that is an opioid to not more than a five-day supply, except that an initial prescription for a schedule II controlled substance that is an opioid following a surgical procedure is limited to not more than a fourteen-day supply.

B. Subsection A of this section does not apply to initial prescriptions if the patient:

1. Has an active oncology diagnosis.
2. Has a traumatic injury, not including a surgical procedure.
3. Is receiving hospice care.
4. Is receiving end-of-life care.
5. Is receiving palliative care.
6. Is receiving skilled nursing facility care.
7. Is receiving treatment for burns.
8. Is receiving medication-assisted treatment for a substance use disorder.
9. Is an infant who is being weaned off opioids at the time of hospital discharge.

C. If a health professional's prescribing authority under the relevant chapter of this title for schedule II controlled substances is more restrictive than the limit specified in subsection A of this section, the health professional's prescribing authority under the relevant chapter of this title applies.

D. An initial prescription for a schedule II controlled substance that is an opioid that is written for more than a five-day supply is deemed to meet the requirements of an exemption under this section when the initial prescription is presented to the dispenser. A pharmacist is not required to verify with the prescriber whether the initial prescription complies with this section.

E. For the purposes of this section, "initial prescription" means a prescription for a schedule II controlled substance that is an opioid that has not covered any portion of the past sixty days before the date the pharmacy dispenses the current prescription as evidenced by the controlled substances prescription monitoring program's central database tracking system.

32-3248.01. Schedule II controlled substances; dosage limit; exceptions; morphine; opioid antagonist

A. A health professional who is authorized under this title to prescribe controlled substances may not issue a new prescription to be filled or dispensed for a patient outside of a health care institution for a schedule II controlled substance that is an opioid that exceeds ninety morphine milligram equivalents per day.

B. The limit prescribed by subsection A of this section does not apply to:

1. A continuation of a prior prescription that was issued within the previous sixty days.
2. An opioid with a maximum approved total daily dose in the labeling as approved by the United States food and drug administration.
3. A prescription that is issued following a surgical procedure and that is limited to not more than a fourteen-day supply.
4. A patient who:
 - (a) Has an active oncology diagnosis.
 - (b) Has a traumatic injury, not including a surgical procedure.
 - (c) Is receiving hospice care.
 - (d) Is receiving end-of-life care.
 - (e) Is receiving palliative care.
 - (f) Is receiving skilled nursing facility care.
 - (g) Is receiving treatment for burns.
 - (h) Is receiving medication-assisted treatment for a substance use disorder.
 - (i) Is hospitalized.

C. If a health professional believes that a patient requires more than ninety morphine milligram equivalents per day and the patient is not exempt from the limit pursuant to subsection B of this section, the health professional shall first consult with a physician who is licensed pursuant to chapter 13 or 17 of this title and who is board-certified in pain, or an opioid assistance and referral call service, if available, that is designated by the department of health services. The consultation may be done by telephone or through telemedicine. If the opioid call service agrees with the higher dose, the health professional may issue a prescription for more than ninety morphine milligram equivalents per day. If the consulting physician agrees with the higher dose, the health professional may issue a prescription for more than ninety morphine milligram equivalents per day. If the consulting physician is not available to consult within forty-eight hours after the request, the health professional may prescribe the amount that the health professional believes the patient requires and subsequently have the consultation. If the health professional is a physician who is licensed pursuant to chapter 13 or 17 of this title and is board-certified in pain, the health professional may issue a prescription for more than ninety morphine milligram equivalents per day without a consultation under this subsection.

D. If a patient is prescribed more than ninety morphine milligram equivalents per day pursuant to subsection B or C of this section, the prescribing health professional shall also prescribe for the patient naloxone hydrochloride or any other opioid antagonist that is approved by the United States food and drug administration for the treatment of opioid-related overdoses.

E. A prescription order for a schedule II controlled substance that is an opioid that is written for more than ninety morphine milligram equivalents per day is deemed to meet the requirements of an exemption under

this section when the prescription order is presented to the dispenser. A pharmacist is not required to verify with the prescriber whether the prescription order complies with this section.

32-3248.02. Health professionals: substance use or addiction continuing education

A health professional who is authorized under this title to prescribe schedule II controlled substances and who has a valid United States drug enforcement administration registration number or who is authorized under chapter 18 of this title to dispense controlled substances shall complete a minimum of three hours of opioid-related, substance use disorder-related or addiction-related continuing education each license renewal cycle. The three hours of continuing medical education or accredited continuing education that is approved by the applicable health profession regulatory board shall be included as part of any continuing education requirements for that health professional.

C-3

GAME AND FISH COMMISSION

Title 12, Chapter 4, Game and Fish Commission, Article 1, Definitions and General Provisions and Article 3, Taking and Handling of Wildlife

Amend: R12-4-101, R12-4-103, R12-4-302, R12-4-305



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: December 7, 2021

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

FROM: Council Staff

DATE: November 12, 2021

SUBJECT: GAME AND FISH COMMISSION
Title 12, Chapter 4, Game and Fish Commission, Article 1, Definitions and General Provisions and Article 3, Taking and Handling of Wildlife

Amend: R12-4-101, R12-4-103, R12-4-302, R12-4-305

Summary:

This regular rulemaking from the Game and Fish Commission (Commission) seeks to amend four rules in Title 12, Chapter 4, Article 1 (Definitions and General Provisions) and Article 3 (Taking and Handling Wildlife) addressing the use of tags in order to implement a paperless tag process. Specifically, based on the Commission's direction to increase online services to include paperless licenses and tags, the Commission proposes to amend rules within Articles 1 and 3 to establish a paperless tag system. The Commission indicates the new electronic tagging system will allow a customer to view their license and tag information and electronically "tag" an animal using an app on their own electronic device.

The Commission also indicates customers will also be able to complete the Game and Fish Department's (Department) post-hunt questionnaire through the new process. The Commission states the ability of customers to complete the hunter questionnaire using the new electronic tagging system will save the Department money, increase convenience for customers, and is predicted to improve the timeliness of data collection and increase the response rate to the questionnaires.

Importantly, the Commission indicates implementation of this rule package will not eliminate the paper tag option. The Commission states customers who do not have a mobile device capable of downloading a mobile app, or do not know how to use a mobile app, or who simply prefer to use the existing paper tag system, will be able to continue to use paper tags. However, the Commission states the modifications to the tag system represents a cost savings to the Department and a convenience to customers who choose to use the paperless tag option.

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

The Commission cites both general and specific authority for these rules.

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

This rulemaking does not establish a new fee or contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Commission did not review or rely on any study in conducting this rulemaking.

4. **Summary of the agency's economic impact analysis:**

The Commission proposes to amend rules within Article 1 and Article 3. The amended rules within Article 1 will address definitions and general provisions, and Article 3 will address the use of tags in order to implement a paperless tag process. The current paper tag program costs approximately \$220,000 to administer annually. The Commission's intent in the proposed rulemaking is to increase customer satisfaction with convenience, and reduce Department costs by implementing a paperless or electronic tag system.

The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. The rulemaking also does not impose any new penalties or fees and will not require any new full-time employees. The Commission believes implementing these changes now will result in resource savings in the future, and outweigh any costs associated with the rulemaking.

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

The Commission has determined that there are no alternative methods of achieving the objectives of the proposed rulemaking. The Commission holds that the benefits of the proposed rulemaking outweigh any costs.

6. What are the economic impacts on stakeholders?

The Commission anticipates the rulemaking will result in an overall benefit to persons regulated by the rule. These individuals will benefit from being able to view and validate electronic tags using their own electronic device and from reduced likelihood of having to purchase a duplicate tag to replace lost paper tags. The rulemaking will result in no impact to political subdivisions of the state, private and public employment in businesses, agencies or political subdivisions, or state revenues.

The Commission expects that the Department will incur costs related to the rulemaking, developing and administering a paperless tag system, and conducting training and a public outreach campaign. However, the Department will benefit from increased customer satisfaction resulting from a more efficient and modern electronic tag system. Additionally, the Department will benefit from the cost savings associated with administering an electronic tag system, and from the ability to reallocate employee resources. The Department believes the benefits provided to the persons being regulated and outweighs any costs to the Department.

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

The Commission indicates that between the Notice of Proposed Rulemaking and the final rules before the Council, R12-4-305 was amended further to clarify how the hunter attaches an electronic tag to an animal. The Commission indicates the failure to include R12-4-305 in the proposed rulemaking was an oversight. However, the Commission states the underlying regulatory obligation is identical to that established in R12-4-302(G). The Commission states that because the obligation is the same for the person who "possesses" and for the person who "lawfully takes" wildlife, and also because the revised language in R12-4-305(B) does not increase the regulatory burden for a person who possesses wildlife, the Commission has concluded that this is not a substantive change because the substantive obligation to maintain the transportation and shipping portion of the tag with the animal is established in R12-4-302(G) and the amendments to R12-4-305 mirror changes made to R12-4-302.

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

Yes. As the Commission states in Item 11 of the Notice of Final Rulemaking, it conducted extensive outreach regarding this rulemaking. The Commission received more than 200 public and stakeholder comments. The Commission includes a summary of the comments it received and its response(s) thereto in Item 11. The comments have also been included with the final materials for the Council's reference.

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

The Commission indicates that the rules being amended here do not require a general permit. Specifically, the Commission states none of the rules that are being amended involve the application for a license, permit, or authorization.

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

Not applicable. The Commission indicates federal law is not directly applicable to the subject of the rules and the rules are based on state law.

11. Conclusion

The Commission proposes to amend rules within Title 12, Chapter 4, Article 1 and Article 3. The amended rules within Article 1 will address definitions and general provisions, and Article 3 will address the use of tags in order to implement a paperless tag process. The Commission indicates the new electronic tagging system will allow a customer to view their license and tag information and electronically "tag" an animal using an app on their own electronic device. Additionally, the Commission states the ability of customers to complete the post-hunt questionnaire using the new electronic tagging system will save the Department money, increase convenience for customers, and is predicted to improve the timeliness of data collection and increase the response rate to the questionnaires.

The Commission is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.



October 18, 2021

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Game and Fish Commission, 12 A.A.C., Chapter 4, Articles 1 and 3, Regular Rulemaking

Dear Ms. Sornsin:

1. The close of record date: **September 24, 2021**
2. Does the rulemaking activity relate to a Five Year Review Report: **No**
 - a. If yes, the date the Council approved the Five Year Review Report: **Not applicable**
3. Does the rule establish a new fee: **No**
 - a. If yes, what statute authorizes the fee: **Not applicable**
4. Does the rule contain a fee increase: **No**
5. Is an immediate effective date requested pursuant to A.R.S. 41-1032: **No**

The Arizona Game and Fish Department (AZGFD) certifies that the preamble discloses a reference to any study relevant to the rule that the agency reviewed. AZGFD certifies that the preamble states that it did not rely on it in the AZGFD's evaluation of or justification for the rule.

AZGFD certifies that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.

The following documents are enclosed:

1. Notice of Final Rulemaking, including the preamble, table of contents, and text of each rule;
2. An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055;

azgfd.gov | 602.942.3000

5000 W. CAREFREE HIGHWAY, PHOENIX AZ 85086

GOVERNOR: DOUGLAS A. DUCEY **COMMISSIONERS:** CHAIRMAN LELAND S. "BILL" BRAKE, ELGIN | JAMES E. GOUGHNOUR, PAYSON
TODD G. GEILER, PRESCOTT | CLAY HERNANDEZ, TUCSON | KURT R. DAVIS, PHOENIX **DIRECTOR:** TY E. GRAY **DEPUTY DIRECTOR:** TOM P. FINLEY

3. Written comments received by the agency concerning the proposed rule and a written record, transcript, or minutes of any testimony received if the agency maintains a written record, transcript or minutes;
4. General and specific statutes authorizing the rules, including relevant statutory definitions; and
5. The statutes and other rule referred to in the definition.

If you have any questions, please contact Celeste Cook at (623) 236-7390 or by email at ccook@azgfdgov.

Sincerely,

Craig McMullen

Ty E. Gray

**NOTICE OF FINAL RULEMAKING
TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION**

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable)** **Rulemaking Action**

R12-4-101	Amend
R12-4-103	Amend
R12-4-302	Amend
R12-4-305	Amend

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

Authorizing statute: A.R.S. § 17-231(A)(1)
Implementing statute: A.R.S. §§ 17-102, 17-231(A)(3), 17-251, 17-301, 17-302, 17-305, and 17-309

- 3. The effective date of the rules:** Pursuant to A.R.S. § 41-1032, the rules become effective sixty days after being filed in the office of the Secretary of State.
 - a. If the agency selected a date earlier than the 60 days effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

Not applicable.

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

Not applicable

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

Notice of Rulemaking Docket Opening: 26 A.A.R. 3261, December 18, 2020
Notice of Proposed Rulemaking: 27 A.A.R. 869, June 11, 2021

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

Name: Celeste Cook, Rules and Policy Manager
Address: Arizona Game and Fish Department
5000 W. Carefree Highway
Phoenix, AZ 85086
Telephone: (623) 236-7390
Fax: (623) 236-7677
E-mail: CCook@azgfd.gov

Please visit the AZGFD website to track the progress of this rule; view the regulatory agenda, five-year review reports, and learn about other agency rulemaking matters.

6. An agency's justification and reason why the rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

The Arizona Game and Fish Commission proposes to amend rules within Article 1 addressing definitions and general provisions and Article 3 addressing the use of tags in order to implement a paperless tag process. An exemption from Executive Order 2020-02 was provided for this rulemaking by Charles Podolak, Natural Resource Policy Advisor, Governor's Office, in an email dated November 9, 2020.

Arizona's great abundance and diversity of both game and nongame wildlife can be attributed to careful management and the important role of the conservation programs the Arizona Game and Fish Department has developed. The Department's management of wildlife species as a public resource depends on sound science and active management. As trustee, the state has no power to delegate its trust duties and no freedom to transfer trust ownership or management of assets to private establishments. Without strict agency oversight and management, the fate of many of our wildlife species would be in jeopardy. Wildlife is not owned by any individual, it is held by the state in trust for all the people.

The durability of paper tags and high cost of purchasing paper tags for Department offices and license dealers has been an ongoing issue. The current paper tag program costs the Department approximately \$220,000 each year to administer (includes obtaining a vendor through procurement process, purchasing specialty paper tags, mailing and processing paper tags, etc.). The Commission anticipates that as time passes, finding a vendor who can meet paper tag requirements will become more difficult and costs will continue to rise.

Based on the Commission's direction to increase online services to include paperless licenses and tags, the Arizona Game and Fish Commission proposes to amend rules within Articles 1 and 3 to establish a paperless tag system. The new electronic tagging system will allow a customer to view their license and tag information and electronically "tag" an animal using an app on their own electronic device. Customers will also be able to complete the department's post-hunt questionnaire through the new process. Previously, this was done by manually filling out a postage-paid postcard, or through connecting to the Department's internet page. Post-hunt questionnaire data significantly informs the Department's recommendations to the Commission as they set season dates and harvest limits for big game. The ability of customers to complete the hunter questionnaire using the new electronic tagging system will save the Department money, increase convenience for customers, and is predicted to improve the timeliness of data collection and increase the response rate to the questionnaires.

The presence of mobile apps has penetrated all socioeconomic classes to the point they are an integral part of most everyone's daily life. The cumulative progress of mobile technology, the availability and access to high speed internet, and the ability for most electronic devices to interface with each other makes it possible to collect and share information online.

The electronic tagging system will be implemented through the development of a mobile application (app) by the Department. The app will be available for download by the public, but will not be required in order to purchase a license or apply for a tag from the department. Benchmarking data from other states that have

implemented an electronic tagging system indicate that adoption of the electronic tag option will increase over time as familiarity and trust in the process grows among customers.

The Commission envisions the paperless tag system will provide increased customer service by providing faster delivery of tags and global access to the customer's license and tag information anytime and possibly anywhere, 24 hours a day, 7 days a week. Both the Department and customers will benefit from a more efficient process and reduced paper waste. Imagine, never getting halfway to your hunting spot and finding out that you left your tag at home.

The Commission believes the amendments proposed in this rulemaking result in a rule that is either less burdensome or has no significant impact on persons regulated by the rule.

Implementation of this rule package will not eliminate the paper tag option. Customers who do not have a mobile device capable of downloading a mobile app, or do not know how to use a mobile app, or who simply prefer to use the existing paper tag system, will be able to continue to use paper tags. The modifications to the tag system represents a cost savings to the Department and a convenience to customers who choose to use the paperless tag option.

R12-4-101. Definitions

The objective of the rule is to establish definitions that assist the persons regulated by the rule and members of the public in understanding the unique terms that are used throughout 12 A.A.C. Chapter 4. The rule was adopted to facilitate consistent interpretation of Article 3 rules and to prevent persons regulated by the rule from misinterpreting the intent of Commission rules.

The Commission proposes to amend the rule to define "attach," "electronic tag," and "validation code" to further implement amendments made to R12-4-103 (duplicate licenses and tags) and R12-4-302 (use of tags).

R12-4-103. Duplicate Licenses and Tags

The objective of the rule is to establish requirements for the issuance of a duplicate license or tag when the original license or tag was not used and was lost, destroyed, mutilated or is otherwise unusable or was placed on a harvested animal that was subsequently condemned and surrendered to a Department employee. The rule was adopted to ensure consistency between the Department and license dealers when issuing a duplicate license or tag.

The Commission proposes to amend the rule to clarify a person who validates their tag electronically for a harvested animal that was subsequently condemned and surrendered to a Department employee may apply for a duplicate tag upon submitting the condemned meat duplicate tag authorization form issued by the Department.

R12-4-302. Use of Tags

The objective of the rule is to establish requirements for the possession and lawful use of tags issued by the Department. A.R.S. § 17-332 authorizes the Commission to prescribe the manner in which a licensee shall attach a tag to a big game animal. The rule was adopted to establish the manner and method in which a person shall attach a tag to wildlife and ensure consistent interpretation of and compliance with A.R.S. § 17-332.

The Commission proposes to amend the rule to clarify how the hunter attaches an electronic tag to a big game animal. In addition, the Commission proposes to amend the rule to clarify that once an electronic tag has been

"attached," it is no longer valid for the take of wildlife. Currently, the rule prohibits any person from possessing another person's tag or allowing another person to possess your tag. The Department recognizes that a parent or guardian will often hold their minor child's tag for safekeeping and believes this practice does not violate the intent of the law. The Commission also proposes to establish that a person may possess a tag issued to a person under 18 years of age to reduce burdens and costs to persons regulated by the rule.

In the past, a hunter was required to cut or notch their tag when they harvested the animal. Over time, tag features have changed and it is no longer necessary to cut or notch the tag. The Commission proposes to repeal the outdated language to make the rule more concise and less confusing to the public.

R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife

The objective of the rule is to conserve wildlife resources by establishing requirements for the lawful possession, transport, import, export, or sale of wildlife. The Commission's rule protects native wildlife by preventing the spread of disease, reducing the risk of released animals competing with native wildlife, discouraging illegal trade of native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety.

The Commission proposes to amend the rule to further clarify how the hunter attaches an electronic tag to an animal.

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

The agency did not rely on any study in its evaluation of or justification for the rule.

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

Not applicable.

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

The Commission's intent in the proposed rulemaking is to increase customer satisfaction and convenience, and reduce Department costs by implementing a paperless or electronic tag system. With this rulemaking the Commission proposes to amend rules necessary to assist with the implementation of an electronic tag system that is less burdensome and a more efficient process for customers who choose to use an electronic tag. The rulemaking does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated. The new electronic tagging system will allow a customer to view a license or tag and validate an electronic tag using their own electronic device. The rule does not impose any new penalties or fees. The Commission believes the amendments proposed in this rulemaking result in a rule that is either less burdensome or has no significant impact on persons regulated by the rule.

The Commission anticipates the rulemaking will result in an overall benefit to persons regulated by the rule. The Commission anticipates the rulemaking will result in no impact to political subdivisions of this state, private and public employment in businesses, agencies or political subdivisions, or state revenues. The Commission has determined the rulemaking will not require any new full-time employees. The Commission has determined that

there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. The Commission anticipates the Department will incur costs related to rulemaking, developing and administering a paperless tag system, and conducting training and a public outreach campaign. However, the Commission believes implementing these changes now will result in resource savings in the future.

Therefore, the Commission has determined that the benefits of the rulemaking outweigh any costs.

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

R12-4-305 is amended further to clarify how the hunter attaches an electronic tag to an animal. The failure to include R12-4-305 in the proposed rulemaking was an oversight, however, the underlying regulatory obligation is identical to that established in R12-4-302(G). Because the obligation is the same for the person who "possesses" and for the person who "lawfully takes" wildlife, and also because the revised language in R12-4-305(B) does not increase the regulatory burden for a person who possesses wildlife, the Commission has concluded that this is not a substantive change because the substantive obligation to maintain the transportation and shipping portion of the tag with the animal is established in R12-4-302(G) and the amendments to R12-4-305 mirror changes made to R12-4-302.

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

During the rulemaking process to further encourage public participation in the rulemaking process, the Department issued press releases, hosted a webinar, presented to statewide conservation organizations, and published information regarding the proposed rule amendments effecting an electronic tag system. The Notice of Proposed Rulemaking was published in the *Arizona Administrative Register* on June 11, 2021; the official public comment period began June 11, 2021 and ended on July 31, 2021, see Notice of Proposed Rulemaking: 27 A.A.R. 869, June 11, 2021.

In addition to the above, at the December 2020, January, February, March, April, and May 2021 Commission meetings, under the Call to the Public agenda item, the public could comment on the proposed rule packages and numerous persons did afford themselves the opportunity to do so.

In all, the Department received over 200 public and stakeholder comments in response to the proposed rulemaking with 9 of them being duplicate comments. "Duplicate comments" are multiple separate comments submitted by one person during the same public comment period. Regardless of the number of separate comments a person may submit, they are all considered to be one comment.

It is important to note, all comments submitted in response to the proposed rulemaking were provided to the Commission and the Governor's Regulatory Review Council for their consideration.

The Department received the following comments in support of the proposed rulemaking. A number of these

comments simply provided a statement saying they support implementing an electronic tagging system but provided no additional information. Of those comments that included information in support of their position, the following summary is provided:

- a. **A number of comments state the new electronic tagging system will benefit both in-state and out-of-state hunters by bringing the Department into the 20th century and making it easier for hunters to view their hunting licenses and tags and electronically tag their animal in the field.**
- b. **A number of comments state the new electronic tagging system will make it easier for hunters to access their license and tag information.**
- c. **A number of comments state the new electronic tagging system will eliminate the possibility of forgetting or losing a paper tag.**
- d. **A number of comments state it will be beneficial to manage tags on a smartphone instead of having to deal with paper.**
- e. **A number of comments state the new electronic tagging system will streamline the process.**
- f. **A number of comments simply support the idea of going paperless and reducing paper waste.**
- g. **A number of comments state the Department's current system is outdated.**
- h. **A number of comments state the Department should offer both paper and electronic tags; paper should be maintained as back-up in the event there are problems with the electronic tagging system.**

Agency Response: The Department appreciates support of the proposed rulemaking. The Department is implementing an electronic tagging system to provide better service to its customers, reduce the Department's operating costs, and modernize its licensing system. Modernizing the Department's tag system provides additional options and flexibilities for customers, adds efficiencies to tag delivery, and reduces customer concerns with misplaced or duplicate tags. Additionally, the electronic tagging system will improve the quality of hunt data from which our biologists make hunt recommendations and the Commission makes decisions.

It is important to note, a customer will have the option to choose an electronic or paper tag at the time of application.

The new electronic tagging system will bring both cost savings and an improved customer experience to Arizona's hunters. The electronic tagging system is designed to improve the customer experience, allow for electronically tagging an animal and simplify obtaining tags, licenses, and reporting after a hunt by adding flexibility and value to current procedures for tag delivery.

With the electronic tagging system, a customer will get the immediate electronic delivery of their tag through the app. No more waiting for the mail to come. The customer will be able to view their hunting licenses and tags and electronically tag their animal in the field. The electronic tagging system will also allow customers to report their harvest through the mobile app.

In addition, the electronic tagging system will allow a parent or guardian to manage their dependents accounts and tag an animal on behalf of a dependent.

Implementation of the electronic tagging system will not increase the cost of paper tags and no additional fee is assessed in order to install or use the app and rules governing the use and possession of tags remain unchanged.

The Commission envisions the electronic tagging system will provide increased customer service by providing faster delivery of tags and global access to the customer's license and tag information anytime and possibly anywhere, 24 hours a day, 7 days a week. Both the Department and customers will benefit from a more efficient process and reduced paper waste. Imagine, never getting to your hunting spot and realizing that you left your tag at home.

The Commission envisions the electronic tagging system will provide increased customer service by allowing customers to complete the post-hunt questionnaire on their mobile app at the time of harvest or shortly after their hunt ends when they didn't harvest an animal. This decreases the number of steps required by a customer to complete the questionnaire and reduces paper waste (no more post-cards for customers who choose the app).

Customers can choose to buy and manage their licenses and tags on their personal electronic device on a mobile app that will work even when offline. Or, choose to buy a paper tag and continue to manage them the same as they have in the past, in their pockets.

The electronic tagging system, including a mobile app, will launch in March 2022. The Department anticipates some additional system enhancements and user functionalities will roll out in the future.

The Department received the following comments opposing the proposed rulemaking. A number of these

comments simply provided a statement saying they oppose the electronic tagging system and provided no additional information in support of their position. Of those comments that included information in support of their position, the following summary is provided:

- a. **A number of comments state they do not own or want to use a cellphone or device to manage their tags; they worry they will not be able to use the new electronic tagging system while in the field due to no cell service or internet access; they do not take their cellphone into wilderness/woods when they hunt; they do not want another app on their phone; they do not want to show anything on their phone to someone outside of "circle" (i.e. taxidermist, game ranger); and/or the Department should put safeguards in place to ensure paper tags will remain available**

Agency Response: The Department understands some persons will be reluctant to migrate towards using new technology for any number of reasons and intends to allow a person to choose between a paper or electronic tag at the time of application/purchase.

As long as a customer has downloaded their tag on the app before going hunting, he or she is not required to have cell service in order to complete the tagging of their animal. The customer can interface with the app, even without cell service or internet access, and the app will upload the information after the customer returns to cell service.

- b. **A number of comments state the new electronic tagging system will benefit the Department by reducing costs but will provide no benefit to the hunter.**

Agency Response: Hunters who do not wish to use the electronic tagging system will not be required to do so. For those who chose to use it, the Department believes the electronic tagging system will provide increased customer service by providing faster delivery of tags and global access to the customer's license and tag information anytime and possibly anywhere, 24 hours a day, 7 days a week.

Hunters will also be able to obtain and possess electronic licenses and tags, electronically tag an animal, and report hunt information while in the field. A parent or guardian will also be able to manage their dependents accounts and tag an animal on behalf of a dependent.

Implementation of the electronic tagging system will not increase the cost of paper tags and no additional fee is assessed in order to install or use the Department app.

Lastly, everyone benefits from a more efficient process and reduced paper waste.

- c. **A number of comments question whether the Department has the ability to accomplish and maintain a good electronic tagging system due to past issues with the Department's computer draw or portal account system.**

Agency Response: The Commission and Department would not have initiated this worthwhile project if there were any concerns with the Department's ability to accomplish and maintain a good electronic tagging system.

- d. **A number of comments state electronic tags will make hunters lazy because they won't have to be responsible for a paper tag and prevent young hunters from learning valuable life skills such as responsibility and organization.**

Agency Response: Hunters who wish to use the paper tag system to instill a sense of responsibility in youth, or view a paperless tag system as a lazy way to do business, will have the option to continue using paper tags. For those who choose to use the electronic tag system, the Department believes the use of the electronic tagging system and completion of the post-hunt questionnaire will be easier and more convenient. The Department also believes the other aspects involved in hunting will likely keep a person busy and provide youth hunters with valuable life skills (e.g. determining which hunts to apply for, applying for the hunt, preparing for the hunt, ensuring everyone is equipped for the hunt, etc.).

- e. **A number of comments state that going electronic will eliminate jobs; a number of comments ask what the new electronic tagging system is costing the Department and whether tags fees will go down or application fees will be eliminated if the Department saves money due to reduced paper costs and a streamlined system.**

Agency Response: The Commission is responsible for managing more than 800 species of wildlife in the State. The Department receives no Arizona tax dollars (general fund dollars) and, like any business, operates primarily on the funding generated from the sale of hunting and fishing licenses, tags, stamps and matching funds from federal excise taxes hunters and anglers pay on guns, ammunition, fishing tackle, motorboat fuels, and related equipment.

The Department's operational costs continue to increase and Department responsibilities have either increased or been expanded. Over the past several years, the Commission and the Department made numerous budget adjustments to address the rising costs. Some of these budget adjustments included keeping positions vacant and making cuts to program budgets.

Currently, finding a vendor who can meet specialty paper tag requirements is difficult and, over time, the

cost of the specialty paper tags and postage are expected to increase.

This reality does not support the idea that moving to an electronic tagging system will eliminate jobs within the Department or negatively impact employees working for a private printing business.

Moving to an electronic tagging system is expected to reduce administrative costs as much as \$220,000 each year due associated with a burdensome process, specialty paper and computer equipment.

These cost savings will be used to fund program budgets (including employee positions) without having to increase license and tag fees.

f. A number of comments state, "if it's not broken, don't fix it."

Agency Response: The Department is implementing an electronic tagging system to provide better service to its customers. Modernizing the Department's tag system provides additional options and flexibilities for customers, adds efficiencies to tag delivery, and reduces customer concerns with misplaced or duplicate tags. Additionally, the electronic tagging system will improve the quality of hunt data from which our biologists make hunt recommendations and the Commission makes decisions. Customers who believe the current paper tag system "is not broken", can continue to use the paper tags.

g. A number of comments ask why the Department should bother developing software when it is already available.

Agency Response: The Department has purchased software solutions in the past for various electronic systems. There were issues with the software 'linking up' to other Department systems that caused delays, and/or increased costs. In addition, system costs do not stop with the purchase of the software and its installation. Systems must be maintained and regularly updated; and the customer has no choice but to continue working with the selected vendor until a new system is purchased and installed. In addition, the Department has experienced delays in service while waiting for assistance whenever there was an issue with the purchased software, especially if the software issue occurred after hours, on the weekend, or on a holiday.

By developing its own software, the Department ensures the electronic tagging system will seamlessly interface with the Sportsman's database and other software systems, fully meet the Departments electronic tagging system needs, easily allow for systems maintenance, and provide the Department with greater flexibility in systems development.

In addition, the Department may generate additional revenue in the future by offering its software to other

fish and wildlife agencies for a fee.

- h. A number of comments state the electronic tagging system will create additional burdens for elderly hunters.**

Agency Response: The electronic tagging system will bring both cost savings and an improved customer experience to Arizona's hunters. The electronic tagging system is designed to improve the customer experience by adding flexibility and value to current procedures for tag delivery. Implementation of the electronic tagging system will not increase the cost of paper tags and rules governing the use and possession of tags remain unchanged.

However, the Department understands some persons will be reluctant to migrate towards using new technology for any number of reasons and intends to allow a person to choose a paper tag at the time of application/purchase.

- i. A number of comments state the electronic tagging system will result in more poaching.**

Agency Response: With the new electronic tagging system, customers can choose to carry their licenses and tags electronically (on their personal electronic device) on a mobile app that will work even when offline.

Just like today, a hunter will be required to possess and display their license and tag upon contact by a law enforcement officer or Department employee. Note that even when they are in the field and without cell reception, law enforcement officers and Department employees will be able to see information about licenses, tags, and validation codes belonging to the customer and can check the validation code (which indicates the hunter electronically tagged the wildlife).

Hunters using the electronic tagging system must write the validation code on a piece of duct tape, trail ribbon, material, etc. and keep it attached to the carcass. The validation code is legal proof of tagging. Rules governing the use and possession of tags remain unchanged. Customers will still have the option to transfer, donate or surrender a tag. Customers will still have the ability to transport or ship the carcass or portions of the carcass using an electronic transportation/shipping permit.

- j. A number of comments voiced concerns about Department costs related to system security and the Department's ability to prevent hacking/data breaches that could compromise or expose customer data.**

Agency Response: The Department currently expends resources related to systems security and will continue

to do so regardless of the electronic licensing system. The electronic tagging system will meet all data security requirements, including encryption of personally identifiable information in transit and at rest.

- k. A number of comments ask whether a person who was issued a paper tag could later convert it to an electronic tag while in field (left the paper tag at home and now want to "switch out" the paper for an electronic).**

Agency Response: The Department anticipates including this feature in a future software revision.

- l. A number of comments question whether the new electronic tagging system will allow a hunter to tag an animal when cell or internet service is unavailable.**

Agency Response: Cell or internet service will not be required while in the field. The hunter will still be able to tag an animal and access their licenses and tags for viewing in the field. The electronic tagging system will store the hunter's licenses, tags, and validation codes on their personal electronic devices. The app will store information recorded in the field while the customer is out of cell/internet service and automatically upload that information once they return to an area that has cell/internet coverage.

- m. A number of comments state cellphone/device failure (dead battery) will cause honest hunters to become violators and there should be a grace period.**

Agency Response: Just like today, hunters will be required to possess and display their license and tag upon contact by a law enforcement officer or Department employee. It will be the hunter's responsibility to ensure they always have enough battery or an external battery source to power their personal electronic device so they can validate their harvest and show their license or tag. Note that even when they are in the field and without cell reception, law enforcement officers and Department employees will also be able to see information about licenses, tags, and validation codes belonging to the customer and can check the validation code (which indicates the hunter electronically tagged the wildlife).

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

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

The rule does not require a general permit.

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

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

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

The agency has not received an analysis that compares the rule's impact of competitiveness of business in this state to the impact on business in other states.

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

Not applicable

14. Whether the rule previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-4-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

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

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

Section

- R12-4-101. Definitions
- R12-4-103. Duplicate Tags and Licenses

ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

Section

- R12-4-302. Use of Tags
- R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife

TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

R12-4-101. Definitions

- A. In addition to the definitions provided under A.R.S. § 17-101, R12-4-301, R12-4-401, and R12-4-501, the following definitions apply to this Chapter, unless otherwise specified:

"Attach" means to fasten or affix a tag to a legally harvested animal. An electronic tag is considered attached once the validation code is fastened to the legally harvested animal.

"Bobcat seal" means the tag a person is required to attach to the raw pelt or unskinned carcass of any bobcat taken by trapping in Arizona or exported out of Arizona regardless of the method of take.

"Bonus point" means a credit that authorizes the Department to issue an applicant an additional computer-generated random number.

"Bow" means a long bow, flat bow, recurve bow, or compound bow of which the bowstring is drawn and held under tension entirely by the physical power of the shooter through all points of the draw cycle until the shooter purposely acts to release the bowstring either by relaxing the tension of the toes, fingers, or mouth or by triggering the release of a hand-held release aid.

"Certificate of insurance" means an official document, issued by the sponsor's and sponsor's vendors, or subcontractors insurance carrier, providing insurance against claims for injury to persons or damage to property which may arise from, or in connection with, the solicitation or event as determined by the Department.

"Cervid" means a mammal classified as a Cervidae, which includes but is not limited to caribou, elk, moose, mule deer, reindeer, wapiti, and whitetail deer; as defined in the taxonomic classification from the Integrated Taxonomic Information System, available online at www.itis.gov.

"Commission Order" means a document adopted by the Commission that does one or more of the following:

- Open, close, or alter seasons,
- Open areas for taking wildlife,
- Set bag or possession limits for wildlife,
- Set the number of permits available for limited hunts, or
- Specify wildlife that may or may not be taken.

"Crossbow" means a device consisting of a bow affixed on a stock having a trigger mechanism to release the bowstring.

"Day-long" means the 24-hour period from one midnight to the following midnight.

"Department property" means those buildings or real property and wildlife areas under the jurisdiction of the Arizona Game and Fish Commission.

"Electronic tag" means a tag that is provided by the Department through an electronic device that syncs with the Department's computer systems.

"Export" means to carry, send, or transport wildlife or wildlife parts out of Arizona to another state or country.

"Firearm" means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun, or other weapon that will discharge, is designed to discharge, or may readily be converted to discharge a projectile by the action of an explosion caused by the burning of smokeless powder, black powder, or black powder substitute.

"Hunt area" means a management unit, portion of a management unit, or group of management units, or any portion of Arizona described in a Commission Order and not included in a management unit, opened to hunting.

"Hunt number" means the number assigned by Commission Order to any hunt area where a limited number of hunt permits are available.

"Hunt permits" means the number of hunt permit-tags made available to the public as a result of a Commission Order.

"Hunt permit-tag" means a tag for a hunt for which a Commission Order has assigned a hunt number.

"Identification number" means the number assigned to each applicant or license holder by the Department as established under R12-4-111.

"Import" means to bring, send, receive, or transport wildlife or wildlife parts into Arizona from another state or country.

"License dealer" means a business authorized to sell hunting, fishing, and other licenses as established under R12-4-105.

"Live baitfish" means any species of live freshwater fish designated by Commission Order as lawful for use in taking aquatic wildlife under R12-4-317.

"Management unit" means an area established by the Commission for management purposes.

"Nonpermit-tag" means a tag for a hunt for which a Commission Order does not assign a hunt number and the number of tags is not limited.

"Nonprofit organization" means an organization that is recognized under Section 501(c) of the U.S. Internal Revenue Code.

"Person" has the meaning as provided under A.R.S. § 1-215.

"Proof of purchase," for the purposes of A.R.S. § 17-331, means an original, or any authentic and verifiable form of the original, of any Department-issued license, permit, or stamp that establishes proof of actual purchase.

"Restricted nonpermit-tag" means a tag issued for a supplemental hunt as established under R12-4-115.

"Solicitation" means any activity that may be considered or interpreted as promoting, selling, or transferring products, services, memberships, or causes, or participation in an event or activity of any kind, including organizational, educational, public affairs, or protest activities, including the distribution or posting of advertising, handbills, leaflets, circulars, posters, or other printed materials for these purposes.

"Solicitation material" means advertising, circulars, flyers, handbills, leaflets, posters, or other printed information.

"Sponsor" means the person or persons conducting a solicitation or event.

"Stamp" means a form of authorization in addition to a license that authorizes the license holder to take wildlife specified by the stamp.

"Tag" means the Department authorization a person is required to obtain before taking certain wildlife as

established under A.R.S. Title 17 and 12 A.A.C. 4.

“Validation code” means the unique code provided by the Department and associated with an electronic tag.

"Waterdog" means the larval or metamorphosing stage of a salamander.

"Wildlife area" means an area established under 12 A.A.C. 4, Article 8.

B. If the following terms are used in a Commission Order, the following definitions apply:

"Antlered" means having an antler fully erupted through the skin and capable of being shed.

"Antlerless" means not having an antler, antlers, or any part of an antler erupted through the skin.

"Bearded turkey" means a turkey with a beard that extends beyond the contour feathers of the breast.

"Buck antelope" means a male pronghorn antelope.

"Adult bull bison" means a male bison of any age or any bison designated by a Department employee during an adult bull bison hunt.

"Adult cow bison" means a female bison of any age or any bison designated by a Department employee during an adult cow bison hunt.

"Bull elk" means an antlered elk.

"Designated" means the gender, age, or species of wildlife or the specifically identified wildlife the Department authorizes to be taken and possessed with a valid tag.

"Ram" means any male bighorn sheep.

"Rooster" means a male pheasant.

"Yearling bison" means any bison less than three years of age or any bison designated by a Department employee during a yearling bison hunt.

R12-4-103. Duplicate Tags and Licenses

A. Under A.R.S. § 17-332(C), the Department and its license dealers may issue a duplicate license or tag to an applicant who:

1. Pays the applicable fee prescribed under R12-4-102, and
2. Signs an affidavit. The affidavit is furnished by the Department and is available at any Department office or license dealer.

B. The applicant shall provide the following information on the affidavit:

1. The applicant's personal information:
 - a. Name;
 - b. Department identification number, when applicable;
 - c. Residency status and number of years of residency immediately preceding application, when applicable;
2. The original license or tag information:
 - a. Type of license or tag;
 - b. Place of purchase;
 - c. Purchase date, when available; and
3. Disposition of the original tag for which a duplicate is being purchased:

- a. The tag was not used and is lost, destroyed, mutilated, or otherwise unusable; or
 - b. The tag was ~~placed on~~ attached to a harvested animal that was subsequently condemned and the carcass and all parts of the animal were surrendered to a Department employee as required under R12-4-112(B) and (C). An applicant applying for a duplicate tag under this subsection shall also submit the condemned meat duplicate tag authorization form issued by the Department.
- C. In the event the Department is unable to verify the expiration date of the original license, the duplicate license shall expire on December 31 of the current year.

ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

R12-4-302. Use of Tags

- A. In addition to meeting requirements prescribed under A.R.S. § 17-331, a person who takes wildlife shall have in possession any tag required for the particular season or hunt area.
- B. A tag obtained in violation of statute or rule is invalid and shall not be used to take, transport, or possess wildlife.
- C. A person who lawfully possesses both a nonpermit-tag and a hunt permit-tag shall not take a genus or species in excess of the bag limit established by Commission Order for that genus or species.
- D. A person shall:
 - 1. Take and tag only the wildlife identified on the tag.
 - 2. Use a tag only in the season and hunt for which the tag is valid as specified by Commission Order.
- E. Except as permitted under R12-4-217, a person shall not:
 - 1. Allow their tag to be attached to wildlife killed by another person,
 - 2. Allow their tag to be possessed by another person while taking wildlife,
 - 3. Allow wildlife killed by that person to be tagged with another person's tag,
 - 4. Attach their tag to wildlife killed by another person, or
 - 5. Possess a tag issued to another person while taking wildlife.
 - 6. Subsections (2) and (5) do not apply to a tag issued to a person under 18 years of age.
- F. Except as permitted under R12-4-217, immediately after a person kills wildlife, the person shall attach ~~the~~:
 - 1. The tag to the wildlife carcass in the manner indicated on the tag, or
 - 2. The validation code to the wildlife carcass in the manner indicated by the Department through the person's electronic device.
- G. A person who ~~lawfully takes wildlife with a valid tag and~~ authorizes another person to possess, transport, or ship ~~the tagged a portion of the carcass~~ their lawfully taken animal shall complete the ~~Transportation~~ transportation and ~~Shipping Permit~~ shipping portion of the ~~original tag authorizing the take of that wildlife in the manner indicated on the tag or~~ by the Department through the person's electronic device, as applicable.
- H. ~~If a~~ A tag is no longer valid for the take of wildlife if:
 - 1. The tag is cut, notched, mutilated, or the Transportation and Shipping Permit portion of the tag is signed or filled out, the tag is no longer valid for the take of wildlife or

2. The validation code is attached to a carcass.

R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife

- A. A person shall ensure that evidence of legality remains with the carcass or parts of a carcass of any wildlife that the person possesses, transports, or imports until arrival at the person's permanent abode, a commercial processing plant, or the place where the wildlife is to be consumed.
- B. In addition to the requirement under subsection (A), a person possessing or transporting the following wildlife shall ensure each:
 1. Big game animal, sandhill crane, and pheasant has the required valid tag attached in the manner indicated on the tag or as indicated by the Department through the person's electronic device, as applicable;
 2. Migratory game bird, except sandhill cranes, has one fully feathered wing attached;
 3. Sandhill crane and Eurasian-collared dove has either the fully feathered head or one fully feathered wing attached;
 4. Quail has attached a fully feathered head, or a fully feathered wing, or a leg with foot attached, when the current Commission Order has established separate bag or possession limits for any species of quail; and
 5. Freshwater fish has the head, tail, or skin attached so the species can be identified and the total number and required length determined.
- C. A person who has lawfully taken wildlife that requires a valid tag when prescribed by the Commission may authorize its transportation or shipment by completing and signing the Transportation and Shipping Permit portion of the valid tag or as indicated by the Department through the person's electronic device, as applicable, for that animal. A separate Transportation and Shipping Permit issued by the Department is necessary to transport or ship to another state or country any big game taken with a resident license. Under A.R.S. § 17-372(B), a person may ship other lawfully taken wildlife by common carrier after obtaining a valid Transportation and Shipping Permit issued by the Department. The person shall provide the following information:
 1. Number and description of the wildlife to be transported or shipped;
 2. Name, address, license number, and license class of the person who took the wildlife;
 3. Tag number;
 4. Name and address of the person receiving a portion of the carcass of the wildlife as authorized under subsection (D), if applicable;
 5. Address of destination where the wildlife is to be transported or shipped; and
 6. Name and address of transporter or shipper.
- D. A person who lawfully takes wildlife under a tag may authorize another individual to possess the head or carcass of the wildlife ~~by separating and attaching the tag~~ as prescribed under R12-4-302.
- E. A person who receives a portion of the wildlife shall provide the identity of the person who took and gave the portion of the wildlife upon request to any peace officer, wildlife manager, or game ranger.
- F. A person shall not possess the horns of a bighorn sheep, taken by a hunter in this state, unless the horns are marked or sealed as established under R12-4-308.

- G.** Except as provided under R12-4-307, before a person may sell, offer for sale, or export the raw pelt or unskinned carcass of a bobcat taken in this state, the person shall:
1. Present the bobcat for inspection at any Department office, and
 2. Purchase a bobcat seal by paying the fee established under R12-4-102 at any Department office or other location as determined and published by the Department. Department personnel or an authorized agent shall attach and lock the bobcat seal only to a pelt or unskinned carcass presented with a validated transportation tag.
- H.** A person who takes bear or mountain lion under A.R.S. § 17-302 may retain the carcass of the wildlife if the person has a valid hunting license and the carcass is immediately tagged with a nonpermit-tag or a valid hunt permit-tag as required under R12-4-114 and R12-4-302, provided the person has not reached the applicable bag limit for that big game animal. An animal retained under this subsection shall count toward the applicable bag limit for bear or mountain lion as authorized by Commission Order. The person shall comply with inspection and reporting requirements established under R12-4-308.
- I.** A person may possess, transport, or import only the following portions of a cervid lawfully taken in another state or country:
1. Boneless portions of meat, or meat that has been cut and packaged either personally or commercially;
 2. Clean hides and capes with no skull or soft tissue attached, except as required for proof of legality;
 3. Clean skulls with antlers, clean skull plates, or antlers with no meat or soft tissue attached, this includes velvet antlers;
 4. Finished taxidermy mounts or products; and
 5. Upper canine teeth with no meat or tissue attached.
- J.** A private game farm license holder may transport a cervid lawfully killed or slaughtered at the license holder's game farm to a licensed meat processor.
- K.** A person may possess or transport only the following portions of a cervid lawfully killed or slaughtered at a private game farm authorized under R12-4-413:
1. Boneless portions of meat, or meat that has been cut and packaged either personally or commercially;
 2. Clean hides and capes with no skull or soft tissue attached;
 3. Clean skulls with antlers, clean skull plates, or antlers with no meat or soft tissue attached, this includes velvet antlers;
 4. Finished taxidermy mounts or products; and
 5. Upper canine teeth with no meat or tissue attached.
- L.** A person who obtains bison meat as authorized under R12-4-306 may sell the meat.
- M.** Except for cervids, which are subject to requirements established under subsections (I), (J), and (K), a person may import into this state the carcasses or parts of wildlife, including aquatic wildlife, lawfully taken in another state or country if transported and exported in accordance with the laws of the state or country of origin.
- N.** A person shall not transport live crayfish from the site where taken, except as permitted under R12-4-316.
- O.** A person in possession of a common carp (*Cyprinus carpio*), buffalofish (*Ictiobus* spp.), or crayfish (families

Astacidae, Cambaridae, and Parastacidae) carcass taken under Commission Order may sell the carcass.

TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 3. TAKING AND HANDLING OF WILDLIFE
R12-4-101, R12-4-103, and R12-4-302
Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking.

The Arizona Game and Fish Commission proposes to amend rules within Article 1 addressing definitions and general provisions and Article 3 addressing the use of tags in order to implement a paperless tag process. An exemption from Executive Order 2020-02 was provided for this rulemaking by Charles Podolak, Natural Resource Policy Advisor, Governor's Office, in an email dated November 9, 2020.

Arizona's great abundance and diversity of both game and nongame wildlife can be attributed to careful management and the important role of the conservation programs the Arizona Game and Fish Department has developed. The Department's management of wildlife species as a public resource depends on sound science and active management. As trustee, the state has no power to delegate its trust duties and no freedom to transfer trust ownership or management of assets to private establishments. Without strict agency oversight and management, the fate of many of our wildlife species would be in jeopardy. Wildlife is not owned by any individual, it is held by the state in trust for all the people.

The durability of paper tags and high cost of purchasing paper tags for Department offices and license dealers has been an ongoing issue. The current paper tag program costs the Department approximately \$220,000 each year to administer (includes obtaining a vendor through procurement process, purchasing specialty paper tags, mailing and processing paper tags, etc.). The Commission anticipates that as time passes, finding a vendor who can meet paper tag requirements will become more difficult and costs will continue to rise.

Based on the Commission's direction to increase online services to include paperless licenses and tags, the Arizona Game and Fish Commission proposes to amend rules within Articles 1 and 3 to establish a paperless tag system. The new electronic tagging system will allow a customer to view their license and tag information and electronically "tag" an animal using an app on their own electronic device. Customers will also be able to complete the department's post-hunt questionnaire through the new process. Previously, this was done by manually filling out a postage-paid postcard, or through connecting to the Department's internet page. Post-hunt questionnaire data significantly informs the Department's recommendations to the Commission as they set season dates and harvest limits for big game. The ability of customers to complete the hunter questionnaire using the new electronic tagging system will save the Department money, increase convenience for customers, and is predicted to improve the timeliness of data collection and increase the response rate to the questionnaires.

The presence of mobile apps has penetrated all socioeconomic classes to the point they are an integral part of most everyone's daily life. The cumulative progress of mobile technology, the availability and access to high speed internet, and the ability for most electronic devices to interface with each other makes it possible to collect and share information online.

The electronic tagging system will be implemented through the development of a mobile application (app) by the Department. The app will be available for download by the public, but will not be required in order to purchase a license or apply for a tag from the department. Benchmarking data from other states that have implemented an electronic tagging system indicate that adoption of the electronic tag option will increase over time as familiarity and trust in the process grows among customers.

The Commission envisions the paperless tag system will provide increased customer service by providing faster delivery of tags and global access to the customer's license and tag information anytime and possibly anywhere, 24 hours a day, 7 days a week. Both the Department and customers will benefit from a more efficient process and reduced paper waste. Imagine, never getting halfway to your hunting spot and finding out that you left your tag at home.

The Commission believes the amendments proposed in this rulemaking result in a rule that is either less burdensome or has no significant impact on persons regulated by the rule.

Implementation of this rule package will not eliminate the paper tag option. Customers who do not have a mobile device capable of downloading a mobile app, or do not know how to use a mobile app, or who simply prefer to use the existing paper tag system, will be able to continue to use paper tags. The modifications to the tag system represents a cost savings to the Department and a convenience to customers who choose to use the paperless tag option.

R12-4-101. Definitions

The objective of the rule is to establish definitions that assist the persons regulated by the rule and members of the public in understanding the unique terms that are used throughout 12 A.A.C. Chapter 4. The rule was adopted to facilitate consistent interpretation of Article 3 rules and to prevent persons regulated by the rule from misinterpreting the intent of Commission rules.

The Commission proposes to amend the rule to define "attach," "electronic tag," and "validation code" to further implement amendments made to R12-4-103 (duplicate licenses and tags) and R12-4-302 (use of tags).

R12-4-103. Duplicate Licenses and Tags

The objective of the rule is to establish requirements for the issuance of a duplicate license or tag when the original license or tag was not used and was lost, destroyed, mutilated or is otherwise unusable or was placed on a harvested animal that was subsequently condemned and surrendered to a Department employee. The rule was adopted to ensure consistency between the Department and license dealers when issuing a duplicate license or tag.

The Commission proposes to amend the rule to clarify a person who validates their tag electronically for a harvested animal that was subsequently condemned and surrendered to a Department employee may

apply for a duplicate tag upon submitting the condemned meat duplicate tag authorization form issued by the Department.

R12-4-302. Use of Tags

The objective of the rule is to establish requirements for the possession and lawful use of tags issued by the Department. A.R.S. § 17-332 authorizes the Commission to prescribe the manner in which a licensee shall attach a tag to a big game animal. The rule was adopted to establish the manner and method in which a person shall attach a tag to wildlife and ensure consistent interpretation of and compliance with A.R.S. § 17-332.

The Commission proposes to amend the rule to clarify how the hunter attaches an electronic tag to a big game animal. In addition, the Commission proposes to amend the rule to clarify that once an electronic tag has been "attached," it is no longer valid for the take of wildlife. Currently, the rule prohibits any person from possessing another person's tag or allowing another person to possess your tag. The Department recognizes that a parent or guardian will often hold their minor child's tag for safekeeping and believes this practice does not violate the intent of the law. The Commission also proposes to establish that a person may possess a tag issued to a person under 18 years of age to reduce burdens and costs to persons regulated by the rule.

In the past, a hunter was required to cut or notch their tag when they harvested the animal. Over time, tag features have changed and it is no longer necessary to cut or notch the tag. The Commission proposes to repeal the outdated language to make the rule more concise and less confusing to the public.

R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife

The objective of the rule is to conserve wildlife resources by establishing requirements for the lawful possession, transport, import, export, or sale of wildlife. The Commission's rule protects native wildlife by preventing the spread of disease, reducing the risk of released animals competing with native wildlife, discouraging illegal trade of native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety.

The Commission proposes to amend the rule to further clarify how the hunter attaches an electronic tag to an animal.

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

Currently, 100% of the big game tags the Department issues are paper tags. Administering the paper tag program requires the Department to obtain a qualified vendor through the procurement process, work with the vendor to design, purchase, and distribute the paper tags to all Department offices and authorized license dealers, monitor supplies, conduct audits, reconcile the resulting paperwork. The Headquarters office conducts the computer draw and mails paper tags to successful applicants and over-the-counter tags are issued by all Department offices and authorized license dealers. Authorized license dealers that are issued paper tags must confirm receipt, verify shipment, identify any discrepancies, maintain an inventory, submit a monthly sales report, submit an affidavit for any lost paper tags, remit the cash value of any lost paper tags, and return any unsold paper tags to

the Department once they can no longer be sold. Persons regulated by the rule are subject to the typical problems associated with paper documents; paper documents are misplaced, lost in the mail, left at home or in another coat, mutilated, etc. Best case scenario, the person finds the paper tag or has to purchase an \$8 dollar duplicate paper tag. Worst case scenario, the person takes a big game animal without having a paper tag in their possession resulting in a violation of Game and Fish Commission laws and rules.

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

The durability of paper tags and high cost of purchasing paper permit-tags for Department offices and License Dealers has been an ongoing issue. The cost of the current paper tag program costs the Department approximately \$220,000 each year to administer (includes obtaining a vendor through procurement process, purchasing paper tags, mailing and processing paper tags, etc.). The Commission anticipates that as time passes, finding a vendor who can meet paper tag requirements will become more difficult and costs associated with administering a paper tag system will continue to rise.

Paper tags are problematic for persons regulated by the rule. Paper tags are left at home, accidentally thrown away, or may become illegible or mutilated while the person is in the field. A person who loses their tag must purchase a duplicate tag in order to be able to take the big game animal identified on the tag.

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

Because the use of electronic devices and apps has become an integral part of most everyone's daily life, the Commission anticipates a large number of customers will use electronic tags as soon as they are available. The Commission also recognizes that some customers are reluctant to use a new system or trust "going paperless," however other state agencies who issue electronic tags report that over a period of time (five to ten years) all customers had navigated to using the electronic tag system.

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

The Commission's intent in the proposed rulemaking is to increase customer satisfaction and convenience, and reduce Department costs by implementing a paperless or electronic tag system. With this rulemaking the Commission proposes to amend rules necessary to assist with the implementation of an electronic tag system that is less burdensome and a more efficient process for customers who choose to use an electronic tag. The rulemaking does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated. The new electronic tagging system will allow a customer to view a license or tag and validate an electronic tag using their own electronic device. The rule does not impose any new penalties or fees. The Commission believes the amendments proposed in this rulemaking result in a rule that is either less burdensome or has no significant impact on persons regulated by the rule.

The Commission anticipates the rulemaking will result in an overall benefit to persons regulated by the rule. The Commission anticipates the rulemaking will result in no impact to political subdivisions of this

state, private and public employment in businesses, agencies or political subdivisions, or state revenues. The Commission has determined the rulemaking will not require any new full-time employees. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. The Commission anticipates the Department will incur costs related to rulemaking, developing and administering a paperless tag system, and conducting training and a public outreach campaign. However, the Commission believes implementing these changes now will result in resource savings in the future.

Therefore, the Commission has determined that the benefits of the rulemaking outweigh any costs.

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

Name: Celeste Cook, Director's Office Rules and Policy Manager
Address: Arizona Game and Fish Department
5000 W. Carefree Highway
Phoenix, Arizona 85086
Telephone: (623) 236-7390
Fax: (623) 236-7677
E-mail: CCook@azgfd.gov

B. The economic, small business and consumer impact statement:

1. Identification of the proposed rulemaking.

See paragraph (A)(1) above.

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

The Commission anticipates the following persons will benefit from the proposed rulemaking:

Persons issued a hunt-permit tag will benefit from the ability to view and validate an electronic tag using their own electronic device.

Persons issued an electronic tag will benefit from the ability to electronically tag a big game animal in real-time.

Persons issued an electronic tag will benefit from the reduced likelihood of having to purchase a duplicate tag to replace a lost or mutilated paper tag.

Authorized license dealers will benefit from the cost savings realized by no longer administering a paper tag inventory.

The Department will benefit from increased customer service satisfaction resulting from a more efficient and modern electronic tag system.

The Department will benefit from the cost savings associated with administering an electronic tag system.

The Department will benefit from the ability to reallocate employee resources.

The Commission anticipates the following persons will bear the costs of the proposed rulemaking:

The Department will bear the costs associated with the development and maintenance of an electronic tag system.

The Department will bear the costs associated with the rulemaking.

The Department will bear the costs associated with implementing an electronic tag system, such as updating and creating publications, brochures, and web pages; providing training to Department employees and license dealers; conducting public outreach campaign to introduce the new electronic tag system and remind hunters about electronic tag requirements; etc.

3. Cost benefit analysis:

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

Minimal	less than \$1,000
Moderate	\$1,000 to \$9,999
Substantial	\$10,000 or more

- (a) Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the Economic, Small Business, and Consumer Impact Statement shall notify the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by council.**

The Commission anticipates the Department will incur substantial costs to implement the paperless tagging system, such as software development, testing, and implementation; communications updates (e.g., forms, publications, brochures, webpages), Department employee and license dealer training, public outreach campaigns, etc.

The Commission anticipates the Department will benefit by increasing customer service satisfaction, removing a cumbersome manual process, and reducing costs associated with the paper tagging system.

The Commission has determined the Department will not require additional full-time employees to implement and enforce the proposed rules.

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

The Commission anticipates the proposed rulemaking will not have a significant impact, if any, on political subdivisions of this state.

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

The Commission anticipates the proposed rulemaking will result in minimal to substantial cost savings to businesses directly affected by the proposed rulemaking. Most all will realize some form of

cost-savings from reduced payroll expenditures due to no longer being required to administer paper tags.

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

The Commission anticipates the proposed rulemaking will have no substantial impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking. The Commission anticipates persons directly affected by the rule will not incur any additional costs as a result of the rulemaking.

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

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

Small business that are authorized to issue licenses and tags on behalf of the Department.

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

The Commission anticipates the proposed rulemaking will not create additional costs for compliance.

(c) Description of the methods that the agency may use to reduce the impact on small businesses.

The Commission believes establishing less stringent compliance requirements for small businesses is not necessary as the proposed rulemaking does not place any additional requirements on businesses.

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

The Commission anticipates the proposed rulemaking will benefit private persons and consumers by being able to view and validate an electronic tag using their own electronic device; from the ability to electronically tag a big game animal in real-time; and the fact a customer who chooses paperless tags will not need to purchase a duplicate tag to replace a lost or mutilated paper tag.

6. Statement of the probable effect on state revenues.

The proposed rulemaking will not significantly impact state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

The Commission has determined that there are no alternative methods of achieving the objectives of the proposed rulemaking. The Commission holds that the benefits of the proposed rulemaking outweigh any costs.

8. Description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

For this rulemaking, the Commission relied on empirical data based on agency experience and observations, which included comments from the public and agency staff that administer and enforce the rules included in this rulemaking. Additionally, the Commission relied on historical data (i.e., Department

reports to include sportsman data, violation data, etc., other state agency rules, etc.), current processes, benchmarking with other states who have implemented an electronic tag system, and the Department's overall mission. This rulemaking amends rules that govern the use of tags and evidence of legality. Rules governing the use and possession of tags remain unchanged. The subject the rules address are based on statutory requirements rather than natural sciences, thus recommendations relied more heavily on empirical qualitative data using agency experience and observations instead of quantitative data. The Commission approached this rulemaking and the use of the documentation, statistics, and research in a methodical way, testing various approaches and trying to replicate approaches that were successful in other states.

- C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement.**

The Department tasked a team of subject matter experts to review and make recommendations for this rulemaking. In its review, the team considered all comments from the public and agency staff that administer and enforce the rules, historical data, current processes and environment, and the Department's overall mission. The team took a customer-focused approach, considering each recommendation from a resource perspective and determining whether the recommendation would cause undue harm to the Department's goals and objectives. The team then determined whether the request was consistent with the Department's overall mission, if it could be effectively implemented given agency resources, and if it was acceptable to the public. The Commission believes the data utilized in completing this economic, small business, and consumer statement is more than adequate.



Celeste Cook <ccook@azgfd.gov>

Paperless documents

1 message

Aaron Davis [REDACTED] >
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Sun, Jun 27, 2021 at 7:22 PM

Hello,

I am going to be against the proposal to go paperless just specifically on the terms of the past records of my portal account not being correct even when checking in with azgf headquarters. I've had them reset my account several times, but still does not show updated information such as current licensing and point guard tags.

The proposal is relevant, however, as far as the online structure I believe needs to be perfected.

Sincerely,
Aaron Davis
[REDACTED]



Celeste Cook <ccook@azgfd.gov>

Webcast

1 message

'Alan Davey' via Tag Modernization <TagModernization@azgfd.gov>

Fri, Jul 16, 2021 at 6:30 PM

Reply-To: Alan Davey <[REDACTED]>

To: "tagmodernization@azgfd.gov" <tagmodernization@azgfd.gov>

I gave up on you. You went through all of this last time. You go through all this and you just do what YOU WANT. You are wasting our money on this. Could go elsewhere. Lost all faith in Arizona Game and Fish. I will no longer be putting in for anything. You don't care about the disabled just like the forest service. You put down the forest service and you do the same thing. I doubt this comment will come out in your so called meeting.

[Sent from Yahoo Mail on Android](#)



Celeste Cook <ccook@azgfd.gov>

Paperless Tag Proposal

1 message

Chris and Alicia Elmer <[REDACTED]>
To: rulemaking@azgfd.gov, ccook@azgfd.gov

Sat, Jun 26, 2021 at 7:49 AM

Love the idea of a paperless tagging system. Question though, this is likely the option I would choose if this is passed. We often hunt in areas with limited or no cellular coverage.

Will there be an offline option so that we can complete all necessary steps to tag the animals? Then once I'm able to go back online, it can then transmit back to AZGFD?

Thanks for your work on this!

Alicia Elmer
[REDACTED]



Celeste Cook <ccook@azgfd.gov>

new rules

1 message

'Rex' via Rulemaking - Game and Fish <Rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 5:59 PM

Reply-To: Rex <[REDACTED]>

To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Every one:

It sounds like the new "paperless" system could save the department many dollars in operating cost. This money could be put back into other worthwhile projects.

I know some of us will have a hard time adjusting to a new system- I am not a person who allows my cell phone to rule my life; but I will adjust.

I support progress that will save the department Money.

Albert R Eckert III
[REDACTED]



Celeste Cook <ccook@azgfd.gov>

Paperless tag system

1 message

AI F <[REDACTED]>
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 3:20 PM

I support it. Alex Filipovic (Flagstaff)

7/29/2021

State of Arizona Mail - Paperless is not a good idea 💡.... I do nothing on a computer 🖥 as I no longer understand them and I will not hu...



Celeste Cook <ccook@azgfd.gov>

Paperless is not a good idea 💡.... I do nothing on a computer 🖥 as I no longer understand them and I will not hunt in Arizona if I have to use a computer to apply...as a 73 year old hunter I believe this action violates the ADA and is grossly unfair to Seniors..... thanks, A J Martinez

1 message

'A J Martinez' via Rulemaking - Game and Fish <Rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 1:46 PM

Reply-To: A J Martinez <[REDACTED]>

To: rulemaking@azgfd.gov

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

paperless

1 message

JOHN elk <[REDACTED]>

Fri, Jun 25, 2021 at 11:33 PM

To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

To whom it my concern I am against going paperless for licenses and tags. So please do not make it the only way to go hunting.

Thank you,
JOHN



Celeste Cook <ccook@azgfd.gov>

(no subject)

1 message

+ [redacted] <+[redacted]>
To: rulemaking@azgfd.gov

Sat, Jun 26, 2021 at 7:11 AM

.....

My concern is access to service that would prohibit the ability to electronically tag an animal. It is common not to have any service available while out hunting and oftentimes access is not available until you are near a decent sized population center. Thanks. John



This message was sent to you by a T-Mobile wireless phone.

 text-[redacted].txt
1K



Celeste Cook <ccook@azgfd.gov>

Paperless

1 message

[REDACTED] <[REDACTED]>
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Sat, Jun 26, 2021 at 9:12 AM

I believe that this is a very good addition to the program.

Sent from [Mail](#) for Windows 10



Celeste Cook <ccook@azgfd.gov>

Paperless tag

1 message

Tammy E [REDACTED] >

Sat, Jun 26, 2021 at 9:54 AM

To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

This is good if you have service on your electronic devise. 9 times out of 10 there is no service when we are hunting or camping! So how does this work, take your harvest and drive to were you have service with an untagged animal???

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

About time! Look to the Utah model if you need some guidance.

1 message

[REDACTED] >
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Sun, Jun 27, 2021 at 9:16 PM

Sent from Windows Mail



Celeste Cook <ccook@azgfd.gov>

Re: Paperless permit tags - NO

1 message

[Redacted] <[Redacted]>
To: Celeste Cook <ccook@azgfd.gov>

Sun, Jul 4, 2021 at 11:53 AM

Not sure my reasons would really matter to you. I don't like paperless bank statements either. I didn't like online applications only either. You are supposing everyone has access, reception, knowledge and wants to take the time to mess with your website. They don't!

Sent via the Samsung Galaxy Note5, an AT&T 4G LTE smartphone

----- Original message -----

From: Celeste Cook <ccook@azgfd.gov>

Date: 7/2/21 10:15 AM (GMT-07:00)

To: [Redacted] <[Redacted]>

Subject: Re: Paperless permit tags - NO

Hello,

Thank you for your comment regarding the paperless tag system rulemaking.

Would you be able to provide some explanation?

It is difficult to know why you oppose the new system if your comment is simply "no."

Thank you!

Celeste Cook

--

><(((e>...><(((e>...><(((e>...><(((e>...><(((e>

CELESTE COOK | RULES/POLICY MANAGER
ARIZONA GAME AND FISH DEPARTMENT
OFFICE: **623-236-7390**
EMAIL: ccook@azgfd.gov
azgfd.gov | 5000 W. Carefree Highway, Phoenix, AZ 85086

Join our new [Conservation Membership](#) program and ensure a wildlife legacy for the future.

On Fri, Jul 2, 2021 at 10:06 AM [Redacted] <[Redacted]> wrote:

No!

--

><(((e>...><(((e>...><(((e>...><(((e>...><(((e>

CELESTE COOK | RULES/POLICY MANAGER
ARIZONA GAME AND FISH DEPARTMENT
OFFICE: **623-236-7390**

7/6/2021

State of Arizona Mail - Re: Paperless permit tags - NO

EMAIL: ccoock@azgfd.gov

azgfd.gov | 5000 W. Carefree Highway, Phoenix, AZ 85086

Join our new [Conservation Membership](#) program and ensure a wildlife legacy for the future.



Celeste Cook <ccook@azgfd.gov>

Tag Modernization

1 message

15 15 [REDACTED] >

Fri, Jul 16, 2021 at 6:30 PM

To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Just copy New Mexico on every thing. Copy the way you can apply for the draw and copy their E-Tag options. It's already done for you. Use their same system.

Sent from my Verizon, Samsung Galaxy smartphone



Celeste Cook <ccook@azgfd.gov>

Paperless tags

1 message

[REDACTED] >
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 2:29 PM

I'm voting no.

Sent from my Verizon, Samsung Galaxy smartphone



Celeste Cook <ccook@azgfd.gov>

paperless tags

1 message

[REDACTED] <[REDACTED]>
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 3:04 PM

I think it would be a Big mistake to have paperless tags. Many people do not have cellphones or computers. No doubt, there are those who are quite inept when it comes to more recent technology.



Celeste Cook <ccook@azgfd.gov>

All e license ???

1 message

[REDACTED] >
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 8:36 PM

What! After the fiasco of the elk draw! Better do another year or more of testing.



Celeste Cook <ccook@azgfd.gov>

paper apps

1 message

[REDACTED] <[REDACTED]>
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 11:20 AM

I think we should keep the paper applications I've hunted in Arizona all my life . its necessary

Sent from my Galaxy



Celeste Cook <ccook@azgfd.gov>

proposed paperless hunt permit-tag

1 message

'Jim & Sandy' via Rulemaking - Game and Fish <Rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 11:31 AM

Reply-To: Jim & Sandy [REDACTED] >

To: rulemaking@azgfd.gov

I don't think it matters what we think or say you guys seem to do what you want. on this one I don't care either way. So just do what your going to do.



Celeste Cook <ccook@azgfd.gov>

(no subject)

1 message

Jeremiah M. <[REDACTED]>

Wed, Jul 28, 2021 at 12:53 PM

To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

I believe we should keep the big game tag system in place and have an option to do a app where you can tell your game through an app. Some places we hunt there is no internet service so it would be impossible to tag your big game species immediately so if we have a tag also we can use the option when we're out in the field. Or we could just stick to the old school tag system and keep the tradition going. ultimately that's what I would prefer. everything is going online and we're losing tradition.

Sent from my Verizon, Samsung Galaxy smartphone



Celeste Cook <ccook@azgfd.gov>

Azgfd track record on electronic tech. is'nt very smooth ?

1 message

[REDACTED] <[REDACTED]>
To: rulemaking@azgfd.gov

Thu, Jul 29, 2021 at 5:53 AM

Sent from my Sprint Samsung Galaxy S7 edge.



Celeste Cook <ccook@azgfd.gov>

Lol,you guys cant manage the IT department now, why would you try to complicate it even further. AZGFD should go back to all paper applications for everything!

1 message

[REDACTED] <[REDACTED]>
to: rulemaking@azgfd.gov

Thu, Jul 29, 2021 at 7:46 PM

Sent from my Verizon, Samsung Galaxy smartphone



Celeste Cook <ccook@azgfd.gov>

Paperless tag

1 message

Mike 556 <[REDACTED]>
To: rulemaking@azgfd.gov

Thu, Jul 29, 2021 at 8:40 AM

I vote no...thank you

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

(no subject)

1 message

[REDACTED] <[REDACTED]>
To: rulemaking@azgfd.gov

Sat, Jul 31, 2021 at 9:58 AM

Absolutely no



Celeste Cook <ccook@azgfd.gov>

Go back to paper please.

1 message

adam Ornelas <[REDACTED]>
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 2:29 PM

Hello,

It's much easier for us hunters to get it at the store instead of on the website. Please go back!!

Adam O.

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

electronic tag

1 message

bruce atwell <[REDACTED]>
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 4:15 PM

What happens if you kill an animal in a location you do not have cell service in? While transporting the animal, if you get stopped by a G&F ranger, are you in violation?



Celeste Cook <ccook@azgfd.gov>

Permit tags

1 message

Bob Edgett [REDACTED] >
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 2:54 PM

No I am against this as I do not carry my phone with me when hunting, also I do not have a computer or a printer
For some this might be ok but not good for me
Thank you. Robert E.



Celeste Cook <ccook@azgfd.gov>

Paperless tag system

1 message

Ben <[REDACTED]>
To: rulemaking@azgfd.gov

Sat, Jun 26, 2021 at 7:16 AM

Hello

I am an Arizona native and have been purchasing hunting licenses and applying for big game draws for the last 24 years. I fully support a paperless tag and license system.

Keeping track of a paper tag in the months between a draw and a hunt, while not a difficult task, is an unnecessary hassle. I have a family member who has lost a tag, and I myself have had to drive back home the night before opening day to retrieve a tag that was not in the backpack I thought it was in. Both of these instances were in no way the fault of AZGFD, but things like this could be avoided with an electronic option.

Thanks!



Celeste Cook <ccook@azgfd.gov>

Great idea!

1 message

Brenda Griego [REDACTED] >
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 7:52 PM



Celeste Cook <ccook@azgfd.gov>

Paperless tags

1 message

'Bruno Loya' via Rulemaking - Game and Fish <Rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 8:11 PM

Reply-To: Bruno Loya <[REDACTED]>

To: rulemaking@azgfd.gov

Don't care for em!

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

E- Tags

1 message

[Redacted] <[Redacted]>
To: rulemaking@azgfd.gov

Tue, Jun 29, 2021 at 2:15 PM

Sounds convenient

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

Paperless

1 message

'Betty Mennis' via Rulemaking - Game and Fish <Rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 1:17 PM

Reply-To: Betty Mennis <[REDACTED]>

To: rulemaking@azgfd.gov

Keep the system the same, don't mess with what still works!!!!!!!!!!

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

I'm for paperless tags

1 message

'Brian Maki' via Rulemaking - Game and Fish <Rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 2:54 PM

Reply-To: Brian Maki <[REDACTED]>

To: rulemaking@azgfd.gov

Also a shopping cart system needs to be implemented instead of putting in for a species. Then having to start all over for the next species.



Celeste Cook <ccook@azgfd.gov>

Rules electronic tags

1 message

Bill Morgan <[REDACTED]>
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 6:57 PM

I am against the idea of electronic tags and license . Many times in the field there is no service on my phone and it just complicates things in my opinion and could even result in more time proving to a judge that you are hunting legally! Cant we just one time , keep things the good old way !!!

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

Fwd: Rules electronic tags

1 message

Bill Morgan <[REDACTED]>
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 6:59 PM

Sent from my iPhone

Begin forwarded message:

From: Bill Morgan <[REDACTED]>
Date: July 28, 2021 at 6:57:28 PM MST
To: rulemaking@azgfd.gov
Subject: Rules electronic tags

I am against the idea of electronic tags and license . Many times in the field there is no service on my phone and it just complicates things in my opinion and could even result in more time proving to a judge that you are hunting legally! Cant we just one time , keep things the good old way !!!

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

electronic licensing proposed... comments

1 message

Bill Marshall [REDACTED] >
To: ccook@azgfd.gov

Thu, Jul 29, 2021 at 1:49 PM

Hello,

I am holder of a Senior, Pioneer license, combo.

I am not as fluent in the E world as younger people are therefore I still like the final paper products, license, permit tags, etc. I try to log into my dashboard and it takes me a couple tries and usually I have

to change my password or user because I don't have the memory and memory as to the last time I used

that AZGFD Dashboard. Very frustrating.

I don't think I will be doing much in the future so, you don't have to worry about me, I just suggest, PHASE THE E SYSTEM IN SLOWLY, that way it won't tread on my toes as much and be gentler for me.

While I'm at it, maybe you can tell me where to see the status about law changes regarding trail cameras,

I have not seen anything regarding those proposed changes and if there are new rules and when they might

become effective, if there were any changes.

can one go to AZGFD main website and search the word "trail Cameras", for example?

thanks for your consideration.

Bill



Celeste Cook <ccook@azgfd.gov>

Paperless permit

1 message

Betty Osborne [REDACTED] >
To: rulemaking@azgfd.gov

Thu, Jul 29, 2021 at 4:30 PM

This is one of the most foolish ideas yet!



Celeste Cook <ccook@azgfd.gov>

Paperless permit

1 message

Betty Osborne <[REDACTED]>
To: rulemaking@azgfd.gov

Thu, Jul 29, 2021 at 4:30 PM

This is one of the most foolish ideas yet!



Celeste Cook <ccook@azgfd.gov>

electronic tags

1 message

bruce [REDACTED] >
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 3:45 PM

I think it is a great idea if you guys can swing it. I am hoping that OTC tags are included also?

Bruce Reed



Celeste Cook <ccook@azgfd.gov>

(no subject)

1 message

Bobby Vallo [REDACTED] >

Sat, Jun 26, 2021 at 6:07 AM

To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>, "ccook@azgfd.gov" <ccook@azgfd.gov>

I think it's great AZGFD is being progressive with the technology available and utilizing mobile devices. It should bring in a little more accurate data for the reason of convenience, which is unfortunate. All that being said, I don't understand why AZGFD is focused on this and spending time and money on a matter "trying to find a new way". AZGFD should be focused on purchasing the same draw system, or mimicking the draw system of New Mexico, Wyoming, or actually any other state in the continental U.S.

The AZGFD draw system has been an embarrassment to what the outdoorsman dollar has been funding.

I wonder if this new technological aspect of AZGFD is something that was created by normal budgeting or is it sees funding by NUMEROUS UNITS that have wayyyyy too many deer tag and elk tags available for draw. Again an embarrassment, more directly to the outdoorsman, especially the those if Arizona.

For the most part AZGFD does a good job, but in recent years they've been killing the reputation of wildlife Arizona once had. Trying to look ahead and wonder how future wildlife looks in Az, Arizona will only be worth putting in for elk, only in a couple units, and deer, again only in a couple units. I feel that is how both residents and non residents will view Arizona. But hey at least they can check in their harvest from they're phone.



Celeste Cook <ccook@azgfd.gov>

Paperless permit tag system

1 message

Bryant White <[REDACTED]>
To: rulemaking@azgfd.gov

Sat, Jun 26, 2021 at 9:41 AM

I am writing to support the paperless tag system. Many other states I hunt in are doing this and some have been for a long time. It is great! You don't have to worry about forgetting your tag... Which I have done!

Thank you,
Harold White

[REDACTED]
Phoenix, Arizona [REDACTED]
[REDACTED]

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

E-tags

1 message

Colby Davis <[REDACTED]>
To: Rulemaking <rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 3:08 PM

I support e tags, as long as there is no location tracking. I don't think the game and fish should collect that info.



Celeste Cook <ccook@azgfd.gov>

New Rulings

1 message

[REDACTED] via Rulemaking - Game and Fish <Rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 4:54 PM

Reply-to: "[REDACTED]" <[REDACTED]>

To: rulemaking@azgfd.gov

I feel that the paper tag is a sure way to tag your bagged animal in the field. There are many areas that do not have cell phone access and if you were stopped to verify your kill you could be subject to fines because the tag had not been put on the animal or filled out on the internet yet, because you did not have cell phone access.

Clarence Gabriel
Holder Of A Pioneer License
[REDACTED]



Celeste Cook <ccook@azgfd.gov>

Tag Modernization

1 message

15 15 <[REDACTED]>

Fri, Jul 16, 2021 at 6:30 PM

To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Just copy New Mexico on every thing. Copy the way you can apply for the draw and copy their E-Tag options. It's already done for you. Use their same system.

Sent from my Verizon, Samsung Galaxy smartphone



Celeste Cook <ccook@azgfd.gov>

paperless tags

1 message

Chris Isch <[REDACTED]>
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 7:09 PM

I don't like the idea



Celeste Cook <ccook@azgfd.gov>

Electronic hunt permit tags and license

1 message

'Craig Ludwig' via Rulemaking - Game and Fish <Rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 1:44 PM

Reply-To: Craig Ludwig <[REDACTED]>

To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

This is greatly needed and it is already available in many other states.

Arizona should get this one done!



Celeste Cook <ccook@azgfd.gov>

Modernization of hunt tag and licenses

1 message

Carlos Lomeli [REDACTED] >
To: rulemaking@azgfd.gov

Fri, Jul 30, 2021 at 10:46 AM

I Emphatically agree that it is time we move forward with technology, as opposed to paper. The cost savings and convenience are my two driving factors for me to vote yes on this.

Best regards
Carlos Lomeli



Celeste Cook <ccook@azgfd.gov>

Paperless/jobless

1 message

[REDACTED] >
to: rulemaking@azgfd.gov

Sun, Jun 27, 2021 at 11:32 AM

My issue is the last couple of years the electronic systems are not reliable and fail constantly. And you want to add to this madness?

Prior to this WOKE AZGFD, the systems were easy and not very many hiccups have proven. I've been buying nearly everything physically from the department for the last 16 years.

Every one wants instant gratification and everything online and no social communication, that's generally being lazy these days.

Does paperless means eliminating jobs at Game and fish??? You'll have to pay extra for paper form in the future? Pay for mailing stamp? I definitely think so. Game and fish is gotten so bad I see the same employees working as cashiers at bass pro and sportsman's for a second job!

When I was a youth hunter fresh out of the hunt safety course, I felt that holding a physical tag in hand hiking the woods looking for that trophy, wrapping the tag around your first trophy harvest is a staple of hard work and achievement. That physical interaction. Having a paper tag teaches you responsibility keeping your paperwork safe and organized before a hunt. Life learning skills.

Let me school you on a real life learning situation.

I was a fresh grad out of the Hunter Ed course. I had MY OWN shiny new orange hunters ed card. And my fist official hunting license.

That following weekend my dad, best friend and I, he also completed the course together. We were going squirrel and rabbit hunting. You wouldn't believe the amount of excitement from a 12 year old. Not knowing a ton of responsibility with pre-hunt packing, lone behold I left my orange Hunt Ed card on my desk at home and we were almost to show low when I realized. Probably one of the worst weekends of my life as a youth hunter. Dad said: "we're not going back home, I bet you learned your lesson!" True statement!!

I had to watch my friend shoot at rabbits and squirrels all weekend while I shot at paper targets at the cinder pit. Lesson was learned and I have not forgotten a tag or license or any proper paperwork since then.

Cons:

-everything online for AZGFD is always glitching and failing.
I'm not for it

-paperless eliminates jobs. Im not for it.

-paperless electronic tags teaches laziness to new generation hunter and fisherman. Im not for it.

-potential cause more poaching. "Oh I forgot my tag/ license I didn't know?"

Pros:

Works for non-residents.

What it comes down to. Public input does not matter anymore, the commission is going to do what they want. The current commission is just a two face organization. Arizona is slowly erasing away. 😞

I'm loosing my faith in AZGFD. Hunting opportunities out of state are more appetizing.

P.S Kari Lake needs to appoint some new commissioners.



Celeste Cook <ccook@azgfd.gov>

paperless Hunt permit

1 message

Charles McCarty <[REDACTED]>
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 11:47 AM

I prefer the old method, for years I was computer illiterate and boing paperless will undoubtedly confuse and restrict some hunters from applying for hunting permits. If this is your intent to reduce the number of applications then continue with total electronic process.



Celeste Cook <ccook@azgfd.gov>

(no subject)

1 message

Chris Mangels [REDACTED] >
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 12:20 PM

NO!



Celeste Cook <ccook@azgfd.gov>

Electronic Tags

1 message

Cory Pritchard <[REDACTED]>
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Mon, Jun 28, 2021 at 8:29 AM

AZGFD,

I believe that implementing an electronic tag and license system would be a really good idea.

It would help both in state and out of state hunters have easier access to tags.

This would also allow for easier methods to be compliant with laws for hunting. I believe a system like this could also assist with harvest quotas on things such as bear, lions, and even

Deer to allow a better understanding of things such as harvest rates in certain hunts to assist with tag allocations.

Sincerely,

Cory Pritchard



Celeste Cook <ccook@azgfd.gov>

Comments on notice of proposed rulemaking within Articles 1 and 3

1 message

Carson Pete <[REDACTED]>
To: ccook@azgfd.gov

Wed, Jul 28, 2021 at 2:54 PM

Good Afternoon,

I think moving the tags to electronic format is an excellent idea, this could save considerable amounts of money, and from my perspective, I think it would be alot easier for me to deal with my tags if they are all on one app. Several times I have misplaced or lost tags and its always a pain to go get replacement ones. I think moving to this system is wise, several states I have hunted out of state have electronic tags for deer and turkey. When you shoot the animal it is so easy to check the electronic tag and not even have to drive to a check station anymore. Also the game officers had a computer in their truck and could easily check on hunters info. The only consideration I have is for the hunter who does not have a "smart" phone. For example, my grandpa is 85 and has a cell phone but it is a flip phone or considerations for youth hunters. My daughter hunts az but she will not have a phone for a few more years. As long as there are some options for these cases you have my full support!

--
-Carson Pete
flagstaff resident
[REDACTED]



Celeste Cook <ccook@azgfd.gov>

Paperless tags

1 message

Chris Weyer [REDACTED] >
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 2:45 PM

Please - please make paper less systems and app based platform for tags, licensing, etc.
I hunt in Missouri amd they have a great system for this - easy to record your deer etc

Thanks,
Chris Weyer

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

tags permits

1 message

don brandon <[REDACTED]>
To: rulemaking@azgfd.gov

Fri, Jun 25, 2021 at 8:21 PM

I actually like applying by paper but I know times change I would recommend it.



Celeste Cook <ccook@azgfd.gov>

Paperless tags

1 message

Daniel Bauerelen <[REDACTED]>
To: rulemaking@azgfd.gov

Tue, Jul 6, 2021 at 1:51 AM

I feel that this will enable people that poach even a greater ability to do so. Right now as it is, we can call people in that don't tag animals. I'm sorry I have to go to the negative aspect of things. The license, I can say is a positive and paper saving idea.
Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

Paperless hunt permit-tag, licensing system

1 message

[REDACTED] <[REDACTED]>
To: ccook@azgfd.gov

Thu, Jul 29, 2021 at 7:45 AM

Good morning Celeste,

I don't know if you are gaining any support for this proposal, but I, for one, love this idea. I have integrated almost everything I do to manage my life is from my phone. The proposed change will reduce my carbon footprint just that much more and add flexibility in managing my licenses for my family. Thank you.

David Brown

Email: [REDACTED]
[REDACTED]
[REDACTED]

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Celeste Cook <ccook@azgfd.gov>

Tags

1 message

dennis.champagne via Rulemaking - Game and Fish <Rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 11:57 AM

Reply-To: [REDACTED]

To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Really does not matter what the public think on device tags, It is a bad idea, The animal needs tag after the kill, Device are subject to cell towers and as we all know not much reception in the field. Also the tagging of the animal needs to ready for drop off at the meat processors and taxidermist, This will require loss of time to record the animal in records. By using cell phones.



Celeste Cook <ccook@azgfd.gov>

My opinion

1 message

'Daniel Dell' via Rulemaking - Game and Fish <Rulemaking@azgfd.gov>

Sat, Jun 26, 2021 at 12:29 PM

Reply-To: Daniel Dell <[REDACTED]>

To: rulemaking@azgfd.gov

Here we go again. Let's change the process under the guise of saving paper and time. How convenient for the younger generations who were raised on computers. What about us hunters that have Pioneer Licenses? I am self-taught to use a computer for many things, but I am far from being proficient or comfortable. Every new dream of yours becomes a totally frustrating and aggravating experience that only increases the sour taste in my mouth for your modern technology. Why can't you leave things alone until all of us seniors have moved on to the happy hunting grounds in the sky? Is it because you have lost respect for your elders and increased your greed for recognition and personal reward? Or does the old proverb "If it ain't broke, don't fix it" have no meaning to you? We don't need any more changes, rules, regulations, means or methods. Devote your energy to being productive, not destructive.

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

Electronic tag

1 message

Dustin Friedman <[REDACTED]>
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 7:14 PM

Electronic tags would be ideal!! Many people forget them on their hunts and is very sad when they either don't get to hunt or have to drive 5 hours back home to get their paper tag!

Dustin Friedman



Celeste Cook <ccook@azgfd.gov>

Modernization license

1 message

[REDACTED] <[REDACTED]>
to: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 2:37 PM

Hello,

I have a question, I'm for the paperless Modernization of hunting licenses on an app, should had been done a decade ago, but will it cover those that are exempted from license for example 100% disabled or veteran status? Thank you.

V/R

David Gilley

Sent from my iPad



Celeste Cook <ccook@azgfd.gov>

(no subject)

1 message

David Holloway <[REDACTED]>
To: rulemaking@azgfd.gov

Fri, Jun 25, 2021 at 10:03 PM

Yes yes. Missouri has had it for a few years and I love it. Go back deer hunting every year. Easy to use and understand. Look at how they do theirs.

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

Paperless hunt permit

1 message

Darin Lessner [REDACTED] >
To: Celeste Cook <ccook@azgfd.gov>

Wed, Jul 28, 2021 at 10:48 AM

To whom it may concern

I don't feel this is a good idea. If you are in the woods and didn't download the tag you have no proof it's a tough for both parties involved. Plus what about people that don't have good internet like myself I live off grid and have limited access to it. Thanks for listening that's my two cents

Regards

Darin lessner



Celeste Cook <ccook@azgfd.gov>

Paperless Tags

1 message

DANIEL LANGE <[REDACTED]>

Wed, Jul 28, 2021 at 11:35 AM

To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

SO what happens when I am out hunting, harvest an animal but have on cell service? Am I going to be cited if stopped while transporting back to camp or to where I have cell service?

Thx

Dan



Celeste Cook <ccook@azgfd.gov>

AZ Game & Fish Commission proposes rulemaking to establish a paperless permit-tag system - Yes

1 message

Daniel McKay <[REDACTED]>
To: rulemaking@azgfd.gov

Sat, Jun 26, 2021 at 6:21 AM

I believe this adds value and options for hunters. Thank you for the consideration to help more people more comfortable with this additional option, should it pass.

Thank you,

Dan McKay



Celeste Cook <ccook@azgfd.gov>

Paperless hunt permit system

1 message

Dennis Netzley [REDACTED] >
To: "ccook@azgfd.gov" <ccook@azgfd.gov>

Sat, Jul 31, 2021 at 5:17 PM

With respect to your proposed paperless system, please bear in mind that not everybody owns a smart phone with internet access. I am one of those. As long as paper tags and licenses will be available, I would have no objection to the paperless system, but please keep the paper available.

I have hunted Arizona for 25 years and do not want to lose the opportunity to do so for the lack of an electronic device.

Dennis Netzley
Clovis, Ca.



Celeste Cook <ccook@azgfd.gov>

Paperless tags

1 message

Donald Stich <[REDACTED]>
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Sat, Jun 26, 2021 at 3:06 PM

Great idea



Celeste Cook <ccook@azgfd.gov>

RESPONSE TO PROPOSAL

1 message

DAVE STONE [REDACTED] >
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Sat, Jun 26, 2021 at 8:50 AM

I think the proposal for electronic licenses and tags is an excellent idea. With today's technology it was bound to happen sooner or later . Paper is still a good back up with issues with I.T. I don't think it should be either or (electronic v. paper). Good luck with this endeavor...

DRS



Celeste Cook <ccook@azgfd.gov>

Fwd: July 31: Deadline to comment on proposed paperless hunt permit-tag, licensing system

1 message

Dan <[REDACTED]>
To: rulemaking@azgfd.gov, ccook@azgfd.gov

Wed, Jul 28, 2021 at 2:57 PM

Celeste,

I would be entirely in favor of having fishing and hunting licenses being electronic instead of paper. As it is, I keep electronic versions of my kids, my wife, and my license on my phone for when someone forgets theirs. It is a pain! While you're at it it would be great if that smart phone app could be built in a simple way to allow for doing the draw on our phones. It is SO cumbersome and repetitive today. 90% of the time people spend entering data could be saved which would be nice especially for families. Thank you for asking!!

Dan

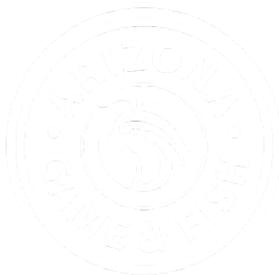
----- Forwarded message -----

From: **AZGFD** <e-news@azgfd.gov>

Date: Wed, Jul 28, 2021 at 1:54 PM

Subject: July 31: Deadline to comment on proposed paperless hunt permit-tag, licensing system

To: <[REDACTED]>



GAME AND FISH NEWS

July 28, 2021

July 31: Deadline to comment on proposed paperless hunt permit-tag, licensing system

PHOENIX — Time is running out to provide comment on a notice of proposed rulemaking within Articles 1 and 3 for the purposes of modernizing the big game hunt permit-tag, and hunt and fish licensing system.

The new system will provide customers with added flexibility following the purchase of a license or hunt permit-tag. An app on their own electronic device will enable customers to view their licenses and hunt permit-tags, allow them to electronically “tag” their harvested animal, and complete their harvest questionnaire. Hunters would still have the ability to receive a paper hunt permit-tag, if preferred.

The public comment period runs through Saturday, July 31. Comments are being accepted by:

- Email: rulemaking@azgfd.gov or ccook@azgfd.gov.
- U.S. Mail: Arizona Game and Fish Department, Attn.: Celeste Cook, Rules and Policy Manager, [5000 W. Carefree Highway, Phoenix, AZ 85086](#).
- Telephone: Celeste Cook, Rules and Policy Manager, 623-236-7390.

The Arizona Game and Fish Commission will consider the final rulemaking at its public meeting Sept. 24. To track the progress of this rule, view the regulatory agenda and all previous five-year review reports, and to learn about any other agency rulemaking matters, visit www.azgfd.com/agency/rulemaking/.

Did you know?

The Arizona Game and Fish Department conserves and protects Arizona's 800+ wildlife species but receives NO Arizona general fund tax dollars. Contribute to our on-the-ground conservation efforts at www.AzWildlifeHero.com.

The Arizona Game and Fish Department receives Federal assistance from the U.S. Fish and Wildlife Service, and thus prohibits discrimination on the basis of race, color, religion, national origin, disability, age and sex pursuant to Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990. To request an accommodation or informational material in an alternative format or to file a discrimination complaint please contact the Director's Office at (602) 942-3000 or by mail at [5000 West Carefree Highway, Phoenix, AZ 85086](#). Discrimination complaints can also be filed with the U.S. Fish and Wildlife Service, Office of Diversity and Inclusive Workforce, Attention: Public Civil Rights and Disability Coordinator, [5275 Leesburg Pike, Falls Church, VA 22041](#).

Arizona Game & Fish Dept. · [5000 W. Carefree Hwy, Phoenix, AZ 85086](#)
(602) 942-3000 · www.azgfd.gov



7/29/2021

State of Arizona Mail - Fwd: July 31: Deadline to comment on proposed paperless hunt permit-tag, licensing system

Arizona Game and Fish Department · 5000 West Carefree Highway · Phoenix · Arizona · 85086

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Dan Strow





Celeste Cook <ccook@azgfd.gov>

Paperless hunt tags and licenses.

1 message

DANA SCHMIDT <[REDACTED]>
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 5:29 PM

It seems in this world of everything going to electronic technology you as well as many other governmental agencies seem to forget that us of the older generation cannot and do not care to do everything via computer or cell phone. We now have to have a portal for this and that and are swamped in passwords or security codes and QR code's whatever the hell those are. Enough already !!! I want a paper license in my wallet and a tag I can take into the field with me.

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

Electronic tagging.

1 message

David Thompson <[REDACTED]>
To: rulemaking@azgfd.gov

Thu, Jul 29, 2021 at 6:53 AM

Hi There,

A couple of thoughts on the switch to an electronic system of permits and tags.

A large portion of the areas hunted in Arizona do not have cell service.

Electronic devices have batteries and they die when you need them.

This new system will put a huge burden on retailers or they will quit selling tags.
I like being able to get an over the counter tag locally.

Thanks for your time.

David Thompson
Paulden, AZ



Celeste Cook <ccook@azgfd.gov>

Paperless hunt permits

1 message

'Daniel Vallejo' via Rulemaking - Game and Fish <Rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 2:11 PM

Reply-To: Daniel Vallejo <[REDACTED]>

To: rulemaking@azgfd.gov

I do not recommend this. The amount of poaching that will be done in the southern units will be crazy. The AZGF and the border patrol believe it or not help people from illegal killing because a lot of the border patrol agents hunt so they can see the tags on the animals taken and hunters know that. Won't stop it completely but it does help having to have a tag on the animal that's visible to others.

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

Tag Modernization

1 message

Ethan Albretsen <[REDACTED]>
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Mon, Jul 19, 2021 at 6:21 AM

Hello,

I just had a comment about tag modernization. I don't like electronic tags. Part of the fun of drawing a tag in Arizona after applying for years is actually getting the tag in the mail. Also some people don't want to carry a cellphone all the time to "tag the animal" after harvesting. Lastly, carrying the paper tag with you while hunting is not inconvenient, carrying a phone and trying to make sure it's always charged up enough so if you harvest an animal is very inconvenient. Some things are better left not modernized. This is coming from a younger person.

Thanks,
Ethan Albretsen



Celeste Cook <ccook@azgfd.gov>

paperless hunt permit-tag

1 message

elaine fowler [REDACTED] >

Sat, Jul 31, 2021 at 8:42 AM

To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>, "ccook@azgfd.gov" <ccook@azgfd.gov>

I think it is a bad idea to change to paperless tags. It is being tried in Oregon where we spend our summers and I have yet to talk to someone who prefers the paperless tag. Electronic devices can always malfunction and there are still plenty of hunters who do not carry cell phones. I have no problem with making it an option, but usually when something like this is tried it soon becomes mandatory.

Elaine Fowler



Celeste Cook <ccook@azgfd.gov>

Paper Tags vs Electronic Tag

1 message

Ed Jones [REDACTED] >

Wed, Jul 28, 2021 at 1:47 PM

To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>, "ccook@azgfd.gov" <ccook@azgfd.gov>

To whom it may concern,

I personally would rather have paper tags. The problem with using electronic is the inability to obtain a good signal from a cellular tower. White mountains and many ranches or state lands have no signal. If you harvest an animal and haul it say 20 miles and get stopped by a game warden, then you are in a boat load of trouble.

Respectfully,

Edward R. Jones
[REDACTED]

Sent from [Outlook](#)



Celeste Cook <ccook@azgfd.gov>

Paper Tag

1 message

Enno Malling <[REDACTED]>
To: rulemaking@azgfd.gov

Thu, Jul 29, 2021 at 6:55 AM

I will "always" want a paper tag.

Enno Malling
Show Low, AZ



Celeste Cook <ccook@azgfd.gov>

Propose paperless

1 message

'Francisco Sandoval' via Rulemaking - Game and Fish <Rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 1:45 PM

Reply-To: Francisco Sandoval <[REDACTED]>

To: rulemaking@azgfd.gov

We should have the opportunity to buy paper form and also electronic because the system or the internet are down for one reason or another that we cannot control. Many people don't really know how to use the internet specially when they are more use to online phone calls. We tend to forget at times of are license expires, one time I forgot when I was going fishing and I didn't have signal to buy it online but luckily the lake did have a small store that sold me one. We should keep both forms because we are humans and we tend to forget at times and the internet fails a lot of the times people try thank you



Celeste Cook <ccook@azgfd.gov>

Electronic tags

1 message

Gary Beckum [REDACTED] >
To: rulemaking@azgfd.gov

Sun, Jun 27, 2021 at 6:47 PM

What do you do when most places I hunt elk and deer has no phone service?

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

No on Paperless Tags

1 message

GLENN BEAUMONT [REDACTED] >
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Sun, Jun 27, 2021 at 7:26 AM

To whom it may concern,

Given that an enormous amount of personal information would be exposed as part of this proposed system and the well known fact that electronic security measures are typically of no value over time, I am not in favor of electronic tags/permits.

It is one thing to submit or access this information at a single point, that being the AZGFD website v. having thousands of links out there that could be used to hack into the system. It is pretty clear to me that no matter the level of security imposed, hackers, etc., will gain access to personal information resulting in identity theft, etc.

I urge you to reconsider this proposal.

Sent from [Mail](#) for Windows 10



Celeste Cook <ccook@azgfd.gov>

Proposed paperless permit-tag system

1 message

Truthseeker 1 <[REDACTED]>
To: rulemaking@azgfd.gov, ccook@azgfd.gov

Mon, Jun 28, 2021 at 5:19 PM

This proposition must remain optional and additional safeguarding rules are needed to ensure the commission or employees of the AZ G&F won't make it mandatory later down the road.

The paperless permit tag system is not a bad thing but it should not be forced on all AZ hunters arbitrarily. Sure the proposition claims "Hunters would still have the ability to receive a paper tag if they prefer" however safeguards must be implemented to prevent any future changes without the consent of the lawful sportsmen in AZ.

If I want a hard copy permit tag after being successfully drawn, then I should have that option guaranteed and protected so it won't be changed in a few years by someone in the G&F IT department or others. I, like many Arizonans don't want another app on our phones because we're sick of all the vulnerabilities with technology.

Thanks
George Cole

[REDACTED]
[Goodyear, AZ](#) [REDACTED]



Celeste Cook <ccook@azgfd.gov>

paperless tags

1 message

George Gumerman <[REDACTED]>
To: rulemaking@azgfd.gov

Mon, Jun 28, 2021 at 1:53 PM

Hi, I support AZGFD move to paperless tags. I've used them in NM and like how easy they are to use. The app is a good idea.

Thanks,

George Gumerman



Celeste Cook <ccook@azgfd.gov>

Taglees

1 message

Gerald Hering <[REDACTED]>
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 3:59 PM

I would vote no



Celeste Cook <ccook@azgfd.gov>

Electronic Tag Rule

1 message

Graham Harrison <[REDACTED]>
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 12:35 PM

I support the proposed electronic tag rule and look forward to seeing a modernized tag system!

AZGFD really seems to stay ahead of the curve on technology and I am constantly impressed by how up-to-date AZGFD stays. Kudos!

Thank you for keeping our public land and resources in such great shape!

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

Electronic game tags

1 message

'GARY KAISER' via Rulemaking - Game and Fish <Rulemaking@azgfd.gov>

Wed, Jul 14, 2021 at 2:40 PM

Reply-To: GARY KAISER <[REDACTED]>

To: Rulemaking@azgfd.gov

I am opposed paperless game tags, which means I would have to buy a smart phone and carry it with me while hunting big game. It would be another gadget to carry that may be worthless in the field

I am not pleased with banning trail cameras, although I can agree that they should not be used at or near water holes.

Thank you very much for your consideration and the hard work you do to protect our wildlife.



Celeste Cook <ccook@azgfd.gov>

modernizing tags

1 message

Gus Kennedy [REDACTED] >
To: rulemaking@azgfd.gov

Thu, Jul 29, 2021 at 3:24 PM

I personally oppose this. I believe there is too many things that could get an honest hunter in trouble. No cell service. No smart phone. Dead battery on phone. Broke phone during the hunt etc. I understand that one will have an option for paper or paperless, but the way I read it is that paper is intended to be phased out. As far as the cost, do what you are already doing but a bit different. Instead of having a ridiculously large tag with paid advertisements from guides, taxidermists, etc, have them on a envelope stuffer like junk mail. You could have more people pay to advertise and get the tags back to a more convenient size.

Just my two cents,

Thanks



Celeste Cook <ccook@azgfd.gov>

new rules

1 message

Gary Smith <[REDACTED]>

Wed, Jul 28, 2021 at 4:07 PM

To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Good day my comment is I do not like the idea of all paperless we have no computers I am barrowing one to write this. My family has raised our children to not have to rely on computers. Also I do not like the fact of having to have a smart phone for the purpose of tagging the animal. As for we do not have smart phones we are simple people we only have old style flip phones with no internet. It really astonishes me that you would want everyone else like us to have to change our life styles to be able to hunt. I would say you need to keep it the way it is now for people like us and also try your way for those who wants to do it that way. I have talked to a lot of friends and family and they agree I'm hoping they can find a computer to write you as well. The school system tried the same thing with telling us the kids would need to have a computer but after digging into it they couldn't make them so for the last 5 years they have gotten their home work paper form (old school) this is going to be the same issues. So Please do not take away the option to get everything paper. And please do not take away their opportunity to hunt. This keeps the old way of the west in all of us.

Thanks

Gary

Sent from [Mail](#) for Windows 10



Celeste Cook <ccook@azgfd.gov>

Proposed paperless licensing

1 message

Heath Hawsey <[REDACTED]>
To: rulemaking@azgfd.gov

Thu, Jul 29, 2021 at 9:02 AM

I think this is a great idea to make this option paperless. It will save money and benefits the environment.

My only concern is about connectivity, which is a real concern in the remote areas of the state. Plus, cell phones are delicate and could be damaged or submerged.

What happens if a hunter or angler has connectivity or technical issues when the license is being checked by a game officer? Are they issued a ticket? Is the game confiscated until proof of licensing is provided? As long as this potential issue is fairly addressed I am all for this proposal.

Alan Heath Hawsey
Gilbert, AZ



Celeste Cook <ccook@azgfd.gov>

Paperless

1 message

Hank Kanner <[REDACTED]>
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 1:24 PM

My vote: I am not in favor of paperless.



Celeste Cook <ccook@azgfd.gov>

paperless hunt permit-tag, licensing system Opinion

1 message

JD Allison [REDACTED] >
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 2:43 PM

Hello,

I think that updating the technology is a great idea and much needed. It's a no brainer in my opinion. The current technology online SUCKS to use. Especially for getting a license and mostly for putting in multiple hunters for multiple hunts on the same ticket.

Thanks for letting me put in my 2 cents.

I hope this finds you having a Wonderful Day!

Sincerely,

JD Allison, PMP

[REDACTED]



Celeste Cook <ccook@azgfd.gov>

Proposed changes

1 message

jimmy amaya <[REDACTED]>
To: Celeste Cook <ccook@azgfd.gov>

Wed, Jul 28, 2021 at 6:52 PM

In light of the recent issues with the online portal. Too many login issues. I do not think the electronic change is the right choice for arizona citizens.

Please fix the portal first.

Jimmy Amaya
Az resident 33 yrs



Celeste Cook <ccook@azgfd.gov>

Paperless Hunt Permit=tag

1 message

Jeffrey Amstutz [REDACTED] >
To: rulemaking@azgfd.gov

Fri, Jul 30, 2021 at 6:25 AM

While I am getting a little "long in the tooth" and still use an old flip phone I understand the need to modernize certain aspects of your institution. As long as proper safeguards are employed and no threat of poaching or improper use of the new system is found I say bravo to AZGFD for making things easier for those who are able to utilize it. Me on the other hand will always prefer the old ways of applying a paper tag and doing my hunter survey and wait, here it is, online.

Respectfully submitted,
Jeffrey O Amstutz



Celeste Cook <ccook@azgfd.gov>

Prefer the paper method myself. Leave it as is for those who like it doing either way instead of totally by digital form.

1 message

Jody Beeler [REDACTED] >
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 12:44 PM

Sent from my iPad



Celeste Cook <ccook@azgfd.gov>

Electronic Tags

1 message

Josh Bearfield [REDACTED] >
To: rulemaking@azgfd.gov

Thu, Jul 29, 2021 at 1:32 PM

I like and support the proposal. Let's do it.

Josh Bearfield

Phoenix, AZ [REDACTED]



Celeste Cook <ccook@azgfd.gov>

Electronic tagging

1 message

Johnny Boydston Jr. <[REDACTED]>
To: rulemaking@azgfd.gov

Thu, Jul 29, 2021 at 5:29 PM

The state of Oregon switched to this electronic tagging a couple years ago it is a pain to deal with and when I hunt Oregon I always get the paper tag not everyone that hunts carries a phone not everyone that hunts has good cell service were they are at or leaves there phone turned on 24/7 biggest mistake you could ever make trying to switch to electronic tagging bad bad choice and hunter numbers in Oregon dropped because it was a nightmare to deal with I will always continue to get a paper tag to carry with me while hunting no thanks to your electronic services signed johnny Boydston
Arizona resident



Celeste Cook <ccook@azgfd.gov>

Paperless Tag

1 message

Jason Beaudoin [REDACTED] >
To: "ccook@azgfd.gov" <ccook@azgfd.gov>

Thu, Jul 29, 2021 at 8:44 PM

I think it's a great idea to use paperless tags. I have left my tag in the truck to only have to go back and get it, when I had my phone with me the entire time. This would greatly reduce the cost of the paper tags. My only concern is the ability to prevent duplicate tags or uses of the same tag. Stopping counterfitting is the name of this game, and if you do it right, the cost savings will greatly benefit the department.

I'm all for it.

Thanks, Jason Beaudoin
Southern AZ Coues Hunter

Sent from [Mail](#) for Windows 10



Celeste Cook <ccook@azgfd.gov>

Paperless license

1 message

██████████ ' via Rulemaking - Game and Fish <Rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 12:28 PM

Reply-to: ██████████ <██████████>

To: rulemaking@azgfd.gov

No against.

John Fomenko

██████████

Sent from my T-Mobile 4G LTE Device



Celeste Cook <ccook@azgfd.gov>

Paperless Permits

1 message

Jake Fischer [REDACTED] >
To: ccook@azgfd.gov

Wed, Jul 28, 2021 at 12:52 PM

I vote yes on paperless permits

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

Comment on Proposal for Paperless Hunt Permit Tag

1 message

John Foote [REDACTED] >
To: "ccook@azgfd.gov" <ccook@azgfd.gov>

Fri, Jul 30, 2021 at 12:07 PM

Dear Celeste Cook,

I just want to say that I agree with the move to have a paperless hunt permit system. With the advancement of technology this is a logical step in the permit process. Thank you.

Sincerely,

John Foote

[REDACTED]



Celeste Cook <ccook@azgfd.gov>

RE: Tag modernization

1 message

John Hensler [REDACTED] >
To: Celeste Cook <ccook@azgfd.gov>

Sat, Jul 24, 2021 at 7:12 AM

K, sounds reasonable as long as you keep the paper tag option. Where I hunt in 5A has no cell coverage. AZ has a lot of remote areas, so probably the case in other places too. So, I would have to leave the untagged animal in the field (spoiling) to drive out for good enough coverage to get the validation code. Depending on where I am, that could be quite a hike and drive. So, you need to keep the paper tag option, not just for a while until hunters usage of the paperless process is high, but forever, unless you can find a way around the coverage issue.

Otherwise seems like a good system. I like the fact that the code needs to be immediately attached to the animal. I hunted in another state that had a paperless tag system with the rule being you had until sun down the next day to call the animal in. That just gave poachers the opportunity to get the animal to their garage, close the door and keep hunting.

Thxs,

John

John Hensler
[REDACTED]
[REDACTED]

From: Celeste Cook [mailto:ccook@azgfd.gov]
Sent: Friday, July 23, 2021 4:40 PM
To: John Hensler <[REDACTED]>
Subject: Re: Tag modernization

Hello John,

Thank you for your follow-up.

Proposed changes include:

- Revising the definition of "attach" to clarify when the electronic tag is considered to be attached to wildlife.
- Defining "electronic tag" (as are all other types of tags).
- Defining "validation code." This information is needed in order to successfully tag your animal with an electronic tag.
- Clarifying a person can get a duplicate electronic tag if the big game animal is subsequently condemned by a Department employee.
- Requiring a person to immediately attach the validation code to wildlife they killed.
- Requiring a person to attach the validation code to wildlife they are giving to another person.
- Clarifying the electronic tag is no longer valid for the take of wildlife once the validation code is attached to wildlife.

Except for defining "electronic tag" and "validation code," all other aspects of the paper tag will apply to an electronic tag. If it is lawful to do with a paper tag, it is lawful to do with an electronic tag and visa versa.

Other changes outside of the electronic tagging process include allowing a person to possess a minor's tag while in the field and cleaning up the transportation and shipping permit portion of the rule.

The proposed rulemaking is attached, the specific rule changes are in the last 7 pages of the document:

- Underlined text is added language.
- Stricken text will be removed from the rule.
- Yellow highlight indicates new requirements.

Please let me know if you need anything further.

Take care and make it a great day!

Celeste

On Fri, Jul 23, 2021 at 1:40 PM John Hensler <[REDACTED]> wrote:

K, this site defines the terminology, but I do not see the written, proposed rule. Hard to comment on rule w/o it. Can you help me find the proposed rule itself ?

John

John Hensler
[REDACTED]
[REDACTED]

From: Celeste Cook [mailto:ccook@azgfd.gov]
Sent: Monday, July 19, 2021 1:22 PM
To: John Hensler <[REDACTED]>
Subject: Re: Tag modernization

Hello John,

Thank you for your inquiry.

To read the proposed rule language (begins on page 7), please use the following link:
<https://azgfd-portal-wordpress-pantheon.s3.us-west-2.amazonaws.com/wp-content/uploads/archive/Notice-of-Proposed-Rulemaking-Tag-Modernization.pdf>

The Department is also hosting a webinar tomorrow at 7:00 pm MST, please use the following link to read more: <https://www.azgfd.com/azgfd-to-host-webcast-on-tag-modernization-process-july-20/>

Feel free to contact me if you require any further assistance.

Best regards,

Celeste Cook, Rules and Policy Manager

On Sat, Jul 17, 2021 at 9:45 AM John Hensler <[REDACTED]> wrote:

Where can I read the proposed rule language. What's posted under Rule Making on AZGFD is just a high level summary. Hard to give feedback without seeing the proposed rule language.

Thxs, John

Sent from [Mail](#) for Windows 10

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Celeste Cook <ccook@azgfd.gov>

Going paperless for tags & licenses

1 message

Jessica Hoover [REDACTED] >
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Fri, Jul 30, 2021 at 11:52 AM

I might be old fashioned but I'm not in favor of the paperless tag system. There is a certain nostalgia about having a paper tag with you on a hunt, Especially when you've been waiting to draw that hunt for several years.

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

(no subject)

1 message

Julio Lara [REDACTED] >
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 1:01 PM

Don't like this at all They're are still a lot of hunters Don't wave service in a lot of units. Some might harvest a animal not report.

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)



Celeste Cook <ccook@azgfd.gov>

Paperless Lic and Tags

1 message

Joe Luciano [REDACTED] >
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 1:36 PM

Great idea long overdue.

Jose Luciano

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

Paperless Tag Proposal

1 message

Johnny Mestrin [REDACTED] >
To: rulemaking@azgfd.gov

Sun, Jun 27, 2021 at 9:24 AM

The idea of going "paperless" with tags is a BAD idea and for several reasons. First and foremost is that it makes it easier for one to move a harvested animal without the obvious indication that it was legally taken and this would not be the case had the animal been tagged in the traditional sense. Also, if for whatever reason a hunter cannot "etag" the harvest immediately, say that his iphone was out of power and still transports the harvested animal he is then in violation! Please don't try and fix a system that is not broken.

Thank you,

John Mestrin



Celeste Cook <ccook@azgfd.gov>

Paperless Tags

1 message

Jack [REDACTED] >
To: rulemaking@azgfd.gov

Mon, Jul 5, 2021 at 12:03 PM

Is the AZGFD going to purchase and subscribe to a carrier for an individuals new phone??? I don't have one or want one that would be able to handle paperless tags. I have a phone only and it stays in the dresser about 95% of the time.

J.E.McGowan

[REDACTED] Prescott, AZ [REDACTED]



Celeste Cook <ccook@azgfd.gov>

Hunt Permit tags

1 message

Justin McCarty [REDACTED] >
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 5:43 PM

To Whom May Ever Concern,

Not everybody has smart phones and the ability to track their location.

You should do a small metal tag that you have to secure with a zip tie.

--

Justin McCarty

[REDACTED]

[REDACTED]



Celeste Cook <ccook@azgfd.gov>

Paperless tags

1 message

'James Maddux' via Rulemaking - Game and Fish <Rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 11:43 AM

Reply-To: James Maddux <[REDACTED]>

To: rulemaking@azgfd.gov

We need paper tags

Sent from my iPad



Celeste Cook <ccook@azgfd.gov>

(no subject)

1 message

Jeremiah M. <[REDACTED]>

Wed, Jul 28, 2021 at 12:53 PM

To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

I believe we should keep the big game tag system in place and have an option to do a app where you can tell your game through an app. Some places we hunt there is no internet service so it would be impossible to tag your big game species immediately so if we have a tag also we can use the option when we're out in the field. Or we could just stick to the old school tag system and keep the tradition going. ultimately that's what I would prefer. everything is going online and we're losing tradition.

Sent from my Verizon, Samsung Galaxy smartphone



Celeste Cook <ccook@azgfd.gov>

Re: July 31: Deadline to comment on proposed paperless hunt permit-tag, licensing system

1 message

'Jose Moreno' via Rulemaking - Game and Fish <Rulemaking@azgfd.gov>
Reply-To: Jose Moreno <[REDACTED]>
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 12:20 PM

It's a good idea for those who have service while hunting. For those who don't have service then a paper tag as an option is good.

>>> AZGFD <e-news@azgfd.gov> 7/28/2021 11:43 AM >>>



GAME AND FISH NEWS

July 28, 2021

July 31: Deadline to comment on proposed paperless hunt permit-tag, licensing system

PHOENIX — Time is running out to provide comment on a notice of proposed rulemaking within Articles 1 and 3 for the purposes of modernizing the big game hunt permit-tag, and hunt and fish licensing system.

The new system will provide customers with added flexibility following the purchase of a license or hunt permit-tag. An app on their own electronic device will enable customers to view their licenses and hunt permit-tags, allow them to electronically “tag” their harvested animal, and complete their harvest questionnaire. Hunters would still have the ability to receive a paper hunt permit-tag, if preferred.

The public comment period runs through Saturday, July 31. Comments are being accepted by:

- Email: rulemaking@azgfd.gov or ccook@azgfd.gov.
- U.S. Mail: Arizona Game and Fish Department, Attn.: Celeste Cook, Rules and Policy Manager, [5000 W. Carefree Highway, Phoenix, AZ 85086](#).
- Telephone: Celeste Cook, Rules and Policy Manager, 623-236-7390.

The Arizona Game and Fish Commission will consider the final rulemaking at its public meeting Sept. 24. To track the progress of this rule, view the regulatory agenda and all previous five-year review reports, and to learn about any other agency rulemaking matters, visit www.azgfd.com/agency/rulemaking/.

Did you know?

The Arizona Game and Fish Department conserves and protects Arizona's 800+ wildlife species but receives NO Arizona general fund tax dollars. Contribute to our on-the-ground conservation efforts at www.AzWildlifeHero.com.

The Arizona Game and Fish Department receives Federal assistance from the U.S. Fish and Wildlife Service, and thus prohibits discrimination on the basis of race, color, religion, national origin, disability, age and sex pursuant to Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990. To request an accommodation or informational material in an alternative format or to file a discrimination complaint please contact the Director's Office at (602) 942-3000 or by mail at [5000 West Carefree Highway, Phoenix, AZ 85086](#). Discrimination complaints can also be filed with the U.S. Fish and Wildlife Service, Office of Diversity and Inclusive Workforce, Attention: Public Civil Rights and Disability Coordinator, [5275 Leesburg Pike, Falls Church, VA 22041](#).

Arizona Game & Fish Dept. · [5000 W. Carefree Hwy, Phoenix, AZ 85086](#)

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This email was sent to jmoreno@bop.gov.

[Click here to view the online version.](#)



noname
28K



Celeste Cook <ccook@azgfd.gov>

modernizing the big game hunt permit-tag, and hunt and fish licensing system.

1 message

JOHN and DIXIE MILLICAN [REDACTED] >
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Fri, Jul 30, 2021 at 10:12 AM

Utilizing this system will allow flexibility and assist in big game harvest survey. My biggest concern would be regarding entering your harvest electronically once big game is harvested, but the successful hunter does not have cell coverage and may be miles or hours away. Since the law specifies that big game must be tagged immediately upon harvest, the above scenario would result in the successful hunter being in violation. Will the tagging statute be changed to reflect this possibility?

Thanks for opportunity to comment.

John Millican

Sent from [Mail](#) for Windows 10



Celeste Cook <ccook@azgfd.gov>

electronic tags

1 message

'Jim Newsome' via Rulemaking - Game and Fish <Rulemaking@azgfd.gov>

Thu, Jul 22, 2021 at 4:10 PM

Reply-To: Jim Newsome <[REDACTED]>

To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

I do not type very well so will dispense with the reasons. Please leave the stick-em tags that are currently used. Really like them and always do a hunter report. Respectfully, Jim Newsome



Celeste Cook <ccook@azgfd.gov>

Re: electronic tags

1 message

Jim Newsome [REDACTED] >
To: Celeste Cook <ccook@azgfd.gov>

Fri, Jul 23, 2021 at 12:23 PM

Not owning a smart phone was one of the reasons I opposed this. However I see a paper tag would still be an option for those like myself. Thanks for the reply Celeste. Respectfully, Jim Newsome

On Thursday, July 22, 2021, 05:00:15 PM PDT, Celeste Cook <ccook@azgfd.gov> wrote:

Hello Jim,

Thank you for commenting on the proposal to establish a paperless tagging system.

I will place your comment in the rule record for consideration by the Commission prior to their making a decision.

To read the proposed rule language, please use the following link: <https://azgfd-portal-wordpress-pantheon.s3.us-west-2.amazonaws.com/wp-content/uploads/archive/Notice-of-Proposed-Rulemaking-Tag-Modernization.pdf>

To read a list of the frequently asked questions, please use the following link: [200923-Tag-Modernization-FAQ_Rev1 \(amazonaws.com\)](https://www.amazonaws.com/200923-Tag-Modernization-FAQ_Rev1).

Feel free to contact me if you require any further assistance.

Best regards,

Celeste Cook, Rules and Policy Manager

On Thu, Jul 22, 2021 at 4:10 PM 'Jim Newsome' via Rulemaking - Game and Fish <Rulemaking@azgfd.gov> wrote:
I do not type very well so will dispense with the reasons. Please leave the stick-em tags that are currently used. Really like them and always do a hunter report. Respectfully, Jim Newsome

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Celeste Cook <ccook@azgfd.gov>

Virtual license

1 message

'JOHN OCONNOR' via Rulemaking - Game and Fish <Rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 1:16 PM

Reply-To: JOHN OCONNOR <[REDACTED]>

To: rulemaking@azgfd.gov

I like the virtual license idea but I would prefer the paper for myself. Hunting doves in 120 degree weather, I don't need an extra item to carry. Paper is a lot easier than a phone. Also I'm guessing the game warden would want to see a license in the field, not back at the truck.



Celeste Cook <ccook@azgfd.gov>

Paperless tags and license.

1 message

Mr Shorty My Friend Jim phelps [REDACTED] >

Sat, Jun 26, 2021 at 6:48 AM

To: rulemaking@azgfd.gov

To whom it may concern.

I am against paperless tags and license. I prefer the old way as I am older and do not care for the new technology.

Thank you

Jim Phelps



Celeste Cook <ccook@azgfd.gov>

Electronic tagging

1 message

JIM PARVIS [REDACTED] >
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 8:02 PM

What happens if in a no service area
Game must be tagged immediately after killed per game laws

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

Paperless tags

1 message

'John Ryan' via Rulemaking - Game and Fish <Rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 2:17 PM

Reply-To: John Ryan <[REDACTED]>

To: rulemaking@azgfd.gov

The way this years draw went I think it's a horrible idea. Keep paper I don't trust your guys system

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

Opinion on new ruling

1 message

Joseph Radosevich [REDACTED] >
To: rulemaking@azgfd.gov

Thu, Jul 29, 2021 at 7:18 AM

Hello, my name is Joseph Radosevich. I live in Phoenix Arizona and have been a resident here for approximately 26 years. I personally would love to have this new system in place. I feel it would make things a lot easier for hunters and anglers also prevent the loss of tags or licenses. I really hope this system goes into place as I am looking forward to using it. Thank you for your time and listening to my comment. Hope you folks have a wonderful day and look forward to trying out this new system.

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

Electronic License and permits

1 message

Juan Ramirez [REDACTED] >
To: ccook@azgfd.gov

Fri, Jul 30, 2021 at 1:12 PM

I think this process you're considering will not help protect Wildlife . In my opinion. First it's ripe to encourage more poaching in Big gameherds won't be tagged anymore.As it is your short handed of Game Wardens in the field. Especially in the Southeastern parts of the State . I hear complaints from some hunters that they don't get checked out in the field !? Think about it ! This is where in my opinion where the dishonest hunters can go out again and shoot another animal . Because it was not checked the first time . By the way, hunters and poachers already know how game wardens operate. They know if once checked they won't see him/her for the rest of the season. These units are big and are in need of more parolling . Please don't make it easier for the dishonest



Celeste Cook <ccook@azgfd.gov>

proposed paperless hunt permit-tag, licensing system

1 message

james sorensen [REDACTED] >
To: Celeste Cook <ccook@azgfd.gov>

Wed, Jul 28, 2021 at 4:38 PM

Hello

I think the paperless permit would be a good idea, as long as you can either print or receive a tag also.

I know a lot of hunters that do not like to carry a phone while hunting. Have found a couple of phones that people have lost in the field.

Thank You

James Sorensen



Celeste Cook <ccook@azgfd.gov>

paperless hunt permit-tag comment

1 message

Justin Sikonia [REDACTED] >
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 8:14 PM

R12-4-101. Definitions

An electronic tag is considered attached once the validation code is fastened to the legally harvested animal.

Perhaps this is more of an implementation or observation comment. I have T-Mobile cellular service which essentially does not work in the forest or desert. If I harvest an animal don't I have to tag it immediately? Will the electronic tag work in an off-line format? If it doesn't, wouldn't I have an illegally harvested animal until I reach cell service to complete the paperless tag?

Thank you,
Justin Sikonia



Celeste Cook <ccook@azgfd.gov>

Permits

1 message

John Sampson <[REDACTED]>
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Thu, Jul 29, 2021 at 11:06 AM

I believe you still need a peal and stick tag in hand, along with your hunting license. Without these who is to say you are legal, and might require officers to need a search warrant. Lots of folks don't have cell phone to take to the field or there is NO reception.

Thank you, John S
Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

Regarding the proposed paperless permit-tag system

1 message

James <[REDACTED]>
To: ccook@azgfd.gov, rulemaking@azgfd.gov

Sat, Jun 26, 2021 at 10:19 AM

Hello,

As an avid hunter and angler in Arizona as well as a resident of 26 years, I strongly support the move to a paperless permit system. Please let me know if any additional information is needed.

Respectfully,

James Tanis

[REDACTED]
Phoenix, AZ [REDACTED]



Celeste Cook <ccook@azgfd.gov>

Electronic Tags Proposal

1 message

Jim Unmacht [REDACTED] >
To: rulemaking@azgfd.gov

Fri, Jul 30, 2021 at 12:43 PM

An excellent idea! Please bring this to fruition as soon as you're able.

Only one caveat, make harvest and/or hunt reporting mandatory, for both the paperless and paper license options.

Harvest data is critical in managing our wildlife populations and the large percentage of nonreporting hunters need to understand the reasoning behind the ask.

A couple options to enhance or ensure compliance:

1. Punitive...failure to report renders them ineligible for the next draw, or
2. Incentive...reporting enables them to be eligible for a chance at either a special draw for a designated tag, or a prize offering of some sort.

Jim Unmacht

New River, AZ



Celeste Cook <ccook@azgfd.gov>

Tag modernization?

1 message

'Jim Vitello' via Rulemaking - Game and Fish <Rulemaking@azgfd.gov>

Fri, Jul 16, 2021 at 8:27 PM

Reply-To: Jim Vitello [REDACTED] >

To: rulemaking@azgfd.gov

More and more you are going against the will of Arizona hunters- I am not bashing you but merely expressing my opinion on your choices - how can we as Hunters trust you ? The camera ban meeting was a mess with antihunting organizations speaking who do not give not even a penny to help ? Cameras DO NOT scare game or cattle that was a lie- Now, you want to change our tags ? To something on our phones ? What If we do not have service ? How would we prove we have a tag ? To my understanding and correct me if I am wrong ; our proof will depend on a internet system that already has let us down by delaying our draw system for weeks and charging hunters extra charges (per facebook hunting groups speaking of it) you have a appearance of not being for Arizona hunters - if you go to internet tags you will take away your greatest ally: the very hunters that support you who not only pay for everything you have but, who watch dog for poaching by looking for that paper tag you now see as a issue, if we started doing things that go against you would you trust us ? The answer is a NO. We are NOT California please stop trying to make us into it. Thank you for hearing me

Joshua 1:9

Jim Vitello



Celeste Cook <ccook@azgfd.gov>

Rulemaking Paperless Tags

1 message

Jim Wooddell [REDACTED] >
To: ccook@azgfd.gov

Sat, Jun 26, 2021 at 6:21 AM

Dear Commission,

I am in favor of the proposed rulemaking for paperless tags. The time has come. However, in Arizona, there are many areas that still do not have cell phone coverage. If the app allows tagging and then waits to upload the data when there is signal, that would be perfect. This should be a concern that is addressed.

Sincerely,

Jim Wooddell



Celeste Cook <ccook@azgfd.gov>

Tag change proposal

1 message

catfish74 [REDACTED] >

Tue, Jul 27, 2021 at 4:07 PM

To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Good evening

I feel the paper tag system already in place should be left as is. Not everyone has a smart phone not everyone that does have one is tech savvy especially the older generation plus when I'm out hunting I usually leave my phone locked in my vehicle also not all phone services work in areas I hunt how do you record in the system you harvested the game you were after if there's no service? And when I'm out hunting with others I may not want to head immediately back to cell service so I can make my harvest legal. With current system I tag all harvested game before I even field dress it which is the law!! First thing anyone should do is put tag on animal.. plus technical issues always happen at horrible times as in phone gets wet broken or lost while in the field then what are you to do to stay legal? Drive to town use a pay phone if you can find one and call Azgfd for what another online tag when you don't even have a working device at the moment and I doubt your officers have time to deal with the amount of extra unnecessary work and confusion this could cause I'm sure they have more important matters to tend too. Leave the paper tags the way they are ain't broke don't try to fix it.. the current system has worked perfectly fine for me the past 36 years and can continue to work just fine on into the future

Thank you for taking my opinion into consideration

Justin wax

Lifelong Arizona resident and sportsman



Celeste Cook <ccook@azgfd.gov>

Technological app for draw?

1 message

John Zurek [REDACTED] >

Wed, Jul 28, 2021 at 10:00 PM

To: rulemaking@azgfd.gov

Cc: Celeste Cook <ccook@azgfd.gov>

First off, thank you for inviting comment and feedback.

I'm not sure what an "app" would cost the sportsmen - but, I bet it ain't cheap! Not to mention maintaining it...

I just returned from an Alaska fishing trip - great experience- 5th trip to AK for me. They have general hunting license for \$26 which includes moose, bear and caribou. If sportsmen in AK choose "trophy" hunt, then they put in for draw - same as AZ. I believe AZ can learn from AK in that, many sportsmen want to go hunting... but are simply "not drawn". I'm certain AZ has plenty of space to put "OTC" tag holders- plenty of GMU's that do not need draw - unless of course AZGFD needs the \$13 draw monies... which I find hard to believe.

Oh another thought on AK... those folks up there live on the game they harvest- and the fish. Not sure what arizonians do with their fair catch? My wife used to comment ... sure is cheaper to go to grocery store... but hey, she is an accountant- what does she know?!

Lastly, the app you are considering seems non-essential (a word I learned in 2020). The sportsmen that are struggling with your sign in process (super simple) will struggle with app as well - so you are only appealing to the "younger" generation that has an "app" for "everything" on their handheld (or watch).

Please reconsider your efforts to spend my hunting/fishing/trapping/waterfowl monies on such an endeavor.

Thank you for your time and consideration and I truly appreciate *your service* to me
- joe sportsman

Sincerely
John Zurek

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

Paperless hunt permit-tag

1 message

jeff zander [REDACTED] >
To: rulemaking@azgfd.gov

Sat, Jul 31, 2021 at 6:23 AM

This is a bad idea there are many people who do not use a smart phone, like me i use a flip phone & have no desire for a smart phone, make it an option to have one printed if a person needs it. Thank you



Celeste Cook <ccook@azgfd.gov>

Paperless permit-tag system

1 message

Ken Gerhardt [REDACTED] >
To: "ccook@azgfd.gov" <ccook@azgfd.gov>

Sun, Jul 18, 2021 at 11:24 AM

Sent from [Mail](#) for Windows 10

Celeste ,

Good day...

I know that an old non techy person cannot stop progress , but some of us do not have technology as the centerpiece of our daily lives .

It is encouraging that "we" could still do the necessary things to participate in AZ hunting and tagging the old fashion way with paper tags . I hope that does remain as an option or some of us will be eliminated from participation .

Please relay my concerns to the Commissioners . Thank you in advance .

I hope that all is well with you in AZ . Sounds as though some much needed rain has occurred ?

Best Regards ,

Kenneth L Gerhardt

Wisconsin



Celeste Cook <ccook@azgfd.gov>

paperless hunt permit tags

1 message

Kelly Jones [REDACTED] >
To: rulemaking@azgfd.gov

Thu, Jul 29, 2021 at 12:47 PM

Not everyone owns or has access to a computer. I say " if it ain't broke, don't fix it.



Celeste Cook <ccook@azgfd.gov>

Proposed Paperless Permit-Tag System

1 message

Ken Langford [REDACTED] >
To: rulemaking@azgfd.gov

Thu, Jul 22, 2021 at 8:23 AM

Arizona Game and Fish Commission:

The proposed paperless permit-tag system is ostensibly good for all (i.e. convenience, cost saving) according to the Department's announcement that invites public comment. Nevertheless, I have a couple of questions / comments.

1. Is it the Commission's / Department's intention to use cell phone location data or other electronic device) to track hunters' locations? If so, I object. If not, I find that intention dubious, or at least short lasting.
2. Announcement of this proposal includes a statement that "Hunters would still have the ability to receive a paper tag if they prefer." Would the paper tag option continue in perpetuity or only until the majority of hunters are using the paperless system? Or until the Commission decides for whatever reason (i.e. convenience, cost saving, ability to track hunters' locations) the paperless-tag system is good for all? No paper applications are accepted for the main draws now; so, it is only reasonable to believe the reassurance of paper tag availability will be temporary.
3. Given the Department's information processing difficulties in executing the draws (e.g. whatever-the-heck-happened in the 2021 antelope / elk draw; untimely updates and incorrect portal account data; inability to announce exactly what tag a hunter draws until a week or later after charges have applied to debit / credit cards; non-resident charges for resident tag draws in the latest draw), might it be more assuring to demonstrate lasting competency in that respect before trying to implement a new data processing improvement? I would respectfully encourage the Commission / Department to permanently fix the ongoing draw issues first.
4. Does this improvement require "service" availability in all geographic areas? Of course, "service" is not always available, or may be unnecessary for a cached application.
5. Does the proposal assume all hunters have an electronic device on their person? Must they if the proposal is adopted? This strikes me as, respectively, incorrect or overbearing, the paper permit option notwithstanding

Thank you for the opportunity to comment.

Sincerely,

Ken Langford
Mesa, AZ



Celeste Cook <ccook@azgfd.gov>

Rulemaking recommendation

1 message

Ken Mccollester <[REDACTED]>
To: ccook@azgfd.gov

Fri, Jul 2, 2021 at 10:46 AM

One thing I can tell you right now I think it is a great idea to have hunting and fishing licenses that are on your phone just like Utah does where if stopped and asked you can bring it up on your phone and show the game warden that you have one.

But a paperless system for tagging animals is a bad idea you will have people taking multiple animals and they won't report animals. Game and Fish wildlife enforcement is not good enough to stop this type of harvesting and I guarantee a lot of it will go on. I think what you should do is issue one tag and one tag only and do not give people a duplicate tag option if they lose their tag.

I think if you lose your tag you're out of luck.

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

NO PAPER TAGS

1 message

Ken Martin <[REDACTED]>
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Fri, Jul 30, 2021 at 1:25 PM

For on thing I do not have a smart phone, or a e mail address. I have to us some one else address to apply for hunts. I have to use the computer at work to send you this. I have a flip phone and there are many places in Arizona that have no signal. Who ever though this up Idea has not traveled Arizona. I have hunted in the Midwest and there is signals everywhere back there. Many times I have see my friends that have smart phone trying to get a signal. I was on a hunt where a other hunt put there tag on a bull elk that my friend had shot. They found it before we did. There was almost a shooting war over this. So if some one by himself has to go get his truck and some else finds the game before he get back they could load it up and drive off with it. This idea also opens up that some else could kill another persons game for them. This idea is not a good one.

Sent from [Mail](#) for Windows 10



Celeste Cook <ccook@azgfd.gov>

Paper less tags

1 message

Karen Shepherd <[REDACTED]>
To: rulemaking@azgfd.gov

Sat, Jun 26, 2021 at 3:15 PM

Please just remember that not all of us have a phone that does that. Especially some us older hunters.. Dan Shepherd



Celeste Cook <ccook@azgfd.gov>

Paperless tag system

1 message

Kevin Matthew Stone <[REDACTED]>
To: rulemaking@azgfd.gov

Tue, Jun 29, 2021 at 7:47 PM

Hello,

Please create a paperless system. Game and fish needs to join the wave of technology other states are already utilizing for their tag system.

Thanks.

Kevin Stone



Celeste Cook <ccook@azgfd.gov>

Tag modernization comments

1 message

Keith Taylor <[REDACTED]>
To: rulemaking@azgfd.gov, tagmodernization@azgfd.gov

Sat, Jul 31, 2021 at 10:22 AM

Hello,

I watched the webcast on tag modernization and related rulemaking. I have a few questions and comments. I have included both the rule making and tag modernization email addresses.

I support tag modernization as described. The rules and discussion about having and using an electronic tag are generally clear. I appreciate the work toward modernizing the systems. I also like the idea of using duct tape or another durable material to tag a harvested animal with a validation code.

Under these rules, will I be able to use the electronic tag validation code on multiple portions of a single harvested animal? For example, if I harvest an elk by myself and need to pack out the broken down carcass in multiple loads, will I be able to put the validation code on each piece? That way the portions with me, at camp, and at the harvest site all have the validation code indicating a legal harvest?

Because there is typically a significant amount of time between purchasing a draw tag and the hunt I think the electronic tag system will work great for this aspect. I am somewhat concerned about how electronic tags will be implemented for OTC and available left-over tags during the hunt. My concern is that people may hunt without purchasing an OTC tag until they have spotted an animal, then purchase the tag only when they are confident of harvesting (assuming they have cell signal), minutes prior to doing so. This, I believe, would reduce the revenue the department receives, without reducing the hunting pressure on the animals and areas. Additionally, some hunters may illegally harvest an animal prior to purchasing a tag, and then purchase a tag minutes after harvesting, or even after inspecting the animal and deciding whether or not to "keep" it. I suspect this second point would be infrequent, but the ability to purchase an OTC tag during the hunt would make it much easier to do.

One solution to this would be not allowing OTC or left over tags to be purchased electronically during the hunt. Either purchase prior to the hunt electronically, or purchase by visiting a vendor or field office during the hunt.

Has any consideration been given to this issue?

I have a couple of suggestions related to future modernization changes. I think the app will allow for updating and integration of many aspects of the AZGFD/customer interaction. For example, integration of license renewal, draw applications, bonus point/portal features to the app. Also, a draw application process that allows the purchase of multiple draw applications in a single cart for multiple species. Rather than having to checkout multiple times. This is more convenient for the user, and also reduces the chance for mistakes from entering information multiple times.

Lastly, I think mandatory harvest reporting is much easier to implement with the electronic tags and app. Hopefully response rates will improve by themselves, but if they don't the app will provide more direct interaction with hunters to encourage (or require) harvest reporting. You did mention in the webcast that location and photo uploads will not be required/requested. But that functionality could be implemented and made to be voluntary. I would be happy to provide additional details about my hunt experience and animals harvested if it supports improved conservation, biological data collection, and/or enforcement . An optional citizen-science initiative. This goes for big game, small game, fishing etc.

Thanks again for the work on modernizing the tags, and the open communication process..

Keith Taylor
Tucson, AZ



Celeste Cook <ccook@azgfd.gov>

E-Tags

1 message

[Redacted] <[Redacted]>
to: ccook@azgfd.gov

Fri, Jul 30, 2021 at 10:14 PM

All for the adaptation and flexibility. Should be able to hunt / tag / process game without paper. What happens if (during the hunt) your phone dies and that's where it all lives. I'll re-read the wording but wanted to ensure that was considered, especially if you happen to complete the kill and the recovery goes well into the evening...

Kyle "Atho" Wallace

[Redacted]

[Redacted]

[Redacted]

5th Gen Fighter and Air Dominance SME



Celeste Cook <ccook@azgfd.gov>

(no subject)

1 message

Laura Cavaliere [REDACTED] >
To: rulemaking@azgfd.gov

Thu, Jul 29, 2021 at 10:19 AM

Although a lot of the younger generation knows how to do things on line a lot of the older generation does not, you would be cutting out a lot of older people who put in by paper. Also if someone loses there phone or computer goes down they have paper tags to fall back on. I think it would be very unfair to get rid of paper applications. Thanks for your time. Laura



Celeste Cook <ccook@azgfd.gov>

Paperless

1 message

les egge [REDACTED] >
To: rulemaking@azgfd.gov

Thu, Jul 29, 2021 at 3:32 AM

No way, I am not a tech guy and need a tag so what would I do to get a tag? I always go to my AZGF regional office to get my tags.



Celeste Cook <ccook@azgfd.gov>

Tags

1 message

Louis Gonzales [REDACTED] >
To: rulemaking@azgfd.gov

Thu, Jul 29, 2021 at 9:10 PM

I don't completely understand why there is any consideration for paperless tags. Some things should not be paperless. Too many changes in such a short time .

Sent from my iPad



Celeste Cook <ccook@azgfd.gov>

Paperless hunt permit-tag and licensing system

1 message

Lacey Roy <[REDACTED]>
To: "ccook@azgfd.gov" <ccook@azgfd.gov>

Thu, Jul 29, 2021 at 1:10 PM

Good Afternoon,

I am submitting my comment for the proposed rule to move our permit tags and licensing over to technology in the form of a phone application. As fluent as I am within the technological world, I find a delicate and important document such as our tags and licenses do not belong on our electronic devices. Technology is unreliable, it is easily manipulated, hacked and I would not trust my phone, laptop, etc. to hold any of my important documents such as my driver's license, social security card, birth certificate and the likes and the same applies with my hunting documents. I understand we will be allowed the option to request paper tags with this new system, but I am notifying you that at least I will not use your new system. I prefer paper in my hands and on my person. If I were out in the field and my phone fell off a cliff, I could not harvest an animal. I am not fond of portals, they glitch, crash, lock you out – the list goes on.

I believe there are far more important things that can be done with your time and funds. I am all about being up to date in this world of computers, but some things are best left on paper.

Thank you,

Lacey Roy

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]



Celeste Cook <ccook@azgfd.gov>

(no subject)

1 message

Luis Valenzuelas [REDACTED] >
To: rulemaking@azgfd.gov

Fri, Jul 30, 2021 at 8:37 AM

I am against total, paperless, because ,some of us old hunters dont have a computer, and our old phones, are hard to ad more applications to it, , Some of us can not afford more expensive phones, or pay both internet and phone service, thank you
Luis Valenzuela



Celeste Cook <ccook@azgfd.gov>

Paperless Permit-Tag System

1 message

[Redacted] >
to: rulemaking@azgfd.gov

Sat, Jun 26, 2021 at 10:11 AM

I totally support the paperless tag system. It will streamline the entire process

Merrill Brown

[Redacted]

Scottsdale, AZ [Redacted]

[Redacted]

MERRILL BROWN

[Redacted]

[Redacted]

Scottsdale, Arizona

[Redacted]

203.470.4714

[Redacted]



Celeste Cook <ccook@azgfd.gov>

Electronic tags

1 message

mark dill jr [REDACTED] >
To: rulemaking@azgfd.gov

Sat, Jun 26, 2021 at 12:31 PM

So you want take digital tags? Makes no sense, this will open it up to hackers, let's say someone doesn't get a tag but is good with hacking, now all of a sudden they have a digital tag. You give out say 200 tags but there is 300 after a hacker messes with the system. Almost every software has been hacked at some point in time and alot of them are companies that have massive budgets to prevent hacking.



Celeste Cook <ccook@azgfd.gov>

Comment

1 message

Mike Kofmehl <[REDACTED]>
To: rulemaking@azgfd.gov

Sat, Jun 26, 2021 at 10:33 AM

I like the change recommended

This will be an app that you load on phone or computer device and can tag your animal electronically without cell or WiFi service correct?

Needs to be because I don't get any service a lot where we hunt.

I think under certain circumstances you have to be given grace period to tag your animals electronically if you lose battery power on device if you can show that. You should be allowed time to do it as soon as you can charge device or get power.

Thanks



Celeste Cook <ccook@azgfd.gov>

Paperless proposal

1 message

'Mike Mitchell' via Rulemaking - Game and Fish <Rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 3:28 PM

Reply-To: Mike Mitchell <[REDACTED]>

To: rulemaking@azgfd.gov

I strongly oppose making licenses and tags a paperless process requiring an "app" along with a smartphone or other electronic device.

I don't own a smartphone and don't want one. How do you justify forcing hunters like me to buy an electronic gadget they don't want to be able to hunt?

Thank you.

Sent from my iPad



Celeste Cook <ccook@azgfd.gov>

Paperless Tags Sysyem

1 message

Mike MacDonald [REDACTED] >
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 12:36 PM

Looks like it'll be ripe with hacks and fake tags and licenses. There's a hard enough time getting the applications in on the system and we're going to do this.

I'll stick to paper thanks.



Celeste Cook <ccook@azgfd.gov>

Comments on proposed paperless hunt permit-tag, licensing system

1 message

Matthew Myrick <[REDACTED]>
To: "ccook@azgfd.gov" <ccook@azgfd.gov>

Thu, Jul 29, 2021 at 7:32 AM

Comments on AZGFD paperless tag/licensing system:

The main problem for allowing mobile devices to be utilized for electronic tagging purposes is that mobile devices are extremely fragile, prone to breakage, susceptible to moisture and unreliable in field conditions. I hope the AZGFD prepares well to deal with this challenge! I believe a question should be added in the online application process that allows the applicant to choose between a paper tag or digital tag, i.e., if drawn I request a paper tag yes/no or digital tag yes/no. Applicants that choose a paper tag SHOULD NOT be charged an additional fee for the paper tag!

Thank you for your consideration,

Matt Myrick

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Celeste Cook <ccook@azgfd.gov>

Comment - Paperless Tag, Licensing System

1 message

Matthew Nehrmeyer <[REDACTED]>
To: rulemaking@azgfd.gov

Thu, Jul 29, 2021 at 7:40 AM

I am opposed to the proposed change. There are many folks that do NOT prefer to do business electronically and do not use smart phones. What are they supposed to do?

I'm against it.

Matt Nehrmeyer



Celeste Cook <ccook@azgfd.gov>

Rule making change

1 message

Mark Strout <[REDACTED]>
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 2:02 PM

I don't think it would be smart to change tags. I like the paper tags and it's part of the experience. This being said I did tell you guys my opinions on game cameras and I thought they should stay. As did a lot of the hunting community people. But even though it was 3 to 1 that we thought they should stay you guys said the hell with what they want and did whatever you want. so why the hell are you gonna listen to us now. Thank you disgruntled Arizona Hunter Mark Strout.



Celeste Cook <ccook@azgfd.gov>

hunt regulations to consider

1 message

Mark Vollmar <[REDACTED]>
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Thu, Jul 29, 2021 at 8:11 AM

I would prefer to have a paper big game tag.

thank you



Celeste Cook <ccook@azgfd.gov>

Proposed hunt rule changes...

1 message

Mark Vollmar [REDACTED] >
To: "ccook@azgfd.gov" <ccook@azgfd.gov>

Thu, Jul 29, 2021 at 8:12 AM

I would prefer to have a paper big game tag.

thank you



Celeste Cook <ccook@azgfd.gov>

Great idea

1 message

Matt [REDACTED] >
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 3:38 PM

Hi guys,
Great idea to add paperless tag system to our current setup. I think CO uses this option and it works fairly well. Just remember to protect the database.

Thanks!

Matt Warner



Celeste Cook <ccook@azgfd.gov>

Paperless Tag Proposal

1 message

Noah Hayes-McKeirnan <[REDACTED]>
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Thu, Jul 29, 2021 at 5:44 PM

Hello,

I am in favor of this proposal. Thank you, and enjoy the coming weekend!

Kind regards,

Noah Hayes-McKeirnan

[REDACTED]
Flagstaff, AZ [REDACTED]



Celeste Cook <ccook@azgfd.gov>

Paperless Tags

1 message

'Robert Brito' via Rulemaking - Game and Fish <Rulemaking@azgfd.gov>

Wed, Jun 30, 2021 at 9:00 AM

Reply-To: Robert Brito <[REDACTED]>

To: rulemaking@azgfd.gov

Hello, I believe this is somewhat of a good idea. The problem is cellular service is not yet available every where. In the field checks by Game Officer or volunteers there maybe no cellular service on a hunt. I believe with the paper tags and license, both systems would work well together. One opinion. Please keep up the good work. Thank you for your time.

Robert Brito

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

(no subject)

1 message

robert baret [REDACTED] >
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 7:22 PM

No way some old people don't have smart phones or a computer



Celeste Cook <ccook@azgfd.gov>

Hunt Permit Tags

1 message

'CenturyLink Customer' via Rulemaking - Game and Fish <Rulemaking@azgfd.gov>

Thu, Jul 29, 2021 at 11:10 AM

Reply-To: CenturyLink Customer <[REDACTED]>

To: rulemaking@azgfd.gov

I prefer paper tags, just make them smaller again. I do not want more apps and I try not use them.

I do not like the intrusion.

Please just send me the tags.

Thank you,

Richard J Byrne Jr.



Celeste Cook <ccook@azgfd.gov>

(no subject)

1 message

Robert Dias [REDACTED] >
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 1:20 PM

Bad idea.



Celeste Cook <ccook@azgfd.gov>

New Electronic Tags - Input

1 message

Ryan Everett <[REDACTED]>
To: rulemaking@azgfd.gov, ccook@azgfd.gov

Fri, Jun 25, 2021 at 8:41 PM

Just my two cents here.

Spend the money and do it right! If you do, this will be HUGE and a much welcomed entrance into bringing AZGFD more into the mobile capable world we live in!

Such a good idea and much needed, just make sure to do it right!

Thank you,

Ryan Everett



Celeste Cook <ccook@azgfd.gov>

Electronic tagging and Licensing.

1 message

Richard Hooper [REDACTED] >
To: rulemaking@azgfd.gov

Thu, Jul 29, 2021 at 6:44 PM

I am opposed to the digitalizing the tagging and licensing, because in due time the option will later be disregarded.

Thank you,

Richard Hooper



Celeste Cook <ccook@azgfd.gov>

paperless permit and licence

1 message

RANDY MARONEY <[REDACTED]>
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 6:21 PM

I think this is a great use of technology but still having access to printing a paper copy would be good as I don't always have my phone with me while fishing.

Thank you

Sent from [Mail](#) for Windows 10



Celeste Cook <ccook@azgfd.gov>

Electronic tag system

1 message

robert mansell [REDACTED] >
To: ccook@azgfd.gov

Wed, Jul 28, 2021 at 12:13 PM

I fully support the proposed change. Robert Mansell

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

Paperless license application

1 message

Ray powell <[REDACTED]>
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 5:28 PM

I believe that a lot of our established core hunters outdoorsman in the state Arizona choose not do use the Internet or do not have the ability to apply for online licenses I believe the paper should be kept in it works way better for our older hunters Thank you concerned Hunter Raymond Powell

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

Electronic tagging

1 message

Randy Spray [REDACTED] >
To: "ccook@azgfd.gov" <ccook@azgfd.gov>

Sat, Jun 26, 2021 at 6:24 PM

I like the idea of reporting your harvest electronically. I do not like the idea of tagging an animal electronically I don't always have cell service. What if I leave my phone in camp to many what if's. If you give a person an amount of time before the need to tag it. They will take the animal home or butcher it in the field and go kill another. Then report the second one. Bad idea. The reporting is great Don't know how you would enforce the tagging in Arizona. You would be discriminating against people who don't have phones

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

Harvest reporting

1 message

Randy Spray [REDACTED] >
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Sat, Jun 26, 2021 at 7:24 PM

I like the reporting on your phone.for the harvest I do not like not requiring you to tag the animal with a tag just doing it by phone some areas do not have phone service the animals need to be tagged before they are moved. If not it will be to easy to harvest more than 1 Kansas has both and it would be very easy to harvest more than what is legal. Except they have liberal limits. We don't

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

Paper less permits and tags a lot of people don't have a computer or the Internet

1 message

Rayburn Smith <[REDACTED]>
To: rulemaking@azgfd.gov

Sun, Jun 27, 2021 at 4:27 AM

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

paper

1 message

Robert Strecker <[REDACTED]>
To: rulemaking@azgfd.gov

Thu, Jul 29, 2021 at 8:35 AM

please keep the current system. i am too old to change



Celeste Cook <ccook@azgfd.gov>

paperless tag

1 message

Richard Wilhelm [REDACTED] >
To: rulemaking@azgfd.gov

Wed, Jul 14, 2021 at 4:55 PM

Sometimes I wish you folks would leave well enough alone. Not everyone has the tech capability to do all the things Game and Fish wants to institute. What if I do not have a cell phone in the field to get the tag off the app? What if I have my phone but have no service where I am at. Not only that, but I have no clue how to get the app, or any other one for that matter. If there is a way around this, or if I am misunderstanding the notice about this, please advise me.

Thank you, Richard Wilhelm



Celeste Cook <ccook@azgfd.gov>

Paperless hunt tag system comment

1 message

Robert Zavala [REDACTED] >
To: rulemaking@azgfd.gov

Thu, Jul 29, 2021 at 11:22 AM

There needs to be a way to maintain a paper system in place. Let's not have Arizona Game and Fish force every sportsman to spend extra money to keep the latest technology available and purchased. New phones soon go out of date and require replacement. I eventually see this as a slippery slope, in the same way that mail in applications are no longer accepted for hunt permit tags. Eventually, the wealthy with the latest gadgets will have all the benefits of the electronic systems and those who are less well off, or who simply desire to be less dependent on electronics for every task in their life, are inconvenienced and driven from the sport.

Dr. Robert Zavala
[REDACTED]



Celeste Cook <ccook@azgfd.gov>

Paperless tags

1 message

ROBERT ZARZYCZNY <[REDACTED]>
To: rulemaking@azgfd.gov

Fri, Jul 30, 2021 at 1:30 PM

In my personal opinion, this is a bad idea. First of all, I think people that have the ability to manipulate computer type devices can alter or possibly even generate tags that were not legitimate. Secondly, many of the areas that I hunt in, I do not have cell phone service and how would that work if a game warden wants to check my tag and my phone will not connect to show the document? I would like to see the tag system remain the way it is and not turn it into another electronic device contraption.

Thank you for the opportunity to comment.
R. Zarzyczny

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

Paperless

1 message

Sean Athey <[REDACTED]>
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 12:19 PM

I think the paperless system is a fantastic idea for consistency and less paper products that have to be used or wasted. Definitely makes it easier for hunters.



Celeste Cook <ccook@azgfd.gov>

Proposed rulemaking - paperless permit tag system. MY public comment.

1 message

S.F. [REDACTED] >
To: ccook@azgfd.gov

Sun, Jun 27, 2021 at 12:25 PM

Sunday, June 27, 2021

Greetings Celeste:

This is my public comment in regards to the purposed paperless system.

In my opinion it would be a disaster, an accident looking for a place to happen.

My reasons are as follows:

1. NOT everyone owns a smart phone. Especially older generations & senior citizens. A paperless system would put a undue burden on them.
2. Not everyone carries a smart phone into the woods-wilderness.
3. Most cell phone service is nonexistent in the woods, wilderness & remote areas.
4. I never carry a cellphone while hunting, fishing or hiking. I do carry a compass or satellite GPS & am proficient with their use thanks to the Military. I am also proficient in wilderness survival.

(those who are not & chose to trek into the wilderness alone are a danger to themselves & others & a burden on the tax payer)
5. The paper system works fine & is efficient, and adequate. If it is not broke, why try to fix it? (one has to wonder is the AZGFD trying to cut jobs by implementing a paperless system ?)
6. It is bad enough that the "play station generation" has little to no respect for the outdoors, via my first hand observations of the trash & litter they leave behind & the destruction they

Do to the outdoor environment such as carving graffiti on live trees, spray painting rock & boulder out cropping's shoving boulders into streams & creeks, shooting signs & trees and leaving

Camp fires unattended or abandoned. The list goes on & on.
7. The electronic paperless system (which can be hacked & manipulated & probably would be) will encourage more of the subjects mentioned in #6 above, to abuse the Outdoors & your paper less

System.

As an Outdoorsman, Conservationist, Hunter, Fisherman an past Wildland Firefighter it is my opinion, Implementing a Paperless system would be a DISASTER of epic proportions.

I AM TOTALLY AGAINST IT. .

I have offered public comment in the past, most recently on, non-streaming trail cameras & there real benefits. Unfortunately my comments may have fallen on deaf ears.

I hope this is not the case with my comments on the paper less system proposal.

Thank You

Scott Finley

Snowflake, AZ.



Celeste Cook <ccook@azgfd.gov>

Hunt permit tag

1 message

sam Giangardella <[REDACTED]>
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 1:31 PM

Paper tag is still the way to go.

Sam G



Celeste Cook <ccook@azgfd.gov>

Paperless hunt tag/ APP

1 message

Sage Carli [REDACTED] >
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 3:46 PM

Excellent idea! Solves the issue of accidentally leaving the paper.....(Speaking from experience)

Thanks!

SAGE CARLI

[REDACTED]



Celeste Cook <ccook@azgfd.gov>

E-tags

1 message

SK [REDACTED] >
To: rulemaking@azgfd.gov

Sat, Jul 31, 2021 at 9:16 AM

I am all for the modernization of the big game hunt permit-tag, and hunting and fishing license system. I believe the app will increase hunter participation of harvest reports, and the app should streamline a lot for hunters and anglers in the field.

Spencer Kirby

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

paperless tags

1 message

Scott Lundberg [REDACTED] >
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Sat, Jun 26, 2021 at 8:25 PM

This is a terrible idea!

1- not everyone has a phone, or uses it for apps!

2- It is stated that people can still get a paper tag, but for how long, and then will we eventually be forced to use your app? Of course we will.

3- No paper so you cut costs, so are tag fees going to go down? Don't think so!

Scott Lundberg



Celeste Cook <ccook@azgfd.gov>

Paperless tag Comment

1 message

'SCOTI MONTIERTH' via Rulemaking - Game and Fish <Rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 4:19 PM

Reply-To: SCOTI MONTIERTH <[REDACTED]>

To: rulemaking@azgfd.gov

Many hunters do not carry "smart" phones or phones at all, especially when hunting. Many hunt areas do not have cell service which would impede the ability to "electronically tag" your harvest. How would this be accommodated for? Why update the tag system to be more modernized while at the same time de-modernize hunting by banning game cameras?



Celeste Cook <ccook@azgfd.gov>

Paperless Hunt Permit-Tag

1 message

Samuel Packard [REDACTED]
To: ccook@azgfd.gov

Wed, Jul 28, 2021 at 2:55 PM

As I understand it, there will still be the traditional paper-tag option. I don't mind having more options, to include electric options. Personally, I will always want to use a paper tag. I don't want to have to worry about battery life and water when I'm in the woods.

Thanks,

Sam Packard



Celeste Cook <ccook@azgfd.gov>

Tag modernizing

1 message

Seth Tabaka <[REDACTED]>
To: rulemaking@azgfd.gov

Fri, Jul 16, 2021 at 6:04 PM

Literally every western state does it better than AZ. You should be able to purchase tags and licenses via the internet and either 1. Mail them or 2. Print them like Nebraska and Ohio and probably many other states.

I hunt all over the country and AZ is the absolute worst.

Seth



Celeste Cook <ccook@azgfd.gov>

Paperless Tag

1 message

Roxie Britt [REDACTED] >
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Thu, Jul 15, 2021 at 6:15 AM

I believe I have already made comments to this proposed rule but did not keep a record , so please consider these comments.

As a Game Ranger, I experienced the old metal self-locking tags and the transition to the self-adhesive paper tag. I always considered the paper tag the best that was in use anywhere in the US. During my career I was contacted by other states and asked to send samples of the AZ tag for consideration of use. I also urged the Director to encourage other western states to adopt it.

It was not without fault as in some years the quality of the paper or adhesive was not satisfactory.

As we know there are folks that try to beat the system and take multiple bag limits. I witnessed instances of such violations in the field and did issue citations to those I was able to observe. The paper tag had an advantage: it could not be easily attached in a hurry as when the Game Ranger was detected nearby.

I fully realize I live in the era of abandonment of paper records and accept it. I personally prefer the paper tag since I do not own an iPhone or have immediate plans to acquire one....and the paper tag is much easier to carry on your person. If this rule as proposed is adopted, I urge AGFD take into consideration the amount of cyber based fraudulent transactions present in our society and design a fool proof (at least at that point in time) method to support the e-tag. The "firewall" will need continuous monitoring and updating. I also ask AGFD to understand the environment a Game Ranger works in, i.e. remote locations some without any form of communication. Please do not make his/hers duty to check a tagged big game animal more difficult.

Thank you for reviewing my comments.

Tom Britt

Sent from [Mail](#) for Windows 10



Celeste Cook <ccook@azgfd.gov>

Tag modernization

1 message

Thaddeas Coleman <[REDACTED]>
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Sat, Jul 24, 2021 at 9:23 PM

To whom it may concern,
I am curious how the use of tagging an animal electronically will be effective, if the majority of remote hunting areas do not have cellular service. If there are not some clear rules put in place it you could end up with more of a hassle than it would be worth.
Thanks, Thaddeas Coleman

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

Electronic tag

1 message

Tammy E <[REDACTED]>

Wed, Jul 28, 2021 at 6:50 PM

To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Don't really understand how this can work. When you are hunting 95% of the time you have no service. So this being said if you harvest an animal and driving around with an untagged animal because you have no service. You get stopped by game& fish now what!! How can you prove you had no service and did not intentionally not tag this animal. I see this causing lots of problems. Probably a lot more people killing and not tagging animals so stupid!! We usually don't have service till we leave our camp to return home so by that time animal is already cut up and on ice with no tag if this is the new policy. Or do we leave our camp drive an hour or so to find cell service so we can electronically tag.

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

Proposal For Electronic Tags

1 message

Tony Garcia [REDACTED] >
To: "ccook@azgfd.gov" <ccook@azgfd.gov>

Wed, Jul 28, 2021 at 3:41 PM

Good Afternoon Ms. Cook,

My name is Tony Garcia and I reside in Prescott. I am an avid hunter and have hunted all over the country. In fact, I hunt a state, Indiana, where you are required to electronically tag a lawfully taken big game animal. I can share with you some of the unfortunate stories I have heard from my friends in law enforcement there. The first is the submission of "ghost does" so that the hunter can get their "earn a buck tag" by harvesting a doe first. Rather than ethically participate in the good intentions of the wildlife managers these hunters simply found a way around the need to harvest a doe. Second, if a hunter harvests a big game animal and they think they can get home where they butcher the animal themselves, they did so. They then go out again to hunt, defeating the purpose of buck limits in Indiana. The last issue was failure to try track a wounded animal. An electronic tag creates no incentive to ethically track a wounded animal.

I would also add, that anyone who has a cell phone and has taken it out into the outdoors runs into far more dead spots than they care to remember. If the law requires a legally harvested animal to be tagged immediately after it has been killed and there is no cell reception, how can that person comply with the law? Additionally, the commission needs to take into account the recent elk tag application fiasco with the department's computer system. I can only imagine that technology will fail when most needed. A system on any opening day could be inundated and crash when multiple users are trying to e-tag an animal. The inconvenience of carrying a paper tag is minimal. And, if someone is going to be trusted with a gun, I would hope they have the sense to pack and carry their paper tags, too. When I pack for a hunt, the first two things I pack are my license and tag. Everything else is secondary. I can see an e-tag system as a back up for the occasional hunter who forgets their tag, but it should not be the primary tag system.

I understand the commission's concerns regarding rising costs. If I recall, this past elk season, there were an additional 40,000 non-residents who applied for tags in Arizona. I may be wrong on the number, but the point is that more non-residents see the hunting opportunities which Arizona offers. The commission should consider, as an alternative to e-tags, is to raise the cost of application fees for non-residents by \$5 and Arizona residents by \$1 to cover the additional costs of paper tags. It seems that the state who keeps the animals in trust would be better meeting their trust responsibilities by not making it easier for people to poach or simply waste an animal.

Thank You,
Tony Garcia



Celeste Cook <ccook@azgfd.gov>

Paperless license and Big game draw tag rulemaking

1 message

Tiffany Huerta <[REDACTED]>
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 8:31 PM

I think you should keep the hunting and fishing license electronically and keep the big game draw tag the way it is because of some people don't have cell phones with internet access to verify if the tag was filled.



Celeste Cook <ccook@azgfd.gov>

Paperless tags

1 message

Thomas Koukalik <[REDACTED]>
To: rulemaking@azgfd.gov

Thu, Jul 29, 2021 at 6:29 AM

I hunt units 31 and 32 often.....My AT&T smart phone does not have a reliable signal in numerous locations.....this is a no go for me.....I NEED a paper tag or I cannot prove I have the tag if asked by G&F.. I VOTE NO

--

Fate whispers to the warrior, "You cannot withstand the storm" and the warrior whispers back, "I am the storm."



Celeste Cook <ccook@azgfd.gov>

On line permits

1 message

Tom Florman [REDACTED] >
To: Celeste Cook <ccook@azgfd.gov>

Wed, Jun 30, 2021 at 8:17 PM

I guess the whole world uses some form of smart phone, boy that's a good one! You know I don't expect this not to be approved but I know at least, 50 to 100 hunters who don't use any form of smart phone because they're still "old school" and I see this as one more hoop they'll think they have to jump through just to go hunt any more. I have a friend who goes to the regional office just to submit permits because he's technology challenged! Computers frustrate him and yes he's a senior! I don't see that changing for a lot of folks whether seniors or not but as I said I don't see this not passing the AZG&F Board when the time comes. I guess I just see it losing more hunters due to frustration. I know this is a cost cutting process, otherwise why would you even consider it. I also see where there will eventually be no hard copy permits period. I don't expect that to follow 10 years from now but probably within 2 or 3 years from this passage. I guess we'll see after all is said and done. Nuff said



Celeste Cook <ccook@azgfd.gov>

(no subject)

1 message

Tony Martinez Jr [REDACTED] >
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 4:21 PM

Hello, I am 32 years old and I've been hunting my whole life. I do not think that tags should be paperless. First of all I think going paperless will increase the odds of people poaching wildlife. Secondly apart of hunting and being outdoors and least for me is to unplug from the world enjoy nature and spend time with family and friends, going paperless just gives people a reason to be on there phones. And thirdly if for some reason someone is out in the field and there phone drops and breaks. How are they supposed to tag something? I know growing up going hunting one of the most memorable times after harvesting an animal is pulling the paper off the sticker and putting it onto the antlers.

Thank you



Celeste Cook <ccook@azgfd.gov>

Proposed E-Tag

1 message

Tanner Ragan <[REDACTED]>
To: rulemaking@azgfd.gov

Wed, Jul 7, 2021 at 5:49 AM

I definitely approve of the new Electronic tag system. I think it would be very beneficial to Gane and Fish, and the users. My only concern is how well the app would be basing the quality off the last two draws we have had.

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

paperless hunt tags & licensing

1 message

Tommy Skates [REDACTED] >
To: rulemaking@azgfd.gov

Thu, Jul 29, 2021 at 6:59 AM

I'm ok with it because hunters can still get the paper tag & license if they want.



Celeste Cook <ccook@azgfd.gov>

Paperless tag

1 message

tommy walls [REDACTED] >
To: rulemaking@azgfd.gov

Sat, Jun 26, 2021 at 10:01 AM

This is a wonderful idea!!!! As an avid hunter it would be nice to be able to manage this with a smart phone and not more paper.

Thanks
Thomas Walls

Sent from my iPhone



Celeste Cook <ccook@azgfd.gov>

E tags

1 message

'Terry Wagner' via Rulemaking - Game and Fish <Rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 11:44 AM

Reply-To: Terry Wagner <[REDACTED]>

To: rulemaking@azgfd.gov

Fine I'd there was a cell signal everywhere in the state



Celeste Cook <ccook@azgfd.gov>

e tag

1 message

Vincent Stazenski [REDACTED] >
To: "rulemaking@azgfd.gov" <rulemaking@azgfd.gov>

Wed, Jul 28, 2021 at 9:38 PM

Bad idea. Now when a sportsman is in the field and see another hunter with a harvested animal with out a tag attached to the carcass it raises a red flag and can be reported to the azgfd as possible wrong doing. Also the electronic tag may not have cell service at a remote location, may have a dead battery or just as easily as a physical tag be left at home or lost. Small businesses that sell license and tags and stamps also gain business when customers purchase other merchandise while purchasing their tags. There are many sportsmen that I know that struggle or get help just to apply for the draw now that it is online only and would really have problems with an app or electronic tag process. I think the e tag will encourage some to bend or break the rules as having a game animal carcass with out a visual physical tag attached will go with out a second look/thought When you attach your tag to an animal that is your animal and every other hunter that sees it or butcher, taxidermist or passer by knows it and that is legally taken and claimed. Without a tag on the animal there will always be a question and doubt. The physical tag is a great tool for the game warden as well as a perfect claim for the hunters harvest. If you want to do away with the tag just let the wardens check everyone on the list that drew a tag when everyone is reporting deer with no tag attached to the carcass. Keep the tag. Thank you, Staz



Celeste Cook <ccook@azgfd.gov>

Fwd: QuestionPro - [Front Counter Survey] - 53120796

1 message

Luke Thompson <lthompson@azgfd.gov>
To: Tag Modernization <TagModernization@azgfd.gov>

Mon, Jun 28, 2021 at 9:05 AM

Team - FYI on comment regarding Electronic Tags.

LUKE THOMPSON | BRANCH CHIEF - HABITAT, EVALUATION, AND LANDS
ARIZONA GAME AND FISH DEPARTMENT - WMHB

OFFICE: 623.236.7302
MOBILE: 928.856.0724
EMAIL: lthompson@azgfd.gov

azgfd.gov | [5000 W. Carefree Highway Phoenix, AZ 85086](#)

----- Forwarded message -----

From: **CustomerService - Game and Fish** <customerservice@azgfd.gov>
Date: Mon, Jun 28, 2021 at 8:31 AM
Subject: Fwd: QuestionPro - [Front Counter Survey] - 53120796
To: Luke Thompson <lthompson@azgfd.gov>

Good morning,
This came through customer service email.
Thank you.

----- Forwarded message -----

From: <rbabel@azgfd.gov>
Date: Sat, Jun 26, 2021 at 4:07 PM
Subject: QuestionPro - [Front Counter Survey] - 53120796
To: customerservice <customerservice@azgfd.gov>

Response Details

ID	53120796
Timestamp	06/26/2021 16:03:00
IP Address	72.104.89.14
Time Taken	251 seconds
Survey Language	English
Email Address	
Email List	

Geo Coding

Country	US
Region	NM
City	Carlsbad

Area Code	
DMA Code	

Contact Information

First Name

William

Last Name

Decker

Phone

[REDACTED]

Email Address

[REDACTED]

* Did you visit a region, facility or use our online services?

» Flagstaff

	DISAGREE STRONGLY	Disagree	Neither Agree nor Disagree	Somewhat Agree	AGREE STRONGLY
* I was pleasantly greeted in a timely manner:			x		
* I was satisfied with the service I received:			x		
* The customer service representative exceeded my expectations:			x		
* Based on my experience today, I will recommend Arizona Game and Fish to my family and friends:			x		

What did you enjoy most about your Arizona Game and Fish visit?

trying to give input for rules being made on paperless. I need paper tags do not have a or ever want a smart phone Thank you

What did you find least enjoyable?

N/A

If we could make one improvement to our products and/or services, what would it be?

I need a paper Tag . I am old and do not have or want a smart phone

Front Counter Survey



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CUSTOMER SERVICE
ARIZONA GAME AND FISH DEPARTMENT

OFFICE:
602.942.3000

EMAIL:
customerservice@azgfd.gov

azgfd.gov | 5000 W. Carefree Highway, Phoenix, AZ 85086

Join our new [Conservation Membership](#) program and ensure a wildlife legacy for the future.



Celeste Cook <ccook@azgfd.gov>

Paperless Tag System

1 message

William Griffin [REDACTED] >
To: ccook@azgfd.gov

Sun, Jun 27, 2021 at 5:09 PM

I have some concerns about a paperless tag system; first of all I do not like showing an app on my phone to anyone outside of my family. What about game processors or if I am stopped by Fish & Game or other law enforcement? What if it is necessary to cross state lines?

Until all issues are resolved, I will be using a paper tag!



Celeste Cook <ccook@azgfd.gov>

Paperless, license& permits

1 message

Warren Gardepe <[REDACTED]>
To: rulemaking@azgfd.gov

Wed, Jul 28, 2021 at 5:43 PM

Don't do it, I don't carry a cell phone when I'm hunting. Thanks Warren



Celeste Cook <ccook@azgfd.gov>

Paperless tag and license

1 message

William Jones [REDACTED] >
To: ccook@azgfd.gov

Wed, Jul 28, 2021 at 2:34 PM

I think a paperless system for licenses and tags as described would be a boon, although aspects of the app would have to work without cellular reception as there are parts of the state without. That said, I can see it being an easier way to make sure that my family and I are up to date on licensing, keep up to date, and have ready access to the licenses, stamps, and tags we use.

“Learn and become who you are” - Pindar



Celeste Cook <ccook@azgfd.gov>

Fw: July 31: Deadline to comment on proposed paperless hunt perm

1 message

Walter Phelps <[REDACTED]>
Reply-To: "[REDACTED]" <[REDACTED]>
To: "ccook@azgfd.gov" <ccook@azgfd.gov>
Cc: Jamescita Peshlakai <dcarr@azleg.gov>

Wed, Jul 28, 2021 at 1:17 PM

Dear Ms. Cook,

Respectfully providing you my comment on proposed rule to go completely paperless on hunt permit tags. Please consider my input as strongly against the proposed rule. In spite of the current pandemic its still critically important to maintain in-person hard copy purchasing of hunting permit tags. Not all of us who hunt are connected to internet grid. Arizona is primarily a rural state with technology infrastructure grids only available in metropolitan counties (i.e. Maricopa county) or cities. Even if you do have internet access i have personally experienced my computer freezing up and not working smoothly so the best thing to do is just go to the nearest Fish & Game office and take care of things over the counter. Please DO NOT allow this rule to go forward.

I personally totally enjoy big game hunting and also enjoy recreational fishing. It has always been my joy to enjoy the outdoors here in AZ. Although I have not been successful in always being selected for a big game tag for the past few years, I still feel strongly that AZGFD has already gone far enough in going paperless.

Walter Phelps
[REDACTED]

Sent from Yahoo Mail on Android

----- Forwarded Message -----

From: "AZGFD" <e-news@azgfd.gov>

To: [REDACTED]

Sent: Wed, Jul 28, 2021 at 12:05 PM

Subject: July 31: Deadline to comment on proposed paperless hunt perm

**GAME AND FISH NEWS**

July 28, 2021

July 31: Deadline to comment on proposed paperless hunt permit-tag, licensing system

PHOENIX — Time is running out to provide comment on a notice of proposed rulemaking within Articles 1 and 3 for the purposes of modernizing the big game hunt permit-tag, and hunt and fish licensing system.

The new system will provide customers with added flexibility following the purchase of a license or hunt permit-tag. An app on their own electronic device will enable customers to view their licenses and hunt permit-tags, allow them to electronically “tag” their harvested animal, and complete their harvest questionnaire. Hunters would still have the ability to receive a paper hunt permit-tag, if preferred.

The public comment period runs through Saturday, July 31. Comments are being accepted by:

- Email: rulemaking@azgfd.gov or ccook@azgfd.gov.
- U.S. Mail: Arizona Game and Fish Department, Attn.: Celeste Cook, Rules and Policy Manager, [5000 W. Carefree Highway, Phoenix, AZ 85086](#).
- Telephone: Celeste Cook, Rules and Policy Manager, 623-236-7390.

The Arizona Game and Fish Commission will consider the final rulemaking at its public meeting Sept. 24. To track the progress of this rule, view the regulatory agenda and all previous five-year review reports, and to learn about any other agency rulemaking matters, visit www.azgfd.com/agency/rulemaking/.

Did you know?

The Arizona Game and Fish Department conserves and protects Arizona’s 800+ wildlife species but receives NO Arizona general fund tax dollars. Contribute to our on-the-ground conservation efforts at www.AzWildlifeHero.com.

The Arizona Game and Fish Department receives Federal assistance from the U.S. Fish and Wildlife Service, and thus prohibits discrimination on the basis of race, color, religion, national origin, disability, age and sex pursuant to Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990. To request an accommodation or informational material in an alternative format or to file a discrimination complaint please contact the Director’s Office at (602) 942-3000 or by mail at [5000 West Carefree Highway, Phoenix, AZ 85086](#). Discrimination complaints can also be filed with the U.S. Fish and Wildlife Service, Office of Diversity and Inclusive Workforce, Attention: Public Civil Rights and Disability Coordinator, [5275 Leesburg Pike, Falls Church, VA 22041](#).

Arizona Game & Fish Dept. · [5000 W. Carefree Hwy, Phoenix, AZ 85086](#)
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[Click here to view the online version.](#)



Celeste Cook <ccook@azgfd.gov>

Electronic tag and license

1 message

Wards Outfitters [REDACTED] >
To: rulemaking@azgfd.gov

Thu, May 27, 2021 at 6:23 AM

Absolutely support this. I'll be sure to comment june 11th.



Celeste Cook <ccook@azgfd.gov>

Electronic tag

1 message

Zach Parker <[REDACTED]>
To: rulemaking@azgfd.gov

Sat, Jun 26, 2021 at 7:19 AM

I just wanted to send this message thank you guys for this proposed rule change. Every time I go out that's the most stressful part about trying to pack up and leave for the time making sure you have a tag and even while you're out hunting you make sure you don't put it in the same zipper is all your other stuff because you can potentially be pulling other stuff out and drop your tag and not even know. I've heard so many people losing their tags and then they have to worry about whether you're going to get caught without tagging your animal. Don't agree with the recent decision on Trail cams, but this rule change I can get behind.

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS**R12-4-101. Definitions**

A. In addition to the definitions provided under A.R.S. § 17-101, R12-4-301, R12-4-401, and R12-4-501, the following definitions apply to this Chapter, unless otherwise specified:

“Arizona Conservation Education” means the conservation education course provided by Arizona Game and Fish Department in hunting safety, responsibility, and conservation.

“Arizona Hunter Education” means the hunter education course provided by Arizona Game and Fish Department in hunting safety, responsibility, and conservation meeting Association of Fish and Wildlife agreed upon reciprocity standards along with Arizona-specific requirements.

“Bobcat seal” means the tag a person is required to attach to the raw pelt or unskinned carcass of any bobcat taken by trapping in Arizona or exported out of Arizona regardless of the method of take.

“Bonus point” means a credit that authorizes the Department to issue an applicant an additional computer-generated random number.

“Bow” means a long bow, flat bow, recurve bow, or compound bow of which the bowstring is drawn and held under tension entirely by the physical power of the shooter through all points of the draw cycle until the shooter purposely acts to release the bowstring either by relaxing the tension of the toes, fingers, or mouth or by triggering the release of a hand-held release aid.

“Certificate of insurance” means an official document, issued by the sponsor’s and sponsor’s vendors, or subcontractors insurance carrier, providing insurance against claims for injury to persons or damage to property which may arise from, or in connection with, the solicitation or event as determined by the Department.

“Cervid” means a mammal classified as a Cervidae, which includes but is not limited to caribou, elk, moose, mule deer, reindeer, wapiti, and whitetail deer; as defined in the taxonomic classification from the Integrated Taxonomic Information System, available online at www.itis.gov.

“Commission Order” means a document adopted by the Commission that does one or more of the following:

- Open, close, or alter seasons,
- Open areas for taking wildlife,
- Set bag or possession limits for wildlife,
- Set the number of permits available for limited hunts, or
- Specify wildlife that may or may not be taken.

“Crossbow” means a device consisting of a bow affixed on a stock having a trigger mechanism to release the bowstring.

“Day-long” means the 24-hour period from one midnight to the following midnight.

“Department property” means those buildings or real property and wildlife areas under the jurisdiction of the Arizona Game and Fish Commission.

“Export” means to carry, send, or transport wildlife or wildlife parts out of Arizona to another state or country.

“Firearm” means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun, or other weapon that will discharge, is designed to discharge, or may readily be converted to discharge a projectile by the action of an explosion caused by the

burning of smokeless powder, black powder, or black powder substitute.

“Handgun” means a firearm designed and intended to be held, gripped, and fired by one or more hands, not intended to be fired from the shoulder, and that uses the energy from an explosive in a fixed cartridge to fire a single projectile through a barrel for each single pull of the trigger.

“Hunt area” means a management unit, portion of a management unit, or group of management units, or any portion of Arizona described in a Commission Order and not included in a management unit, opened to hunting.

“Hunt number” means the number assigned by Commission Order to any hunt area where a limited number of hunt permits are available.

“Hunt permits” means the number of hunt permit-tags made available to the public as a result of a Commission Order.

“Hunt permit-tag” means a tag for a hunt for which a Commission Order has assigned a hunt number.

“Identification number” means the number assigned to each applicant or license holder by the Department as established under R12-4-111.

“Import” means to bring, send, receive, or transport wildlife or wildlife parts into Arizona from another state or country.

“License dealer” means a business authorized to sell hunting, fishing, and other licenses as established under R12-4-105.

“Limited-entry permit-tag” means a permit made available for a limited-entry fishing or hunting season.

“Live baitfish” means any species of live freshwater fish designated by Commission Order as lawful for use in taking aquatic wildlife under R12-4-317.

“Management unit” means an area established by the Commission for management purposes.

“Nonpermit-tag” means a tag for a hunt for which a Commission Order does not assign a hunt number and the number of tags is not limited.

“Nonprofit organization” means an organization that is recognized under Section 501© of the U.S. Internal Revenue Code.

“Person” has the meaning as provided under A.R.S. § 1-215.

“Proof of purchase,” for the purposes of A.R.S. § 17-331, means an original, or any authentic and verifiable form of the original, of any Department-issued license, permit, or stamp that establishes proof of actual purchase.

“Pursue” means to chase, tree, corner or hold wildlife at bay.

“Pursuit-only” means a person may pursue, but not kill, a bear, mountain lion, or raccoon on any management unit that is open to pursuit-only season, as defined under R12-4-318, by Commission Order.

“Pursuit-only permit” means a permit for a pursuit-only hunt for which a Commission Order does not assign a hunt number and the number of permits are not limited.

“Restricted nonpermit-tag” means a tag issued for a supplemental hunt as established under R12-4-115.

“Solicitation” means any activity that may be considered or interpreted as promoting, selling, or transferring products, services, memberships, or causes, or participation in an event or activity of any kind, including organizational, educational,

CHAPTER 4. GAME AND FISH COMMISSION

public affairs, or protest activities, including the distribution or posting of advertising, handbills, leaflets, circulars, posters, or other printed materials for these purposes.

“Solicitation material” means advertising, circulars, flyers, handbills, leaflets, posters, or other printed information.

“Sponsor” means the person or persons conducting a solicitation or event.

“Stamp” means a form of authorization in addition to a license that authorizes the license holder to take wildlife specified by the stamp.

“Tag” means the Department authorization a person is required to obtain before taking certain wildlife as established under A.R.S. Title 17 and 12 A.A.C. 4.

“Waterdog” means the larval or metamorphosing stage of a salamander.

“Wildlife area” means an area established under 12 A.A.C. 4, Article 8.

B. If the following terms are used in a Commission Order, the following definitions apply:

“Antlered” means having an antler fully erupted through the skin and capable of being shed.

“Antlerless” means not having an antler, antlers, or any part of an antler erupted through the skin.

“Bearded turkey” means a turkey with a beard that extends beyond the contour feathers of the breast.

“Buck pronghorn” means a male pronghorn.

“Adult bull bison” means a male bison of any age or any bison designated by a Department employee during an adult bull bison hunt.

“Adult cow bison” means a female bison of any age or any bison designated by a Department employee during an adult cow bison hunt.

“Bull elk” means an antlered elk.

“Designated” means the gender, age, or species of wildlife or the specifically identified wildlife the Department authorizes to be taken and possessed with a valid tag.

“Ram” means any male bighorn sheep.

“Rooster” means a male pheasant.

“Yearling bison” means any bison less than three years of age or any bison designated by a Department employee during a yearling bison hunt.

Historical Note

Amended effective May 3, 1976 (Supp. 76-3). Amended effective October 22, 1976 (Supp. 76-5). Amended effective June 29, 1978 (Supp. 78-3). Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-01 renumbered as Section R12-4-101 without change effective August 13, 1981 (Supp. 81-4). Amended effective April 22, 1982 (Supp. 82-2). Amended subsection (A), paragraph (10) effective April 7, 1983 (Supp. 83-2). Amended effective June 4, 1987 (Supp. 87-2). Amended subsection (A) effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read “Amended subsection (A) effective January 1, 1989, filed December 30, 1988” (Supp. 89-2). Amended effective May 27, 1992 (Supp. 92-2). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended effective Jan-

uary 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 845, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 1047, effective June 1, 2019 (Supp. 19-2). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-102. License, Permit, Stamp, and Tag Fees

- A. A person who purchases a license, tag, stamp, or permit listed in this Section shall pay at the time of purchase all applicable fees prescribed under this Section or the fees the Director authorizes under R12-4-115.
- B. A person who applies to purchase a hunt permit-tag shall submit with the application all applicable fees using acceptable forms of payment as required under R12-4-104(F) and (G).
- C. As authorized under A.R.S. § 17-345, the license fees in this Section include a \$3 surcharge, except Youth and High Achievement Scout licenses.
- D. A person desiring a replacement of a Migratory Bird Stamp shall repurchase the stamp.

Hunting and Fishing License Fees	Resident	Nonresident
General Fishing License	\$37	\$55
Community Fishing License	\$24	\$24
General Hunting License	\$37	Not available
Combination Hunting and Fishing License	\$57	\$160
Youth Combination Hunting and Fishing License, fee applies until the applicant’s 18th birthday.	\$5	\$5
High Achievement Scout License, as authorized under A.R.S. § 17-333(C). Fee applies until the applicant’s 21st birthday.	\$5	Not available
Short-term Combination Hunting and Fishing License	\$15	\$20
Youth Group Two-day Fishing License	\$25	Not available

Hunt Permit-tag Fees	Resident	Nonresident
Bear	\$25	\$150
Bighorn Sheep	\$300	\$1,800
Bison		
Adult Bulls or any Bison	\$1,100	\$5,400
Adult Cows	\$650	\$3,250
Yearling	\$350	\$1,750
Cow or Yearling	\$650	\$3,250
Deer and Archery Deer	\$45	\$300
Youth	\$25	\$25
Elk	\$135	\$650
Youth	\$50	\$50

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final rulemaking at 13 A.A.R. 462, effective February 6, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 1472, effective July 12, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 25 A.A.R. 1854, effective July 2, 2019 (Supp. 19-3). Amended by final exempt rulemaking at 27 A.A.R. 400, effective July 1, 2021 (Supp. 21-1). Amended by final exempt rulemaking at 27 A.A.R. 1076, effective August 21, 2021 (Supp. 21-2).

R12-4-103. Duplicate Tags and Licenses

- A.** Under A.R.S. § 17-332(C), the Department and its license dealers may issue a duplicate license or tag to an applicant who:
1. Pays the applicable fee prescribed under R12-4-102, and
 2. Signs an affidavit. The affidavit is furnished by the Department and is available at any Department office or license dealer.
- B.** The applicant shall provide the following information on the affidavit:
1. The applicant's personal information:
 - a. Name;
 - b. Department identification number, when applicable;
 - c. Residency status and number of years of residency immediately preceding application, when applicable;
 2. The original license or tag information:
 - a. Type of license or tag;
 - b. Place of purchase;
 - c. Purchase date, when available; and
 3. Disposition of the original tag for which a duplicate is being purchased:
 - a. The tag was not used and is lost, destroyed, mutilated, or otherwise unusable; or
 - b. The tag was placed on a harvested animal that was subsequently condemned and the carcass and all parts of the animal were surrendered to a Department employee as required under R12-4-112(B) and (C). An applicant applying for a duplicate tag under this subsection shall also submit the condemned meat duplicate tag authorization form issued by the Department.
- C.** In the event the Department is unable to verify the expiration date of the original license, the duplicate license shall expire on December 31 of the current year.

Historical Note

Amended effective June 7, 1976 (Supp. 76-3). Amended effective October 20, 1977 (Supp. 77-5). Former Section R12-4-07 renumbered as Section R12-4-103 without change effective August 13, 1981 (Supp. 81-4). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Computer Draw and Purchase of Bonus Points

- A.** For the purposes of this Section, "group" means all applicants who placed their names on a single application as part of the same application.
- B.** A person is eligible to apply:
1. For a hunt permit-tag if the person:
 - a. Is at least 10 years of age at the start of the hunt for which the person is applying;

- b. Has successfully completed a Department-sanctioned hunter education course by the start date of the hunt for which the person is applying, when the person is between 9 and 14 years of age;
 - c. Has not reached the bag limit established under subsection (J) for that genus; and
 - d. Is not suspended or revoked in this state as a result of an action under A.R.S. §§ 17-340 or 17-502 at the time the person submits an application.
2. For a bonus point if the person:
- a. Is at least 10 years of age by the application deadline date; and
 - b. Is not suspended or revoked in this state as a result of an action under A.R.S. §§ 17-340 or 17-502 at the time the person submits an application.
- C.** An applicant shall apply at the times, locations, and in the manner and method established by the hunt permit-tag application schedule published by the Department and available at any Department office, on the Department's website, or a license dealer.
1. The Commission shall set application deadline dates for hunt permit-tag computer draw applications through the hunt permit-tag application schedule.
 2. The Director has the authority to extend any application deadline date if a problem occurs that prevents the public from submitting a hunt permit-tag application within the deadlines set by the Commission.
 3. The Commission, through the hunt permit-tag application schedule, shall designate the manner and method of submitting an application, which may require an applicant to apply online only. If the Commission requires applicants to use the online method, the Department shall accept paper applications only in the event of a Department systems failure.
- D.** An applicant for a hunt permit-tag or a bonus point shall complete and submit a Hunt Permit-tag Application. The application form is available from any Department office, a license dealer, or on the Department's website.
- E.** An applicant shall provide the following information on the Hunt Permit-tag Application:
1. The applicant's personal information:
 - a. Name;
 - b. Date of birth,
 - c. Social security number, as required under A.R.S. §§ 25-320(P) and 25-502(K);
 - d. Department identification number, when applicable;
 - e. Residency status and number of years of residency immediately preceding application, when applicable;
 - f. Mailing address, when applicable;
 - g. Physical address;
 - h. Telephone number, when available; and
 - i. E-mail address, when available;
 2. If the applicant possesses a valid license authorizing the take of wildlife in this state, the number of the applicant's license;
 3. If the applicant does not possess a valid license at the time of the application, the applicant shall purchase a license as established under subsection (L). The applicant shall provide all of the following information on the license application portion of the Hunt Permit-tag Application:
 - a. Physical description, to include the applicant's eye color, hair color, height, and weight;

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“Smart device” means any device equipped with a target-tracking system or an electronically-controlled, electronically-assisted, or computer-linked trigger or release. This includes but is not limited to smart rifles.

“Trap flag” means an attractant made from materials other than animal parts that is suspended at least three feet above the ground.

“Water set” means any trap used and anchored in water rather than on land.

Historical Note

Amended as an emergency effective April 10, 1975 (Supp. 75-1). Amended effective May 3, 1976, Amended effective June 7, 1976 (Supp. 76-3). Amended effective May 26, 1978 (Supp. 78-3). Editorial correction subsection (D) (Supp. 78-5). Amended effective June 4, 1979 (Supp. 79-3). Former Section R12-4-50 renumbered as Section R12-4-301 without change effective August 13, 1981 (Supp. 81-4). Amended subsection (A) effective May 12, 1982 (Supp. 82-3). Amended effective July 3, 1984 (Supp. 84-4). Amended effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read “Amended effective January 1, 1989, filed December 30, 1988” (Supp. 89-2). Amended effective February 9, 1998 (Supp. 98-1). Amended by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Former R12-4-301 renumbered to R12-4-321; new Section made by final rulemaking at 18 A.A.R. 1458, effective January 1, 2013 (Supp. 12-2). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2). Amended by final rulemaking at 25 A.A.R. 1047, effective June 1, 2019 (Supp. 19-2).

R12-4-302. Use of Tags

- A. In addition to meeting requirements prescribed under A.R.S. § 17-331, a person who takes wildlife shall have in possession any tag required for the particular season or hunt area.
- B. A tag obtained in violation of statute or rule is invalid and shall not be used to take, transport, or possess wildlife.
- C. A person who lawfully possesses both a nonpermit-tag and a hunt permit-tag shall not take a genus or species in excess of the bag limit established by Commission Order for that genus or species.
- D. A person shall:
 1. Take and tag only the wildlife identified on the tag.
 2. Use a tag only in the season and hunt for which the tag is valid as specified by Commission Order.
- E. Except as permitted under R12-4-217, a person shall not:
 1. Allow their tag to be attached to wildlife killed by another person,
 2. Allow their tag to be possessed by another person while taking wildlife,
 3. Allow wildlife killed by that person to be tagged with another person’s tag,
 4. Attach their tag to wildlife killed by another person, or
 5. Possess a tag issued to another person while taking wildlife.
- F. Except as permitted under R12-4-217, immediately after a person kills wildlife, the person shall attach the tag to the wildlife carcass in the manner indicated on the tag.
- G. A person who lawfully takes wildlife with a valid tag and authorizes another person to possess, transport, or ship the tagged portion of the carcass shall complete the Transportation and Shipping Permit portion of the original tag authorizing the take of that wildlife.

- H. If a tag is cut, notched, mutilated, or the Transportation and Shipping Permit portion of the tag is signed or filled out, the tag is no longer valid for the take of wildlife.

Historical Note

Former Section R12-4-51 renumbered as Section R12-4-302 without change effective August 13, 1981 (Supp. 81-4). Amended subsections (A), (D), (E), and repealed subsection (G) effective May 12, 1982 (Supp. 82-3). Amended effective March 23, 1983 (Supp. 83-2). Amended subsection (F) effective October 31, 1984 (Supp. 84-5). Amended subsections (A), (D), (F) and (G) and added a new Section (H) effective June 4, 1987 (Supp. 87-2). Amended effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read “Amended effective January 1, 1989, filed December 30, 1988” (Supp. 89-2). Section R12-4-302 repealed, new Section R12-4-302 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Section repealed, new Section adopted effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 683, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 1047, effective June 1, 2019 (Supp. 19-2).

R12-4-303. Unlawful Devices, Methods, and Ammunition

- A. In addition to the prohibitions prescribed under A.R.S. §§ 17-301 and 17-309, the following devices, methods, and ammunition are unlawful for taking wildlife in this state:
 1. A person shall not use any of the following to take wildlife:
 - a. Fully automatic firearms, including firearms capable of selective automatic fire.
 - b. Tracer or armor-piercing ammunition designed for military use.
 - c. Any smart device as defined under R12-4-301.
 - d. Any self-guided projectiles.
 2. A person shall not take big game using full-jacketed or total-jacketed bullets that are not designed to expand upon impact,
 3. A person shall not use or possess any of the following while taking wildlife:
 - a. Poisoned projectiles or projectiles that contain explosives or a secondary propellant.
 - b. Pitfalls of greater than 5-gallon size, explosives, poisons, or stupefying substances, except as permitted under A.R.S. § 17-239 or as allowed by a scientific collecting permit issued under A.R.S. § 17-238.
 - c. Any lure, attractant, or cover scent containing any cervid urine.
 - d. Electronic night vision equipment, electronically enhanced light-gathering devices, thermal imaging devices or laser sights projecting a visible light; except for devices such as laser range finders projecting a non-visible light, scopes with self-illuminating reticles, and fiber optic sights with self-illuminating sights or pins that do not project a visible light onto an animal.
 4. A person shall not by any means:

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- b. Falconry;
 - c. Pneumatic weapons;
 - d. Shotguns shooting shot, only;
 - e. Handguns shooting shot, only;
 - f. Crossbow;
 - g. Slingshot;
 - h. Hand-held projectiles; and
 - i. Dogs.
3. To take migratory game birds, except Eurasian collared-dove:
- a. Bow and arrow;
 - b. Crossbow;
 - c. Falconry;
 - d. Dogs;
 - e. Shotguns shooting shot:
 - i. Ten gauge or smaller, except that lead shot shall not be used or possessed while taking ducks, geese, swans, mergansers, common moorhens, or coots; and
 - ii. Incapable of holding more than a total of three shells as prescribed under 50 C.F.R. 20.21, published October 1, 2015. The material incorporated by reference in this subsection does not include any later amendments or editions. The material is available at any Department office, online from the Government Printing Office website www.gpoaccess.gov, or may be ordered from the Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000.
- D. A person may take waterfowl from any watercraft, except a sinkbox, subject to the following conditions:
- 1. The motor is shut off, the sail is furled, as applicable, and any progress from a motor or sail has ceased;
 - 2. The watercraft may be:
 - a. Adrift as a result of current or wind action;
 - b. Beached;
 - c. Moored;
 - d. Resting at anchor; or
 - e. Propelled by paddle, oars, or pole; and
 - 3. The person may only use the watercraft under power to retrieve dead or crippled waterfowl; shooting is prohibited while the watercraft is under power.
- E. A person may take predatory and fur-bearing animals by using the following methods, when authorized by Commission Order and subject to the restrictions under R12-4-303 and R12-4-318:
- 1. Firearms;
 - 2. Pre-charged pneumatic weapons .22 caliber or larger;
 - 3. Bow and arrow;
 - 4. Crossbow;
 - 5. Traps not prohibited under R12-4-307;
 - 6. Artificial light while taking raccoon provided the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail;
 - 7. Artificial light while taking coyote during seasons with day-long hours, provided the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail; and
 - 8. Dogs.
- F. A person may take nongame mammals and birds by any method authorized by Commission Order and not prohibited under R12-4-303, R12-4-318, and R12-4-422, subject to the following restrictions. A person:
- 1. Shall not take nongame mammals and birds using foot-hold traps;
 - 2. Shall check pitfall traps of any size daily, release non-target species, remove pitfalls when no longer in use, and fill any holes;
 - 3. Shall not use firearms at night; and
 - 4. May use artificial light while taking nongame mammals and birds, if the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail.
- G. A person may take reptiles by any method not prohibited under R12-4-303 or R12-4-318 subject to the following restrictions. A person:
- 1. Shall check pitfall traps of any size daily, release non-target species, remove pitfalls when no longer in use, and fill any holes;
 - 2. Shall not use firearms at night; and
 - 3. May use artificial light while taking reptiles provided the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail.

Historical Note

Amended effective May 21, 1975 (Supp. 75-1). Amended effective May 3, 1976 (Supp. 76-3). Amended effective October 20, 1977 (Supp. 77-5). Amended effective January 11, 1978 (Supp. 78-1). Amended effective September 7, 1978 (Supp. 78-5). Amended effective November 14, 1979 (Supp. 79-6). Amended effective July 22, 1980 (Supp. 80-4). Former Section R12-4-53 renumbered as Section R12-4-304 without change effective August 13, 1981 (Supp. 81-4). Amended effective May 12, 1982 (Supp. 82-3). Amended effective April 7, 1983 (Supp. 83-2). Amended subsection (I) effective June 7, 1984 (Supp. 84-3). Amended effective February 28, 1985 (Supp. 85-1). Amended effective September 16, 1985 (Supp. 85-5). Amended effective June 4, 1987 (Supp. 87-2). Former Section R12-4-304 repealed, new Section R12-4-304 adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Former Section R12-4-304 repealed, new Section R12-4-304 adopted effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Former Section R12-4-304 repealed, new Section R12-4-304 adopted effective February 9, 1998 (Supp. 98-1). Amended by final rulemaking at 8 A.A.R. 1702, effective March 11, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 2629, effective December 9, 2011 (Supp. 11-4). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2). Amended by final rulemaking at 25 A.A.R. 1047, effective June 1, 2019 (Supp. 19-2).

R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife

- A. A person shall ensure that evidence of legality remains with the carcass or parts of a carcass of any wildlife that the person possesses, transports, or imports until arrival at the person's permanent abode, a commercial processing plant, or the place where the wildlife is to be consumed.

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- B.** In addition to the requirement under subsection (A), a person possessing or transporting the following wildlife shall ensure each:
1. Big game animal, sandhill crane, and pheasant has the required valid tag attached in the manner indicated on the tag;
 2. Migratory game bird, except sandhill cranes, has one fully feathered wing attached;
 3. Sandhill crane and Eurasian-collared dove has either the fully feathered head or one fully feathered wing attached;
 4. Quail has attached a fully feathered head, or a fully feathered wing, or a leg with foot attached, when the current Commission Order has established separate bag or possession limits for any species of quail; and
 5. Freshwater fish has the head, tail, or skin attached so the species can be identified and the total number and required length determined.
- C.** A person who has lawfully taken wildlife that requires a valid tag when prescribed by the Commission may authorize its transportation or shipment by completing and signing the Transportation and Shipping Permit portion of the valid tag for that animal. A separate Transportation and Shipping Permit issued by the Department is necessary to transport or ship to another state or country any big game taken with a resident license. Under A.R.S. § 17-372(B), a person may ship other lawfully taken wildlife by common carrier after obtaining a valid Transportation and Shipping Permit issued by the Department. The person shall provide the following information:
1. Number and description of the wildlife to be transported or shipped;
 2. Name, address, license number, and license class of the person who took the wildlife;
 3. Tag number;
 4. Name and address of the person receiving a portion of the carcass of the wildlife as authorized under subsection (D), if applicable;
 5. Address of destination where the wildlife is to be transported or shipped; and
 6. Name and address of transporter or shipper.
- D.** A person who lawfully takes wildlife under a tag may authorize another individual to possess the head or carcass of the wildlife by separating and attaching the tag as prescribed under R12-4-302.
- E.** A person who receives a portion of the wildlife shall provide the identity of the person who took and gave the portion of the wildlife upon request to any peace officer, wildlife manager, or game ranger.
- F.** A person shall not possess the horns of a bighorn sheep, taken by a hunter in this state, unless the horns are marked or sealed as established under R12-4-308.
- G.** Except as provided under R12-4-307, before a person may sell, offer for sale, or export the raw pelt or unskinned carcass of a bobcat taken in this state, the person shall:
1. Present the bobcat for inspection at any Department office, and
 2. Purchase a bobcat seal by paying the fee established under R12-4-102 at any Department office or other location as determined and published by the Department. Department personnel or an authorized agent shall attach and lock the bobcat seal only to a pelt or unskinned carcass presented with a validated transportation tag.
- H.** A person who takes bear or mountain lion under A.R.S. § 17-302 may retain the carcass of the wildlife if the person has a valid hunting license and the carcass is immediately tagged with a nonpermit-tag or a valid hunt permit-tag as required under R12-4-114 and R12-4-302, provided the person has not reached the applicable bag limit for that big game animal. An animal retained under this subsection shall count toward the applicable bag limit for bear or mountain lion as authorized by Commission Order. The person shall comply with inspection and reporting requirements established under R12-4-308.
- I.** A person may possess, transport, or import only the following portions of a cervid lawfully taken in another state or country:
1. Boneless portions of meat, or meat that has been cut and packaged either personally or commercially;
 2. Clean hides and capes with no skull or soft tissue attached, except as required for proof of legality;
 3. Clean skulls with antlers, clean skull plates, or antlers with no meat or soft tissue attached, this includes velvet antlers;
 4. Finished taxidermy mounts or products; and
 5. Upper canine teeth with no meat or tissue attached.
- J.** A private game farm license holder may transport a cervid lawfully killed or slaughtered at the license holder's game farm to a licensed meat processor.
- K.** A person may possess or transport only the following portions of a cervid lawfully killed or slaughtered at a private game farm authorized under R12-4-413:
1. Boneless portions of meat, or meat that has been cut and packaged either personally or commercially;
 2. Clean hides and capes with no skull or soft tissue attached;
 3. Clean skulls with antlers, clean skull plates, or antlers with no meat or soft tissue attached, this includes velvet antlers;
 4. Finished taxidermy mounts or products; and
 5. Upper canine teeth with no meat or tissue attached.
- L.** A person who obtains bison meat as authorized under R12-4-306 may sell the meat.
- M.** Except for cervids, which are subject to requirements established under subsections (I), (J), and (K), a person may import into this state the carcasses or parts of wildlife, including aquatic wildlife, lawfully taken in another state or country if transported and exported in accordance with the laws of the state or country of origin.
- N.** A person shall not transport live crayfish from the site where taken, except as permitted under R12-4-316.
- O.** A person in possession of a common carp (*Cyprinus carpio*), buffalofish (*Ictiobus* spp.), or crayfish (families *Astacidae*, *Cambaridae*, and *Parastacidae*) carcass taken under Commission Order may sell the carcass.

Historical Note

Amended effective May 3, 1976 (Supp. 76-3). Former Section R12-4-54 renumbered as Section R12-4-305 without change effective August 13, 1981 (Supp. 81-4). Amended effective May 12, 1982 (Supp. 82-3). Amended effective June 14, 1983 (Supp. 83-3). Amended effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Amended effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Section repealed, new Section adopted effective April 1, 1997; filed in the Office of the Secretary of State July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 683, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2). Amended by final rulemaking at 25 A.A.R. 1047, effective June 1, 2019 (Supp. 19-2).

R12-4-306. Bison Hunt Requirements

17-102. Wildlife as state property; exceptions

Wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the commission.

17-231. General powers and duties of the commission

A. The commission shall:

1. Adopt rules and establish services it deems necessary to carry out the provisions and purposes of this title.
2. Establish broad policies and long-range programs for the management, preservation and harvest of wildlife.
3. Establish hunting, trapping and fishing rules and prescribe the manner and methods that may be used in taking wildlife, but the commission shall not limit or restrict the magazine capacity of any authorized firearm.
4. Be responsible for the enforcement of laws for the protection of wildlife.
5. Provide for the assembling and distribution of information to the public relating to wildlife and activities of the department.
6. Prescribe rules for the expenditure, by or under the control of the director, of all funds arising from appropriation, licenses, gifts or other sources.
7. Exercise such powers and duties necessary to carry out fully the provisions of this title and in general exercise powers and duties that relate to adopting and carrying out policies of the department and control of its financial affairs.
8. Prescribe procedures for use of department personnel, facilities, equipment, supplies and other resources in assisting search or rescue operations on request of the director of the division of emergency management.
9. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

B. The commission may:

1. Conduct investigations, inquiries or hearings in the performance of its powers and duties.
2. Establish game management units or refuges for the preservation and management of wildlife.
3. Construct and operate game farms, fish hatcheries, fishing lakes or other facilities for or relating to the preservation or propagation of wildlife.
4. Expend funds to provide training in the safe handling and use of firearms and safe hunting practices.
5. Remove or permit to be removed from public or private waters fish which hinder or prevent propagation of game or food fish and dispose of such fish in such manner as it may designate.
6. Purchase, sell or barter wildlife for the purpose of stocking public or private lands and waters and take at any time in any manner wildlife for research, propagation and restocking purposes or for use at a game farm or fish hatchery and declare wildlife salable when in the public interest or the interest of conservation.
7. Enter into agreements with the federal government, with other states or political subdivisions of the state and with private organizations for the construction and operation of facilities and for management studies, measures or procedures for or relating to the preservation and propagation of wildlife and expend funds for carrying out such agreements.
8. Prescribe rules for the sale, trade, importation, exportation or possession of wildlife.

9. Expend monies for the purpose of producing publications relating to wildlife and activities of the department for sale to the public and establish the price to be paid for annual subscriptions and single copies of such publications. All monies received from the sale of such publications shall be deposited in the game and fish publications revolving fund.

10. Contract with any person or entity to design and produce artwork on terms that, in the commission's judgment, will produce an original and valuable work of art relating to wildlife or wildlife habitat.

11. Sell or distribute the artwork authorized under paragraph 10 of this subsection on such terms and for such price as it deems acceptable.

12. Consider the adverse and beneficial short-term and long-term economic impacts on resource dependent communities, small businesses and the state of Arizona, of policies and programs for the management, preservation and harvest of wildlife by holding a public hearing to receive and consider written comments and public testimony from interested persons.

13. Adopt rules relating to range operations at public shooting ranges operated by and under the jurisdiction of the commission, including the hours of operation, the fees for the use of the range, the regulation of groups and events, the operation of related range facilities, the type of firearms and ammunition that may be used at the range, the safe handling of firearms at the range, the required safety equipment for a person using the range, the sale of firearms, ammunition and shooting supplies at the range, and the authority of range officers to enforce these rules, to remove violators from the premises and to refuse entry for repeat violations.

14. Solicit and accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title.

C. The commission shall confer and coordinate with the director of water resources with respect to the commission's activities, plans and negotiations relating to water development and use, restoration projects under the restoration acts pursuant to chapter 4, article 1 of this title, where water development and use are involved, the abatement of pollution injurious to wildlife and in the formulation of fish and wildlife aspects of the director of water resources' plans to develop and utilize water resources of the state and shall have jurisdiction over fish and wildlife resources and fish and wildlife activities of projects constructed for the state under or pursuant to the jurisdiction of the director of water resources.

D. The commission may enter into one or more agreements with a multi-county water conservation district and other parties for participation in the lower Colorado river multispecies conservation program under section 48-3713.03, including the collection and payment of any monies authorized by law for the purposes of the lower Colorado river multispecies conservation program.

17-251. Possession or use of a firearm silencer or muffler while hunting; definition

- A. The commission shall not adopt or enforce any rule that prohibits the lawful possession or use of a firearm silencer or muffler, including for the taking of wildlife or while hunting.
- B. This section does not limit the authority of the commission to prescribe the type and caliber of firearm or ammunition that may be used for taking wildlife.
- C. For the purposes of this section, "firearm silencer or muffler" means any device that is designed, made or adapted to muffle the report of a firearm.

17-301. Times when wildlife may be taken; exceptions; methods of taking

A. A person may take wildlife, except aquatic wildlife, only during daylight hours unless otherwise prescribed by the commission. A person shall not take any species of wildlife by the aid or with the use of a jacklight, other artificial light, or illegal device, except as provided by the commission.

B. A person shall not take wildlife, except aquatic wildlife, or discharge a firearm or shoot any other device from a motor vehicle, including an automobile, aircraft, train or powerboat, or from a sailboat, boat under sail, or a floating object towed by powerboat or sailboat except as expressly permitted by the commission. No person may knowingly discharge any firearm or shoot any other device upon, from, across or into a road or railway.

C. Fish may be taken only by angling unless otherwise provided by the commission. The line shall be constantly attended. In every case the hook, fly or lure shall be used in such manner that the fish voluntarily take or attempt to take it in their mouths.

D. It shall be unlawful to take wildlife with any leghold trap, any instant kill body gripping design trap, or by a poison or a snare on any public land, including state owned or state leased land, lands administered by the United States forest service, the federal bureau of land management, the national park service, the United States department of defense, the state parks board and any county or municipality. This subsection shall not prohibit:

1. The use of the devices prescribed in this subsection by federal, state, county, city, or other local departments of health which have jurisdiction in the geographic area of such use, for the purpose of protection from or surveillance for threats to human health or safety.
2. The taking of wildlife with firearms, with fishing equipment, with archery equipment, or other implements in hand as may be defined or regulated by the Arizona game and fish commission, including but not limited to the taking of wildlife pursuant to a hunting or fishing license issued by the Arizona game and fish department.
3. The use of snares, traps not designed to kill, or nets to take wildlife for scientific research projects, sport falconry, or for relocation of the wildlife as may be defined or regulated by the Arizona game and fish commission or the government of the United States or both.
4. The use of poisons or nets by the Arizona game and fish department to take or manage aquatic wildlife as determined and regulated by the Arizona game and fish commission.
5. The use of traps for rodent control or poisons for rodent control for the purpose of controlling wild and domestic rodents as otherwise allowed by the laws of the state of Arizona, excluding any fur-bearing animals as defined in section 17-101.

17-302. Taking of bear or mountain lion for protection of property; report

A. Other provisions of this title notwithstanding, a landowner or lessee, who is a livestock operator and who has recently had livestock attacked or killed by bear or mountain lion, may, if he complies with subsection B, lawfully exercise such measures as necessary to prevent further damage from the offending bear or lion, including the taking of such bear or mountain lion in the following manner:

1. All traps shall be inspected within seventy-two hours and nontarget animals released without further injury. The department shall provide technical advice and assistance in the release of nontarget bears and lions. Nontarget animals seriously injured and unable to leave the scene upon release shall be humanely dispatched. Target bears and lions shall be humanely dispatched immediately.

2. Bears and lions may be taken only by means of:

(a) Leg hold traps without teeth and with an open jaw spread not exceeding eight and one-half inches.

(b) Leg snares.

(c) Firearms.

(d) Other legal hunting weapons and devices.

3. All traps and snares shall be identified as to the person or agency setting the trap or snare.

4. A livestock operator taking a lion or bear pursuant to this section shall notify a department office within five days after setting traps or initiating pursuit in any manner. The notification for both bears and lions shall include information on the number and kind of livestock attacked or killed and the name and address of the livestock operator experiencing depredation. Such information shall not be public information.

5. A livestock operator taking a bear or lion pursuant to this section shall provide reasonable evidence of having livestock recently attacked or killed if a person authorized by the director requests such evidence within forty-eight hours of the department being notified pursuant to paragraph 4. Information shall include location description of sufficient detail to allow the site of depredation and traps set to be located. Such information shall not be public information.

6. Dogs may be used to facilitate the pursuit of depredating bears and lions.

B. A license or tag shall not be required for the taking of a bear or mountain lion under this section, but within ten days after the taking, the livestock operator shall file a written report with the department. The location of the take, identity of the livestock operator filing the report and location and date of livestock depredation are not public information. Such report shall also contain the following information:

1. Name and address of livestock operator experiencing depredation losses.

2. Number, ages and kinds of livestock lost.

3. Numbers and location of bears or lions taken.

4. Sex and estimated age of each bear or lion taken.

5. Location and date of livestock depredation.

C. No portion of an animal taken pursuant to this section shall be retained or sold by any person except as authorized by the commission.

D. No animal trapped or taken alive under this section shall be held in captivity.

E. In addition to other penalties provided by law, persons not in compliance with the provisions of this section may be ordered by the department to remove devices not in compliance with the requirements of this section and to cease and desist current pursuit activities intended to take the depredating bear or lion which the livestock operator has failed to comply with the provisions of this section.

F. A livestock operator entitled to take a bear or lion under the provisions of this section may contract with another person for the taking of the depredating bear or lion. The person under contract shall comply with all of the provisions of this section.

17-305. Possession of other weapons while hunting; violation; classification

A. The possession of legal weapons, devices, ammunition or magazines, which are not authorized to take wildlife, is not prohibited while hunting if the weapon or device is not used to take wildlife.

B. Taking wildlife by using a weapon, device, ammunition or magazine that is not authorized to take wildlife is a class 1 misdemeanor.

17-309. Violations; classification

A. Unless otherwise prescribed by this title, it is unlawful for a person to:

1. Violate any provision of this title or any rule adopted pursuant to this title.
2. Take, possess, transport, release, buy, sell or offer or expose for sale wildlife except as expressly permitted by this title.
3. Destroy, injure or molest livestock, growing crops, personal property, notices or signboards, or other improvements while hunting, trapping or fishing.
4. Discharge a firearm while taking wildlife within one-fourth mile of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident.
5. Take a game bird, game mammal or game fish and knowingly permit an edible portion thereof to go to waste, except as provided in section 17-302.
6. Take big game, except bear or mountain lion, with the aid of dogs.
7. Make more than one use of a shipping permit or coupon issued by the commission.
8. Obtain a license or take wildlife during the period for which the person's license has been revoked or suspended or the person has been denied a license.
9. Litter hunting and fishing areas while taking wildlife.
10. Take wildlife during the closed season.
11. Take wildlife in an area closed to the taking of that wildlife.
12. Take wildlife with an unlawful device.
13. Take wildlife by an unlawful method.
14. Take wildlife in excess of the bag limit.
15. Possess wildlife in excess of the possession limit.
16. Possess or transport any wildlife or parts of the wildlife that was unlawfully taken.
17. Possess or transport the carcass of big game without a valid tag being attached.
18. Use the edible parts of any game mammal or any part of any game bird or nongame bird as bait.
19. Possess or transport the carcass or parts of a carcass of any wildlife that cannot be identified as to species and legality.
20. Take game animals, game birds and game fish with an explosive compound, poison or any other deleterious substances.
21. Import into this state or export from this state the carcass or parts of a carcass of any wildlife unlawfully taken or possessed.

B. Unless a different or other penalty or punishment is specifically prescribed, a person who violates any provision of this title, or who violates or fails to comply with a lawful order or rule of the commission, is guilty

of a class 2 misdemeanor.

C. A person who knowingly takes any big game during a closed season or who knowingly possesses, transports or buys any big game that was unlawfully taken during a closed season is guilty of a class 1 misdemeanor.

D. A person is guilty of a class 6 felony who knowingly:

1. Barter, sells or offers for sale any big game or parts of big game taken unlawfully.

2. Barter, sells or offers for sale any wildlife or parts of wildlife unlawfully taken during a closed season.

3. Barter, sells or offers for sale any wildlife or parts of wildlife imported or purchased in violation of this title or a lawful rule of the commission.

4. Assists another person for monetary gain with the unlawful taking of big game.

5. Takes or possesses wildlife while under permanent revocation under section 17-340, subsection B, paragraph 3.

E. A peace officer who knowingly fails to enforce a lawful rule of the commission or this title is guilty of a class 2 misdemeanor.

C-4

BOARD OF PHARMACY

Title 4, Chapter 23, Article 4, Professional Practices and Article 11, Pharmacy Technicians

Amend: R4-23-411, R4-23-1104



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: December 7, 2021

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

FROM: Council Staff

DATE: November 12, 2021

SUBJECT: BOARD OF PHARMACY
Title 4, Chapter 23, Article 4, Professional Practices and Article 11, Pharmacy Technicians

Amend: R4-23-411, R4-23-1104

Summary:

This regular rulemaking from the Board of Pharmacy (Board) seeks to amend two rules in Title 4, Chapter 23, Article 4, Professional Practices, and Article 11, Pharmacy Technicians. Specifically, the Board seeks to amend these rules to allow pharmacy technicians to perform additional tasks, including administering vaccines, when the task is delegated by the pharmacist on duty.

The Board indicates this proposed expansion of the pharmacy technician scope of work is consistent with the evolving national scope of work for pharmacy technicians and guidance provided by the Secretary of the U.S. Department of Health and Human Services regarding the Public Readiness and Emergency Preparedness (PREP) Act. The Board states guidance provides that qualified pharmacy technicians are covered by the liability provisions of the PREP Act when administering COVID-19 vaccines and vaccines recommended by the Advisory Committee on Immunization Practices.

The Board indicates it is also making minor changes needed to align the rules with statute or to incorporate changes implemented during the COVID-19 emergency.

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

The Board cites both general and specific authority for these rules.

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

This rulemaking does not establish a new fee or contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Board indicates it did not review or rely on any study in conducting this rulemaking.

4. **Summary of the agency's economic impact analysis:**

The Board states there are currently 1,330 pharmacy permittees in Arizona and 12,125 licensed pharmacy technicians. The Board states all pharmacy permittees employ pharmacy technicians who perform a variety of tasks regarding prescription orders and prescription medications that do not involve the exercise of clinical judgement. The rulemaking expands the scope of work for pharmacy technicians, which will enable pharmacy permittees to serve the public more efficiently and effectively. The Board is also making minor changes needed to align the rules with statute or to incorporate changes implemented during the COVID19 emergency.

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

The Board states that the costs are minimal and cannot be reduced while ensuring public health and safety. No less intrusive or costly method was considered.

6. **What are the economic impacts on stakeholders?**

Stakeholders are identified as the Board, pharmacy permittees, and pharmacy technicians.

The Board incurred the cost of this rulemaking and will incur the cost of implementing it. The Board will benefit from having updated rules that expand the scope of work for pharmacy technicians and enable pharmacy permittees to serve the public more efficiently and effectively.

The expanded scope of work for pharmacy technicians, which may also include receiving and transferring prescription orders for non-controlled substance medications, will free the time of pharmacists for activities involving the exercise of clinical judgement. Administration of vaccines is a significant part of the business of a pharmacy permittee and having additional

employees qualified to administer them will be beneficial to the permittee's business. The rule amendment requires that pharmacy technicians receive initial and continuing training regarding administration of injections. The Arizona Pharmacy Association will be involved in this training, which will cost between \$120 and \$150 per participant. This cost will probably be paid by the pharmacy permittee.

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

The Board indicates it did not make any substantial changes to the proposed rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

The Board indicates it received six comments related to this rulemaking. The Board indicates four were from individuals representing entities that are part of the pharmaceutical industry: Pharmaceutical Care Management Association, National Association of Chain Drug Stores, CVS, and Walgreens. These comments from the pharmaceutical industry entities expressed strong support for the proposed rulemaking. The Board indicates the remaining two comments were from an individual Mr. Rajesh Gupta who is opposed to the rulemaking. Copies of the comments are included with the final materials for the Council's reference.

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

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

The Board indicates, under A.R.S. § 41-1037(A)(2), the license issued to a pharmacy technician under A.R.S. § 32-1923.01 is not a general permit. Specifically, A.R.S. § 32-1923.01 requires the Board to assess individual qualifications before issuing the license.

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

Not applicable. The Board indicates there are numerous federal laws with which individuals dealing with drugs must comply, but indicates none is directly applicable to this rulemaking.

11. Conclusion

The Board seeks to amend two rules to allow pharmacy technicians to perform additional tasks, including administering vaccines, when the task is delegated by the pharmacist on duty. Additionally, the Board indicates it is also making minor changes needed to align the rules with statute or to incorporate changes implemented during the COVID-19 emergency.

The Board is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.



Arizona State Board of Pharmacy

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November 5, 2021

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

**Re: A.A.C. Title 4. Professions and Occupations
Chapter 23. Board of Pharmacy**

Dear Ms. Sornsin:

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

- A. Close of record date: The rulemaking record was closed on September 24, 2021, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).
- B. Relation of the rulemaking to a five-year-review report: The rulemaking does not relate to a five-year-review report.
- C. New fee: The rulemaking does not establish a new fee.
- D. Fee increase: The rulemaking does not increase an existing fee.
- E. Immediate effective date: An immediate effective date is not requested.
- F. Certification regarding studies: I certify that the preamble accurately discloses the Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.
- G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.
- H. List of documents enclosed:
 1. Cover letter signed by the Executive Director;
 2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
 3. Economic, Small Business, and Consumer Impact Statement

Sincerely,

A handwritten signature in black ink that reads "Kam Gandhi".

Kamlesh Gandhi
Executive Director

NOTICE OF FINAL RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 23. BOARD OF PHARMACY

PREAMBLE

1. Articles, Parts, and Sections Affected

Rulemaking Action

R4-23-411

Amend

R4-23-1104

Amend

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

Authorizing statute: A.R.S. § 32-1904(A)(1) and (B)

Implementing statute: A.R.S. §§ 32-1923.01, 32-1925, 32-1961, and 32-1974

3. The effective date for the rules:

As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State.

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

Not applicable

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

Not applicable

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

Notice of Rulemaking Docket Opening: 27 A.A.R. 1232, August 13, 2021

Notice of Proposed Rulemaking: 27 A.A.R. 1219, August 13, 2021

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

Name: Kamlesh Gandhi

Address: 1616 W Adams Street, Suite 120

Phoenix, AZ 85007

Telephone: (602) 771-2740

Fax: (602) 771-2749

E-mail: kgandhi@azpharmacy.gov

Website: www.azpharmacy.gov

6. An agency's justification and reason why a rule should be made, amended, repealed , or renumbered, to include an explanation about the rulemaking:

The Board is amending its rules to allow pharmacy technicians to perform additional tasks, including administering vaccines, when the task is delegated by the pharmacist on duty. This expansion of the pharmacy technician scope of work is consistent with the evolving national scope of work for pharmacy technicians and guidance provided by the Secretary of the U.S. Department of Health and Human Services regarding the Public Readiness and Emergency Preparedness (PREP) Act. The guidance provides that qualified pharmacy technicians are covered by the liability provisions of the PREP Act when administering COVID19 vaccines and vaccines recommended by the Advisory Committee on Immunization Practices. The Board is also making minor changes needed to align the rules with statute or to incorporate changes implemented during the COVID19 emergency.

An exemption from Executive Order 2021-02 was provided by Trista Guzman Glover in an e-mail dated May 18, 2021. Ms Guzman Glover authorized the Board to submit the rulemaking to the Council in an e-mail dated October 27, 2021.

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

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

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

Not applicable

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

Expanding the scope of work for pharmacy technicians will enable pharmacy permittees to serve the public more efficiently and effectively.

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

No changes were made between the proposed and final rulemaking.

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

The Board received six comments regarding the proposed rulemaking. Four were from individuals representing entities that are part of the pharmaceutical industry: Pharmaceutical Care Management Association, National Association of Chain Drug Stores, CVS, and Walgreens. And two were from Mr. Rajesh Gupta.

The entities representing the pharmaceutical industry expressed strong support for the proposed rulemaking. They believe it will empower pharmacists to make maximum use of the pharmacy technician workforce in the face of increasing public demand for pharmacy services. They indicate that having pharmacy technicians administer vaccines is not new because in response to the COVID health emergency, the federal government, under the Public Readiness and Emergency Preparedness Act, authorized trained pharmacy technicians to administer vaccines. This rulemaking simply makes that authority permanent.

They also indicated that several other states have successfully expanded the scope of pharmacy technician practices to include administrative and support tasks related to patient care services. This same expansion has occurred to a limited extent in Arizona through use of approved deviation requests. The ability of the pharmacist to exercise professional judgment in task delegation provides the pharmacist with better control over functions delegated and avoids a one-size-fits-all approach.

Mr. Gupta opposed the proposed rulemaking. He believes the tasks being allowed are discretionary and should be reserved to pharmacists who have the rigorous training required to perform the duties. He contends the rulemaking is an insidious attempt to cut the pharmacist payroll by hiring more pharmacy technicians who make a fraction of what a pharmacist makes. He is also concerned about the liability of pharmacists when pharmacy technicians are allowed to perform tasks only a pharmacist should perform.

The Board thanks all who commented. It respectfully disagrees when the comments made by Mr. Gupta. No changes were made in response to the comments.

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

None

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

Under A.R.S. § 41-1037(A)(2), the license issued to a pharmacy technician under A.R.S. § 32-1923.01 is not a general permit. A.R.S. § 32-1923.01 requires the Board to assess individual qualifications before issuing the license.

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

No rule in this rulemaking is more stringent than federal law. There are numerous federal laws with which individuals dealing with drugs must comply but none is directly applicable to this rulemaking.

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

No analysis was submitted.

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

None

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

Neither rule in the rulemaking was previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 4. PROFESSIONAL PRACTICES

Section

R4-23-411. Pharmacist-administered or Intern-administered Immunizations

ARTICLE 11. PHARMACY TECHNICIANS

Section

R4-23-1104. Pharmacy Technicians and Pharmacy Technician Trainees

ARTICLE 4. PROFESSIONAL PRACTICES

R4-23-411. Pharmacist-administered or Intern-administered Immunizations

- A.** Authorization to administer immunizations, vaccines, and emergency medications, as defined at A.R.S. § 32-1974(N), to an eligible adult patient or eligible minor patient. As used in this Section, “eligible adult patient” means an eligible patient 13 years of age or older and “eligible minor patient” means an eligible patient at least three years of age but less than 13 years of age. A pharmacist or an intern in the presence of and under the immediate personal supervision of a pharmacist, may administer, without a prescription, immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient, if:
1. Both the pharmacist and intern meet the qualifications and standards specified by A.R.S. § 32-1974 and this Section;
 2. The Board authorizes both the pharmacist and intern as specified in subsection (D);
 3. For an eligible adult patient, the immunization or vaccine is:
 - a. Recommended for adults by the United States Centers for Disease Control and Prevention; or
 - b. Recommended by the United States Centers for Disease Control and Prevention’s Health Information for International Travel;
 4. For an eligible adult patient, the immunization or vaccine is not on the Arizona Department of Health Services list specified in A.A.C. R9-6-1301 as required under A.R.S. § 32-1974(I);
 5. For an eligible minor patient, the immunization or vaccine is for influenza or a booster dose as described under A.R.S. § 32-1974(B)(2); and
 6. For an eligible minor patient, any immunizations or vaccines other than influenza or a booster dose as described under A.R.S. § 32-1974(B)(2) are administered in response to a public health emergency declared by the Governor under A.R.S. § 36-787.
- B.** A pharmacist or an intern in the presence of and under the immediate personal supervision of a pharmacist, may administer, with a prescription, any immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient, if:
1. Both the pharmacist and intern meet the qualifications and standards specified by A.R.S. § 32-1974 and this Section; and
 2. The Board authorizes both the pharmacist and intern as specified in subsection (D).
- C.** A pharmacist or intern who is authorized to administer immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient shall:

1. Not delegate the authority to any other pharmacist, intern, or employee not specifically authorized by rule; and
 2. Maintain their current certificate for inspection by the Board or its designee or review by the public.
- D.** Qualifications to administer immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient. After receipt of a completed application form, the Board shall authorize the administration of immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient by a pharmacist or intern who meets the following qualifications:
1. Has a current license to practice pharmacy in this state,
 2. Successfully completes a training program specified in subsection (E), and
 3. Has a current certificate in basic cardiopulmonary resuscitation.
- E.** Immunizations training program requirements. A training program for pharmacists or interns to administer immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient shall include the following courses of study:
1. Basic immunology and the human immune response;
 2. Mechanics of immunity, adverse effects, dose, and administration schedule of available vaccines;
 3. Response to an emergency situation as a result of the administration of an immunization, vaccine, or medication including administering an emergency medication to counteract the adverse effects of the immunization, vaccine, or medication given;
 4. Administration of intramuscular injections;
 5. Other immunization administration methods; and
 6. Recordkeeping and reporting requirements specified in subsection (F).
- F.** Recordkeeping and reporting requirements.
1. A pharmacist or intern authorized under this Section to administer immunizations, vaccines, and emergency medications to an eligible patient shall provide to the pharmacy the following information and documentation regarding each immunization, vaccine, or emergency medication administered:
 - a. The name, address, and date of birth of the patient;
 - b. The date of administration and site of injection;
 - c. The name, dose, manufacturer's lot number, and expiration date of the vaccine, immunization, or emergency medication;
 - d. The name and address of the patient's identified primary-care provider or physician;

- e. The name of the pharmacist or intern administering the immunization, vaccine, or emergency medication;
 - f. A record of the pharmacist's or intern's consultation with the patient determining that the patient is an eligible patient as defined in R4-23-110;
 - g. Consultation or other professional information provided to the patient by the pharmacist or intern;
 - h. The name and date of the immunization or vaccine information sheet provided to the patient; and
 - i. For an immunization or vaccine given to an eligible minor patient, a consent form signed by the minor's parent or guardian.
2. As required under A.R.S. § 32-1974(F)(1), the pharmacist or intern shall provide a written or electronic report to the patient's primary-care provider or physician containing the documentation required in subsection (F)(1)(a) through (d). The pharmacy shall document the time and date the report is sent and make the record of compliance with this subsection available in the pharmacy or on request, within 72 hours, for inspection by the Board or its designee.
 3. A pharmacy's pharmacist-in-charge or permittee shall maintain the records required in subsection (F)(1) in the pharmacy or database for a minimum of seven years from the administration date.
- G.** Confidentiality of records. A pharmacist, intern, pharmacy permittee, or pharmacist-in-charge shall comply with applicable state and federal privacy statutes and rules when releasing patient health information.
- H.** Pharmacist-administered or intern-administered adult immunizations that require a prescription order. A pharmacist or intern authorized by the Board to administer adult immunizations or vaccines shall not administer any immunization or vaccine listed in A.A.C. R9-6-1301 without a prescription order. In addition to filing a prescription order as required in A.R.S. § 32-1964, a pharmacist or pharmacy intern who administers an immunization or vaccine listed in A.A.C. R9-6-1301 shall comply with the recordkeeping requirements of subsection (F)(1).

ARTICLE 11. PHARMACY TECHNICIANS

R4-23-1104. Pharmacy Technicians and Pharmacy Technician Trainees

- A.** Permissible tasks of a pharmacy technician trainee. Acting in compliance with all applicable statutes and rules and under the supervision of a pharmacist, a pharmacy technician trainee licensed under

R4-23-1103 may assist a ~~graduate intern, pharmacy~~ an intern, or pharmacist with the following when applicable to the pharmacy practice site:

1. Record on the original prescription order the serial number of the prescription medication and date dispensed;
 2. Initiate or accept verbal or electronic refill authorization from a medical practitioner or medical practitioner's agent and record, on the original prescription order or by an alternative method approved by the Board or its designee, the medical practitioner's name, patient name, name and quantity of prescription medication, specific refill information, and name of medical practitioner's agent, if any;
 3. Record information in the refill record or patient profile;
 4. Enter information for a new or refill prescription medication as required under A.R.S. § 32-1964;
 5. Type and affix a label for the prescription medication. A pharmacist or ~~graduate or pharmacy~~ intern working under the supervision of a pharmacist shall verify the accuracy of the label as described under R4-23-402(A)(11);
 6. Reconstitute a prescription medication, if a pharmacist checks the ingredients and procedure before reconstitution and verifies the final product after reconstitution;
 7. Retrieve, count, or pour a prescription medication, if a pharmacist verifies the contents of the prescription medication against the original prescription medication container or by an alternative drug identification method approved by the Board or its designee;
 8. Prepackage drugs in accordance with R4-23-402(A); and
 9. Measure, count, pour, or otherwise prepare and package a drug needed for hospital inpatient dispensing, if a pharmacist verifies the accuracy, measuring, counting, pouring, preparing, packaging, and safety of the drug before the drug is delivered to a patient care area.
- B.** Permissible tasks of a pharmacy technician. Acting in compliance with all applicable statutes and rules and under the supervision of a pharmacist, a pharmacy technician licensed under R4-23-1102 may:
1. Perform the tasks listed in subsection (A);
 2. After completing a pharmacy technician drug compounding training program developed by the pharmacy permittee or pharmacist-in-charge under R4-23-1105(C), assist a pharmacist, ~~graduate intern,~~ pharmacy intern in compounding prescription medications and sterile or non-sterile pharmaceuticals in accordance with written policies and procedures, if the preparation, accuracy, and safety of the final product is verified by a pharmacist before dispensing;

3. Perform a final technology-assisted verification of product if the pharmacy technician is qualified under R4-23-1104.01(D); ~~and~~
4. If technology-assisted verification is performed, type and affix a label for the prescription medication. A pharmacist or ~~graduate or pharmacy~~ intern shall verify the accuracy of the label as described under R4-23-402(A)(12);
5. Administer a vaccine when:
 - a. Authority to administer the vaccine is delegated by the pharmacist on duty;
 - b. Administration of the vaccine is done under a pharmacist's order that complies with A.R.S. § 32-1974 and R4-23-411;
 - c. Administration of the vaccine is done under the supervision of a pharmacist on duty who is certified by the Board under A.R.S. § 32-1974(D) to administer vaccines; and
 - d. There is evidence in the pharmacy file that the pharmacy technician has completed the following:
 - i. A practical training program that is approved by the Accreditation Council for Pharmacy Education and includes hands-on injection technique and recognition and treatment of emergency reactions to vaccines;
 - ii. Current certification in basic cardiopulmonary resuscitation; and
 - iii. Two hours of continuing education during each license renewal period that are about administration of vaccines and approved by the Accreditation Council for Pharmacy Education; and
6. Perform any task if the task is delegated to the pharmacy technician by the pharmacist on duty after the pharmacist on duty ensures the pharmacy technician is trained to do the task and evidence of the training exists in the pharmacy file. A pharmacist on duty shall not delegate or attempt to delegate the following tasks to a pharmacy technician:
 - a. Administering an emergency medication.
 - b. Counseling a patient.
 - c. Conducting a drug utilization review.
 - d. Performing any task that requires the exercise of clinical judgment.
 - e. Issuing a prescription order.
 - f. Receiving a new prescription order for a controlled substance, or
 - g. Transferring by telephone an existing prescription order for a controlled substance.

- C. A trained and licensed pharmacy technician or pharmacy technician trainee who performs a task as authorized under subsections (A) and (B) shall ensure the task is performed accurately.
- D. Prohibited activities. A pharmacy technician or pharmacy technician trainee shall not perform a professional practice reserved for a pharmacist, ~~graduate intern,~~ or ~~pharmacy~~ intern in accordance with R4-23-402 or R4-23-653 unless otherwise allowed by rule.
- E. A pharmacy technician or pharmacy technician trainee shall wear a badge indicating name and title while on duty.
- F. Before employing a pharmacy technician or pharmacy technician trainee, a pharmacy permittee or pharmacist-in-charge shall develop, implement, review, and revise in the manner described in R4-23-653(A) and comply with policies and procedures outlined in subsection (G) for pharmacy technician and pharmacy technician trainee tasks.
- G. A pharmacy permittee or pharmacist-in-charge shall ensure policies and procedures required under subsection (F) include the following:
 - 1. For all practice sites:
 - a. Supervisory controls and verification procedures to ensure the quality and safety of pharmaceutical service;
 - b. Employment performance expectations for a pharmacy technician and pharmacy technician trainee;
 - c. The tasks a pharmacy technician or pharmacy technician trainee may perform as specified under subsections (A) and (B);
 - d. Pharmacist and patient communication;
 - e. Reporting, correcting, and avoiding medication and dispensing errors;
 - f. Security procedures for:
 - i. Confidentiality of patient prescription records, and
 - ii. The pharmacy area;
 - g. Automated medication distribution system;
 - h. Compounding procedures for pharmacy technicians; and
 - i. Brief overview of state and federal pharmacy statutes and rules;
 - 2. For community and limited-service pharmacy practice sites:
 - a. Prescription dispensing procedures for:
 - i. Accepting a new written prescription order,
 - ii. Accepting a refill request,
 - iii. Selecting a drug product,

- iv. Counting and pouring,
 - v. Labeling, and
 - vi. Obtaining refill authorization; and
 - b. Computer data-entry procedures for:
 - i. New and refill prescriptions,
 - ii. Patient's drug allergies,
 - iii. Drug-drug interactions,
 - iv. Drug-food interactions,
 - v. Drug-disease state contraindications,
 - vi. Refill frequency,
 - vii. Patient's disease and medical condition,
 - viii. Patient's age or date of birth and gender, and
 - ix. Patient profile maintenance; and
- 3. For hospital pharmacy practice sites:
 - a. Medication order procurement and data entry,
 - b. Drug preparation and packaging,
 - c. Outpatient and inpatient drug delivery, and
 - d. Inspection of drug storage and preparation areas and patient care areas.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT¹
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 23. BOARD OF PHARMACY

1. Identification of the rulemaking:

The Board is amending its rules to allow pharmacy technicians to perform additional tasks, including administering vaccines, when the task is delegated by the pharmacist on duty. This expansion of the pharmacy technician scope of work is consistent with the evolving national scope of work for pharmacy technicians² and guidance provided by the Secretary of the U.S. Department of Health and Human Services regarding the Public Readiness and Emergency Preparedness (PREP) Act. The guidance provides that qualified pharmacy technicians are covered by the liability provisions of the PREP Act when administering COVID19 vaccines and vaccines recommended by the Advisory Committee on Immunization Practices. The Board is also making minor changes needed to align the rules with statute or to incorporate changes implemented during the COVID19 emergency.

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

Until the rulemaking is completed, the scope of work for pharmacy technicians in Arizona will not be expanded in a way consistent with that in other states, federal guidance, and the best interest of citizens needing vaccines.

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

Vaccines are one of the most cost-effective preventative health measures available. Widespread use of vaccines reduces the cost of health care. Pharmacies are one of the primary locations at which individuals choose to obtain a vaccine. Without this rulemaking, an inexpensive and easy way to expand access to vaccines will be denied to citizens of Arizona.

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

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

² See <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6958442>

When the rulemaking is completed, the scope of work for pharmacy technicians will expand to include supervised administration of vaccines. This will expand access to vaccines in Arizona.

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

Expanding the scope of work for pharmacy technicians will enable pharmacy permittees to serve the public more efficiently and effectively.

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

Name: Kamlesh Gandhi

Address: 1616 W Adams Street, Suite 120
Phoenix, AZ 85007

Telephone: (602) 771-2740

Fax: (602) 771-2749

E-mail: kgandhi@azpharmacy.gov

Website: www.azpharmacy.gov

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

Pharmacy permittees, pharmacy technicians, and the Board are persons that are directly affected by, will bear the costs of, and will directly benefit from the rulemaking. There are currently 1,330 pharmacy permittees in Arizona and 12,125 licensed pharmacy technicians. All pharmacy permittees employ pharmacy technicians who perform a variety of tasks regarding prescription orders and prescription medications that do not involve the exercise of clinical judgment. The expanded scope of work for pharmacy technicians, which may also include receiving and transferring prescription orders for non-controlled substance medications, will free the time of pharmacists for activities involving the exercise of clinical judgment. Administration of vaccines is a significant part of the business of a pharmacy permittee and having additional employees qualified to administer them will be beneficial to the permittee's business. The rule amendment requires that pharmacy technicians receive initial and continuing training regarding administration of injections. The Arizona Pharmacy Association will be involved in this training, which will cost between \$120 and \$150 per participant. This cost probably will be paid by the pharmacy permittee.

The Board incurred the cost of this rulemaking and will incur the cost of implementing it. The Board will benefit from having updated rules that expand the scope of work for pharmacy technicians and enable pharmacy permittees to serve the public more efficiently and effectively.

5. Cost-benefit analysis:

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

The Board is the only state agency directly affected by this rulemaking. Its costs and benefits are described in item 4. The Board will not need additional full-time employees to implement the amended rules.

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

Political subdivisions are not directly affected by this rulemaking.

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

Pharmacy permittees and pharmacy technicians are businesses directly affected by this rulemaking. Their costs and benefits are described in item 4.

6. Impact on private and public employment:

There will be no impact on private or public employment.

7. Impact on small businesses³:

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

Pharmacy permittees and pharmacy technicians are small businesses subject to this rulemaking.

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

Before administering a vaccine, a pharmacy technician is required to complete a practical training program involving hands-on injection technique and recognition and treatment of emergency reactions to vaccines. A pharmacy technician working under the expanded scope of work is also required to maintain certification in basic cardiopulmonary resuscitation and to obtain two hours of continuing education about administration of vaccines during each license renewal period. The pharmacy permittee must maintain evidence that a pharmacy technician has completed these requirements.

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

³ Small business has the meaning specified in A.R.S. § 41-1001(21).

The only cost involved is that of the training required for a pharmacy technician to be qualified to administer vaccines and maintenance of records of the training. These costs are minimal and cannot be reduced while still ensuring public health and safety.

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

Private persons and consumers are not directly affected by this rulemaking.

9. Probable effects on state revenues:

The rulemaking has no effect on state revenue.

10. Less intrusive or less costly alternative methods considered:

The rulemaking is neither intrusive nor costly. No less intrusive or costly method was considered.

Via electronic mail

August 16, 2021

Kamlesh Gandhi, PharmD
Executive Director
Arizona State Board of Pharmacy
1616 West Adams St, Suite 120
Phoenix, AZ 85007

Re: Proposed rule amendments to R4-23-411 and R4-23-1104 Pharmacy Technicians

Dear Executive Director Gandhi:

I am writing to you in my capacity as Sr. Director of Pharmacy Regulatory Affairs for CVS Health and its family of pharmacies. CVS Health, the largest pharmacy health care provider in the United States, is uniquely positioned to provide care with diverse access points to patients in the state of Arizona through our integrated offerings across the spectrum of pharmacy care. CVS Health appreciates the opportunity to submit comments on the proposed amendments to Arizona Administrative Code (AAC) Title 4 Chapter 23 expanding pharmacy technicians' tasks to include administering of vaccines when the task is delegated by the pharmacist on duty. We would also like to thank the Board for their vigilance in continuously improving the laws and rules that guide pharmacists, pharmacy interns and pharmacy technicians serving Arizona patients.

Paramount and centric to all Board rules, including pharmacy technician roles and responsibilities, is patient safety. Increasing the scope of pharmacy technician practice to include administrative and supportive tasks for pharmacist-provided patient care services will allow pharmacists to more effectively and efficiently provide for patients' medication-related needs.¹ Most importantly, some states have a patient safety track record of success with expanded pharmacy technicians roles that spans over four decades, which Arizona will now join with promulgation of the amended rules.² Pharmacist delegation is individualistic and takes into account the individual technician's capabilities, the pharmacist's comfort level, facility policies, and the risk mitigation strategies present at the facility, among other factors.³ The ability for a pharmacist to utilize their discretion in task delegation provides a pharmacist better control over which functions to delegate in the interest of patient care, and to whom. The amended rules achieve that objective rather than supplanting the professional judgment of pharmacists with one-size-fits-all rules.⁴

Therefore, CVS Health supports proposed amendments to AAC R4-23-411 Pharmacist-administered or Inter-administered Immunizations and AAC R4-23-1104 Pharmacy Technician and Pharmacy Technician Trainees which expands pharmacy technician tasks and duties. If you have any questions or need additional information, please contact me directly at 540-604-3661.

Sincerely,



Lauren Paul, PharmD, MS
Sr Director, Pharmacy Regulatory Affairs
CVS Health

References:

1. Zellmer WA, et al. Toward uniform standards for pharmacy technicians: Summary of the 2017 Pharmacy Technician Stakeholder Consensus Conference. Am J Health Syst Pharm. 2017;74(17):1321-1332.

2. Frost TP, Adams AJ. Expanded pharmacy technician roles: Accepting verbal prescriptions and communicating prescription transfers. *Res Social Adm Pharm.* 2017;13(6):1191-1195.
3. Adams AJ. Toward permissionless innovation in health care. *J Am Pharm Assoc.* 2015; 55:359e362.
4. Adams AJ. Advancing technician practice: Deliberations of a regulatory board. *Research in Social and Administrative Pharmacy.* 2018;14(1):1-5.



Jeenu Philip, R.Ph.
Director, Pharmacy Affairs
Walgreen Co.
p: 904-386-6776
jeenu.philip@walgreens.com

September 13th, 2021

Via Email

Arizona Board of Pharmacy
Attention: Kam Gandhi, PharmD
Executive Director
1616 W. Adams St., Suite 120
Phoenix, AZ 85007
Email: kgandhi@azpharmacy.gov

Dear Executive Director Gandhi,

On behalf of all pharmacies owned and operated by Walgreen Co. in the state of Arizona, we thank the Board for the opportunity to provide comments on the proposed rule changes regarding delegation of responsibilities to pharmacy technicians and specifically to administer immunizations in R4-23-411 and R4-23-1104.

Walgreens is very much in support of these rule changes; we encourage the expansion of pharmacy technician roles to allow delegation of immunization administration and other expanded duties to trained pharmacy technicians. We stand in full support of the rules as proposed.

Several states, such as Idaho, Illinois, Indiana, Rhode Island, Utah, and Washington, have all allowed this activity. Additionally, numerous other states are in active discussions regarding regulation changes to allow this activity to be permissible in their state.

Within the first year of adopting these regulations, the Idaho Board of Pharmacy estimated that pharmacy technicians administered approximately 25,000 vaccines. There were no adverse events or errors reported to the Board of Pharmacy¹, illustrating that with proper training, pharmacy technicians are capable of safely administering immunizations to patients.

Furthermore, internal surveys have highlighted positive feedback on pharmacy technicians administered immunizations by pharmacists, pharmacy technicians, and patients. The ability to delegate this administrative task to trained pharmacy technicians allows for increased pharmacist capacity for engaging in additional clinical and patient care services.

Technician Immunization Program Feedback and Benefits:

- Pharmacists in the study felt that their immunizing pharmacy technicians were properly trained to administer immunizations, capable of giving immunizations, and empowered by their new role within the pharmacy.²
- Findings also included a pharmacist-perceived increase in vaccination rates and recommendation for other pharmacy technicians to be trained to administer immunizations.²



- Pharmacists' opinions revealed that working with newly trained immunizing pharmacy technicians has not only positively affected the morale of their team, but can help to increase the number of vaccinations given by the pharmacy.²
- There was no risk to pharmacist employment position as the pharmacist must complete clinical review prior to pharmacy technician administration to confirm vaccine eligibility and is responsible to confirm correct product and dosage is being provided by pharmacy technician.
- Providing the pharmacy technician the ability to complete the non-clinical task of immunization administration provides the pharmacist additional capacity to practice at the top of their licensure to engage patients in additional activities such as medication therapy management services, adherence monitoring, prescriptive authority, etc.

Walgreens fully supports the Board's proposed regulations regarding the pharmacy technician's ability to administer immunizations and commends the Board for being progressive and taking swift action to make the PREP act provisions permanent.

If the Board would like additional information, please feel free to contact me.

Sincerely,

Jeenu Philip R.Ph.

References:

1. Alex Adams, Shane Desselle, and Kimberly McKeirnan. "Pharmacy technician-administered vaccines: on perceptions and practice reality." *Pharmacy* 6.4 (2018): 124.
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6306786/>
2. [Bertsch TG](#), [McKeirnan KC](#), [Frazier K](#), [VanVoorhis L](#), [Shin S](#), [Le K](#). July 2019. Supervising pharmacists' opinions about pharmacy technicians as immunizers. *J Am Pharm Assoc*. Volume 59, Issue 4, Pages 527-532. <https://www.ncbi.nlm.nih.gov/pubmed/31036525>



September 20, 2021
Kamlesh Gandhi, PharmD
Executive Director
Arizona State Board of Pharmacy
1616 West Adams ST, Suite 120
Phoenix, Arizona 85007

Re: Proposed rule amendments to R4-23-411 and R4-23-1104 Pharmacy Technicians

Dear Executive Director Gandhi:

On behalf of the Pharmaceutical Care Management Association (PCMA), we respectfully submit the following comments in support of the rule to amend **R4-23-411** and **R4-23-1104** regarding the expanding scope of tasks which may be performed by pharmacy technicians as delegated by a pharmacist, including the administration of vaccines. PCMA is the national trade association representing America's pharmacy benefit managers, which administer prescription drug plans for more than 266 million Americans with health coverage provided through Fortune 500 employers, health insurance plans, labor unions, and Medicare Part D.

Recognizing that patient safety is a chief goal for any Board rule, expanding the scope of pharmacy technician practices to include administrative and supportive tasks for pharmacy related patient care services is supportive of that goal. A number of states have had proven success with expanded pharmacy technician roles and PCMA commends the Arizona Board of Pharmacy for joining their ranks. Allowing pharmacists to use their professional judgement in the delegation of tasks according to a pharmacy technician's abilities sets aside a one-size-fits-all approach and encourages more control for a pharmacist to more efficiently and effectively provide patient and clinical care.

In 2018 and 2019, the Arizona State Board of Pharmacy approved several deviation requests allowing certified, licensed pharmacy technicians to complete verbal prescription transfers of non-controlled substances. Prior to these deviation approvals, only pharmacists or interns under the direct supervision of pharmacists were allowed to complete verbal prescription transfers. These approvals allowed certified, licensed pharmacy technicians to safely practice at the top of their license while giving more time for pharmacists to engage in direct patient care. The deviation approvals have shown over the last 2 to 3 years that certified, licensed pharmacy technicians can safely engage in verbal prescription transfers.

PCMA supports the Arizona State Board of Pharmacy approving the rulemaking changes to allow for pharmacy technicians to engage in activities delegated by the pharmacist on duty, which includes, but not limited to, verbal prescription transfers of non-controlled substances. The expanded list of permissible technician duties will provide more time for pharmacists to engage in clinical and discretionary activities that require the education, training, and experience of a pharmacist, which will ultimately lead to better patient care and outcomes.

We appreciate your consideration of our comments. If you have any questions or would like more information, please contact me at 859-797-1820.



Sincerely,

A handwritten signature in black ink, appearing to read "Connor Rose", is positioned above the typed name.

Connor Rose
Director, State Affairs
PCMA

September 21, 2021

Kamlesh Gandhi
Executive Director
Arizona State Board of Pharmacy
1616 W. Adams St., Ste. 120
Phoenix, AZ 85007

Via email: kgandhi@azpharmacy.gov

**RE: Pharmacist-administered or Intern-administered Immunizations (R4-23-211)
and Pharmacy Technicians and Pharmacy Technician Trainees (R4-23-1104)
Proposed Rules**

Dear Mr. Gandhi:

On behalf of our members operating community pharmacies in Arizona, the National Association of Chain Drug Stores (NACDS)ⁱ is writing to communicate our strong support for the proposed rules allowing pharmacists to delegate additional nondiscretionary tasks to pharmacy technicians, including the technical act of administering vaccines and performing other tasks that a pharmacy technician is trained to perform. This rule change will serve to empower pharmacists to optimize use of the pharmacy technician workforce as they work to meet increasing public demand for pharmacy services.

As amplified during the COVID-19 pandemic, pharmacies play a vital role delivering healthcare services to the public. More and more, people have come to rely on their local pharmacy for necessary care access, including for vaccines, testing services, health screenings, and other important clinical care. Meeting patient demand for these clinical services while simultaneously meeting prescription dispensing needs for patients is greatly enhanced by the ability of each member of the pharmacy team to contribute at the top of their skills and to deploy care models that remove inefficiencies. Leveraging pharmacy technicians to assist in administering vaccines serves this importance purpose, bolstering pharmacies' ability to meet patients' various healthcare needs.

Throughout the public health emergency, pharmacy technicians have been integral in the delivery of vaccine services. As authorized by the federal government under the Public Readiness and Emergency Preparedness Act (PREP Act), trained pharmacy technicians throughout the state are already participating in the administration of vaccines to the people of Arizona. By permanently codifying the ability of pharmacy technicians to continue to assist pharmacists with vaccine administration efforts, the regulatory change

proposed by these rules will help to ensure that pharmacies can continue to provide the level of patient care services that the general public has come to expect in recent times.

NACDS thanks you for consideration of our comments. We ask the Board to adopt these proposed rules to optimize the capacity of the pharmacy community to pharmacies to meet patients growing pharmacy care needs. If you have any questions or need additional information, please contact Sandra Guckian, NACDS' Vice President, State Relations, at sguckian@nacds.org or 703-774-4801.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven C. Anderson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Steven C. Anderson, FASAE, CAE, IOM
President and Chief Executive Officer

ⁱ The National Association of Chain Drug Stores represents traditional drug stores, supermarkets and mass merchants with pharmacies. Chains operate over 40,000 pharmacies, and NACDS' over 80 chain member companies include regional chains, with a minimum of four stores, and national companies. Chains employ nearly 3 million individuals, including 155,000 pharmacists. They fill over 3 billion prescriptions yearly, and help patients use medicines correctly and safely, while offering innovative services that improve patient health and health care affordability. Please visit nacds.org.



Kamlesh Gandhi <kgandhi@azpharmacy.gov>

Pharmacist Delegation of Tasks to Technicians

1 message

Rajesh Gupta <rajeshgupta8777@gmail.com>

Wed, Aug 18, 2021 at 6:18 PM

To: Kamlesh Gandhi <KGandhi@azpharmacy.gov>

Public Comment:

This rule making change to expand the duties of pharmacy technicians or trainees thereof under pharmacist delegation is farcical and a big mistake. There is nothing wrong with the existing rules and statutes that govern pharmacy technicians or trainees thereof. This rule making change is unnecessary and not needed for the state of Arizona. I do not want this totally BIASED, unsolicited, unilateral rule making change to reach fruition. I want this to be dropped and not passed. I feel the Arizona board of pharmacy should have done a better job in educating the public of talks for rule making change by the board of pharmacy that were proposed and later petitioned for approval to the governor. I am totally against this piece of legislation. I am sure I am not the only one.

GUPTA



Kamlesh Gandhi <kgandhi@azpharmacy.gov>

Fwd: Pharmacist Delegation of Tasks to Technician RULE REWRITE

1 message

Rajesh Gupta <rajeshgupta8777@gmail.com>
To: Kamlesh Gandhi <kgandhi@azpharmacy.gov>

Thu, Sep 16, 2021 at 6:34 PM

DISREGARD the previous email. I forgot to add a word to this.

----- Forwarded message -----

From: Rajesh Gupta <rajeshgupta8777@gmail.com>
Date: Thu, Sep 16, 2021 at 6:30 PM
Subject: Pharmacist Delegation of Tasks to Technician RULE REWRITE
To: Kamlesh Gandhi <kgandhi@azpharmacy.gov>

I am opposed to expanding the duties of the pharmacy technician because:

- 1) the tasks being allowed by the rule change are discretionary tasks that should only be reserved to pharmacists.
- 2) A pharmacist has to go through rigorous training to perform the duties that now a technician may do with just a high school degree.
- 3) It's an insidious attempt to cut the pharmacist payroll by hiring more techs who make a fraction of what the pharmacist makes.
- 4) Pharmacy techs do not have the caliber to perform the duties allowed by the rule rewrite because of the lack of education they get as compared to pharmacists.
- 5) It's a liability issue for a pharmacist and the rule fails to mention what's the liability of pharmacists now that techs are allowed to do tasks that only pharmacists are allowed to do.
- 6) This rule change adds more pressure on the pharmacists who are already pressured with the increased workloads and quotas set by corporations.

I also think that it is not in the PURVIEW of the Arizona board of pharmacy to track CUSTOMER SERVICE complaints on not answering phone calls timely and other matters deemed customer service related since CUSTOMER SERVICE IS NOT a violation of state or federal LAW. I feel you should tackle those who are violating the laws and rules instead. It's (NOT) the board's business on how companies handle customer service complaints for they are not a violation of state or federal law.

CHAPTER 23. BOARD OF PHARMACY

2. Components for pharmaceutical product compounding are accurately weighed, measured, or subdivided. To ensure that each weight, measure, or subdivision is correct as stated in the compounding procedures, a pharmacist:
 - a. Checks and rechecks, or assumes responsibility for checking and re-checking, the operations at each stage of the compounding process; and
 - b. Documents by hand-written initials or signature the completion and accuracy of the compounding process.
 3. Compounding equipment and utensils are properly cleaned and maintained.
 4. In addition to the labeling requirements of A.R.S. § 32-1968(D), the label contains:
 - a. A statement, symbol, designation, or abbreviation that the pharmaceutical product is a compounded pharmaceutical product, and
 - b. A beyond-use-date as specified in subsection (B)(3)(d).
 5. A written list of the compounded pharmaceutical product's active ingredients is given to the patient at the time of dispensing.
 6. When a component is removed from its original container and transferred to another container, the new container label contains, in full text or an abbreviated code system, the following:
 - a. The component name,
 - b. The manufacturer's or supplier's name,
 - c. The lot or control number,
 - d. The weight or measure,
 - e. The beyond-use-date as specified in subsection (B)(3)(d), and
 - f. The transfer date.
- J.** A pharmacy permittee shall ensure that the pharmacist-in-charge stores any quantity of compounded pharmaceutical product produced in excess of the quantity dispensed in accordance with subsection (B):
1. In an appropriate container with a label that contains:
 - a. A complete list of components or the pharmaceutical product's name;
 - b. The preparation date;
 - c. The assigned lot or control number; and
 - d. A beyond-use-date as specified in subsection (B)(3)(d); and
 2. Under conditions, dictated by the pharmaceutical product's composition and stability characteristics, that ensure its strength, quality, and purity.
- K.** A pharmacy permittee shall ensure that the pharmacist-in-charge establishes, implements, and complies with record-keeping procedures that comply with this subsection:
1. Pharmaceutical product compounding procedures and other records required by this Section are maintained by the pharmacy for not less than seven years, and
 2. Pharmaceutical product compounding procedures and other records required by this Section are readily available for inspection by the Board or its designee.

Historical Note

Adopted effective August 5, 1997 (Supp. 97-3).
Amended by final rulemaking at 10 A.A.R. 3391, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 12 A.A.R. 3981, effective December 4, 2006 (Supp. 06-4).

R4-23-411. Pharmacist-administered or Intern-administered Immunizations

- A.** Authorization to administer immunizations, vaccines, and emergency medications, as defined at A.R.S. § 32-1974(N), to an eligible adult patient or eligible minor patient. As used in this Section, "eligible adult patient" means an eligible patient 13 years of age or older and "eligible minor patient" means an eligible patient at least three years of age but less than 13 years of age. A pharmacist or an intern in the presence of and under the immediate personal supervision of a pharmacist, may administer, without a prescription, immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient, if:
1. Both the pharmacist and intern meet the qualifications and standards specified by A.R.S. § 32-1974 and this Section;
 2. The Board authorizes both the pharmacist and intern as specified in subsection (D);
 3. For an eligible adult patient, the immunization or vaccine is:
 - a. Recommended for adults by the United States Centers for Disease Control and Prevention; or
 - b. Recommended by the United States Centers for Disease Control and Prevention's Health Information for International Travel;
 4. For an eligible adult patient, the immunization or vaccine is not on the Arizona Department of Health Services list specified in A.A.C. R9-6-1301 as required under A.R.S. § 32-1974(I);
 5. For an eligible minor patient, the immunization or vaccine is for influenza or a booster dose as described under A.R.S. § 32-1974(B)(2); and
 6. For an eligible minor patient, any immunizations or vaccines other than influenza or a booster dose as described under A.R.S. § 32-1974(B)(2) are administered in response to a public health emergency declared by the Governor under A.R.S. § 36-787.
- B.** A pharmacist or an intern in the presence of and under the immediate personal supervision of a pharmacist, may administer, with a prescription, any immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient, if:
1. Both the pharmacist and intern meet the qualifications and standards specified by A.R.S. § 32-1974 and this Section; and
 2. The Board authorizes both the pharmacist and intern as specified in subsection (D).
- C.** A pharmacist or intern who is authorized to administer immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient shall:
1. Not delegate the authority to any other pharmacist, intern, or employee; and
 2. Maintain their current certificate for inspection by the Board or its designee or review by the public.
- D.** Qualifications to administer immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient. After receipt of a completed application form, the Board shall authorize the administration of immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient by a pharmacist or intern who meets the following qualifications:
1. Has a current license to practice pharmacy in this state,
 2. Successfully completes a training program specified in subsection (E), and
 3. Has a current certificate in basic cardiopulmonary resuscitation.
- E.** Immunizations training program requirements. A training program for pharmacists or interns to administer immunizations,

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vaccines, and emergency medications to an eligible adult patient or eligible minor patient shall include the following courses of study:

1. Basic immunology and the human immune response;
 2. Mechanics of immunity, adverse effects, dose, and administration schedule of available vaccines;
 3. Response to an emergency situation as a result of the administration of an immunization, vaccine, or medication including administering an emergency medication to counteract the adverse effects of the immunization, vaccine, or medication given;
 4. Administration of intramuscular injections;
 5. Other immunization administration methods; and
 6. Recordkeeping and reporting requirements specified in subsection (F).
- F. Recordkeeping and reporting requirements.**
1. A pharmacist or intern authorized under this Section to administer immunizations, vaccines, and emergency medications to an eligible patient shall provide to the pharmacy the following information and documentation regarding each immunization, vaccine, or emergency medication administered:
 - a. The name, address, and date of birth of the patient;
 - b. The date of administration and site of injection;
 - c. The name, dose, manufacturer's lot number, and expiration date of the vaccine, immunization, or emergency medication;
 - d. The name and address of the patient's identified primary-care provider or physician;
 - e. The name of the pharmacist or intern administering the immunization, vaccine, or emergency medication;
 - f. A record of the pharmacist's or intern's consultation with the patient determining that the patient is an eligible patient as defined in R4-23-110;
 - g. Consultation or other professional information provided to the patient by the pharmacist or intern;
 - h. The name and date of the immunization or vaccine information sheet provided to the patient; and
 - i. For an immunization or vaccine given to an eligible minor patient, a consent form signed by the minor's parent or guardian.
 2. As required under A.R.S. § 32-1974(F)(1), the pharmacist or intern shall provide a written or electronic report to the patient's primary-care provider or physician containing the documentation required in subsection (F)(1)(a) through (d). The pharmacy shall document the time and date the report is sent and make the record of compliance with this subsection available in the pharmacy or on request, within 72 hours, for inspection by the Board or its designee.
 3. A pharmacy's pharmacist-in-charge or permittee shall maintain the records required in subsection (F)(1) in the pharmacy or database for a minimum of seven years from the administration date.
- G. Confidentiality of records.** A pharmacist, intern, pharmacy permittee, or pharmacist-in-charge shall comply with applicable state and federal privacy statutes and rules when releasing patient health information.
- H. Pharmacist-administered or intern-administered adult immunizations that require a prescription order.** A pharmacist or intern authorized by the Board to administer adult immunizations or vaccines shall not administer any immunization or vaccine listed in A.A.C. R9-6-1301 without a prescription order. In addition to filing a prescription order as required in A.R.S. § 32-1964, a pharmacist or pharmacy intern who administers an

immunization or vaccine listed in A.A.C. R9-6-1301 shall comply with the recordkeeping requirements of subsection (F)(1).

Historical Note

New Section made by final rulemaking at 10 A.A.R. 3967, effective November 13, 2004 (Supp. 04-3). Amended by final rulemaking at 12 A.A.R. 279, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 3674, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 15 A.A.R. 1930, effective November 3, 2009 (Supp. 09-4). Amended by final rulemaking at 17 A.A.R. 2596, effective February 4, 2012 (Supp. 11-4). Amended by final rulemaking at 23 A.A.R. 211, effective March 5, 2017 (Supp. 17-1). Amended by final rulemaking at 25 A.A.R. 1015, effective June 1, 2019 (Supp. 19-2). Amended by final rulemaking at 26 A.A.R. 223, effective March 14, 2020 (Supp. 20-1).

R4-23-412. Emergency Refill Prescription Dispensing

- A.** When a state of emergency is declared under A.R.S. § 32-1910(A) or (B) and the state of emergency results in individuals being unable to refill existing prescriptions, a pharmacist may work in the affected county, city, or town and may dispense a one-time emergency refill prescription of up to a 30-day supply of a prescribed medication to an affected individual if both of the following apply:
1. In the pharmacist's professional opinion the medication is essential to the maintenance of life or to the continuation of therapy, and
 2. The pharmacist makes a good faith effort to reduce the information to a written prescription marked "emergency prescription" and files and maintains the prescription as required by law.
- B.** If the state of emergency declared under A.R.S. § 32-1910(A) or (B) continues for at least 21-days after the pharmacist dispenses an emergency prescription under subsection (A), the pharmacist may dispense one additional emergency refill prescription of up to a 30-day supply of the prescribed medication if the pharmacist complies with subsection (A)(2).
- C.** A pharmacist's authority to dispense emergency prescriptions under this Section ends when the declared state of emergency is terminated.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 4400, effective January 3, 2009 (Supp. 08-4).

R4-23-413. Temporary Recognition of Nonresident Licensure

- A.** When a state of emergency is declared under A.R.S. § 32-1910(A) or (B):
1. A pharmacist who is not licensed in this state, but who is currently licensed in another state, may dispense prescription medications in those affected counties, cities, or towns in this state during the time that a declared state of emergency exists under A.R.S. § 32-1910(A) or (B) if both of the following apply:
 - a. The pharmacist provides proof of current licensure in another state, and
 - b. The pharmacist is engaged in a relief effort during a state of emergency.
 2. Acting under the direct supervision of a pharmacist, a pharmacy technician or pharmacy intern not licensed in this state, but currently licensed or registered in another state, may assist a pharmacist in dispensing prescription medications in affected counties, cities, or towns in this state during the time

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2. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.
- C. Licensure.**
1. If an applicant is found to be ineligible for pharmacy technician licensure under statute and rule, the Board office shall issue a written notice of denial to the applicant.
 2. If an applicant is found to be eligible for pharmacy technician licensure under statute and rule, the Board office shall issue a certificate of licensure and a wall license. An applicant who is assigned a license number and who has been granted "open" status on the Board's license verification site may begin practice as a pharmacy technician before receiving the certificate of licensure.
 3. An applicant who is assigned a license number and who has a "pending" status on the Board's license verification site shall not practice as a pharmacy technician until the Board office issues a certificate of licensure as specified in subsection (C)(2).
 4. A licensee shall maintain the certificate of licensure in the practice site for inspection by the Board or its designee or review by the public.
- D. License renewal.**
1. To renew a license, a pharmacy technician shall submit a completed license renewal application electronically or manually on a form furnished by the Board with the biennial renewal fee specified in R4-23-205.
 2. If the biennial renewal fee is not paid by November 1 of the renewal year specified in A.R.S. § 32-1925, the pharmacy technician license is suspended and the licensee shall not practice as a pharmacy technician. The licensee shall pay a penalty as provided in A.R.S. § 32-1925 and R4-23-205 to vacate the suspension.
 3. A licensee shall maintain the renewal certificate of licensure in the practice site for inspection by the Board or its designee or review by the public.
- E. Time frames for pharmacy technician licensure and license renewal.** The Board office shall follow the time frames established in R4-23-202(F).
- F. Verification of license.** A pharmacy permittee or pharmacist-in-charge shall not permit a person to practice as a pharmacy technician until the pharmacy permittee or pharmacist-in-charge verifies the person is currently licensed by the Board as a pharmacy technician.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 102, effective March 10, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 2911, effective November 10, 2013 (Supp. 13-3). Amended by final rulemaking at 25 A.A.R. 1015, effective June 1, 2019 (Supp. 19-2).

R4-23-1103. Pharmacy Technician Trainee Licensure

- A. Eligibility.** An applicant for licensure as a pharmacy technician trainee shall provide the Board proof the applicant is eligible under R4-23-1101(B)(1).
- B. Application.**
1. An applicant for licensure as a pharmacy technician trainee shall:
 - a. Submit a completed application electronically or manually on a form furnished by the Board, and
 - b. Submit with the application form:
 - i. The documents specified in the application form,
 - ii. The licensure fee specified in R4-23-205, and
 - iii. The wall license fee specified in R4-23-205.

2. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.
- C. Licensure.**
1. If an applicant is found to be ineligible for pharmacy technician trainee licensure under statute and rule, the Board office shall issue a written notice of denial to the applicant.
 2. If an applicant is found to be eligible for pharmacy technician trainee licensure under statute and rule, the Board office shall issue a certificate of licensure and a wall license. An applicant who is assigned a license number and who has been granted "open" status on the Board's license verification site may begin practice as a pharmacy technician trainee before receiving the certificate of licensure.
 3. An applicant who is assigned a license number and who has a "pending" status on the Board's license verification site shall not practice as a pharmacy technician trainee until the Board office issues a certificate of licensure as specified in subsection (C)(2).
 4. A licensee shall maintain the certificate of licensure in the practice site for inspection by the Board or its designee or review by the public.
 5. A pharmacy technician trainee license is valid for 36 months from the date issued. A pharmacy technician trainee who does not complete the prescribed training program and pass a Board-approved pharmacy technician examination before the pharmacy technician trainee's license expires is not eligible for licensure as a pharmacy technician and shall not practice as a pharmacy technician or pharmacy technician trainee. The Board has approved the following pharmacy technician examinations:
 - a. Pharmacy Technician Certification Board (PTCB) Exam, and
 - b. Exam for the Certification of Pharmacy Technicians (ExCPT).
- D. Time frames for pharmacy technician trainee licensure.** The Board office shall follow the time frames established in R4-23-202(F).
- E. Verification of license.** A pharmacy permittee or pharmacist-in-charge shall not permit a person to practice as a pharmacy technician trainee until the pharmacy permittee or pharmacist-in-charge verifies that the person is currently licensed by the Board as a pharmacy technician trainee.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 2911, effective November 10, 2013 (Supp. 13-3). Amended by final rulemaking at 25 A.A.R. 1015, effective June 1, 2019 (Supp. 19-2). Amended by final rulemaking at 26 A.A.R. 223, effective March 14, 2020 (Supp. 20-1).

R4-23-1104. Pharmacy Technicians and Pharmacy Technician Trainees

- A. Permissible tasks of a pharmacy technician trainee.** Acting in compliance with all applicable statutes and rules and under the supervision of a pharmacist, a pharmacy technician trainee licensed under R4-23-1103 may assist a graduate intern, pharmacy intern, or pharmacist with the following when applicable to the pharmacy practice site:
1. Record on the original prescription order the serial number of the prescription medication and date dispensed;

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2. Initiate or accept verbal or electronic refill authorization from a medical practitioner or medical practitioner's agent and record, on the original prescription order or by an alternative method approved by the Board or its designee, the medical practitioner's name, patient name, name and quantity of prescription medication, specific refill information, and name of medical practitioner's agent, if any;
 3. Record information in the refill record or patient profile;
 4. Enter information for a new or refill prescription medication as required under A.R.S. § 32-1964;
 5. Type and affix a label for the prescription medication. A pharmacist or graduate or pharmacy intern working under the supervision of a pharmacist shall verify the accuracy of the label as described under R4-23-402(A)(11);
 6. Reconstitute a prescription medication, if a pharmacist checks the ingredients and procedure before reconstitution and verifies the final product after reconstitution;
 7. Retrieve, count, or pour a prescription medication, if a pharmacist verifies the contents of the prescription medication against the original prescription medication container or by an alternative drug identification method approved by the Board or its designee;
 8. Prepackage drugs in accordance with R4-23-402(A); and
 9. Measure, count, pour, or otherwise prepare and package a drug needed for hospital inpatient dispensing, if a pharmacist verifies the accuracy, measuring, counting, pouring, preparing, packaging, and safety of the drug before the drug is delivered to a patient care area.
- B.** Permissible tasks of a pharmacy technician. Acting in compliance with all applicable statutes and rules and under the supervision of a pharmacist, a pharmacy technician licensed under R4-23-1102 may:
1. Perform the tasks listed in subsection (A);
 2. After completing a pharmacy technician drug compounding training program developed by the pharmacy permittee or pharmacist-in-charge under R4-23-1105(C), assist a pharmacist, graduate intern, or pharmacy intern in compounding prescription medications and sterile or non-sterile pharmaceuticals in accordance with written policies and procedures, if the preparation, accuracy, and safety of the final product is verified by a pharmacist before dispensing;
 3. Perform a final technology-assisted verification of product if the pharmacy technician is qualified under R4-23-1104.01(D); and
 4. If technology-assisted verification is performed, type and affix a label for the prescription medication. A pharmacist or graduate or pharmacy intern shall verify the accuracy of the label as described under R4-23-402(A)(12).
- C.** A trained and licensed pharmacy technician or pharmacy technician trainee who performs a task as authorized under subsections (A) and (B) shall ensure the task is performed accurately.
- D.** Prohibited activities. A pharmacy technician or pharmacy technician trainee shall not perform a professional practice reserved for a pharmacist, graduate intern, or pharmacy intern in accordance with R4-23-402 or R4-23-653.
- E.** A pharmacy technician or pharmacy technician trainee shall wear a badge indicating name and title while on duty.
- F.** Before employing a pharmacy technician or pharmacy technician trainee, a pharmacy permittee or pharmacist-in-charge shall develop, implement, review, and revise in the manner described in R4-23-653(A) and comply with policies and procedures outlined in subsection (G) for pharmacy technician and pharmacy technician trainee tasks.
- G.** A pharmacy permittee or pharmacist-in-charge shall ensure policies and procedures required under subsection (F) include the following:
1. For all practice sites:
 - a. Supervisory controls and verification procedures to ensure the quality and safety of pharmaceutical service;
 - b. Employment performance expectations for a pharmacy technician and pharmacy technician trainee;
 - c. The tasks a pharmacy technician or pharmacy technician trainee may perform as specified under subsections (A) and (B);
 - d. Pharmacist and patient communication;
 - e. Reporting, correcting, and avoiding medication and dispensing errors;
 - f. Security procedures for:
 - i. Confidentiality of patient prescription records, and
 - ii. The pharmacy area;
 - g. Automated medication distribution system;
 - h. Compounding procedures for pharmacy technicians; and
 - i. Brief overview of state and federal pharmacy statutes and rules;
 2. For community and limited-service pharmacy practice sites:
 - a. Prescription dispensing procedures for:
 - i. Accepting a new written prescription order,
 - ii. Accepting a refill request,
 - iii. Selecting a drug product,
 - iv. Counting and pouring,
 - v. Labeling, and
 - vi. Obtaining refill authorization; and
 - b. Computer data-entry procedures for:
 - i. New and refill prescriptions,
 - ii. Patient's drug allergies,
 - iii. Drug-drug interactions,
 - iv. Drug-food interactions,
 - v. Drug-disease state contraindications,
 - vi. Refill frequency,
 - vii. Patient's disease and medical condition,
 - viii. Patient's age or date of birth and gender, and
 - ix. Patient profile maintenance; and
 3. For hospital pharmacy practice sites:
 - a. Medication order procurement and data entry,
 - b. Drug preparation and packaging,
 - c. Outpatient and inpatient drug delivery, and
 - d. Inspection of drug storage and preparation areas and patient care areas.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 19 A.A.R. 102, effective March 10, 2013 (Supp. 13-1). Amended by final rulemaking at 23 A.A.R. 3257, effective January 8, 2018 (Supp. 17-4).

R4-23-1104.01 Technology-assisted Verification of Product

- A.** By complying with this Section, the permittee of a retail, institutional, or limited-service pharmacy may implement a technology-assisted verification of product program that allows a pharmacy technician licensed under R4-23-1102 and qualified under subsection (D) to perform final product verification.
- B.** Written program description required. Before implementing a technology-assisted verification of product program the per-

As of June 17, 2021

32-1901. Definitions

In this chapter, unless the context otherwise requires:

1. "Administer" means the direct application of a controlled substance, prescription-only drug, dangerous drug or narcotic drug, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by a practitioner or by the practitioner's authorized agent or the patient or research subject at the direction of the practitioner.

2. "Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of drugs, devices, poisons or hazardous substances.

3. "Advisory letter" means a nondisciplinary letter to notify a licensee or permittee that either:

(a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee or permittee.

(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

(c) While the licensee or permittee has demonstrated substantial compliance through rehabilitation, remediation or reeducation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee or permittee.

4. "Antiseptic", if a drug is represented as such on its label, means a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment or dusting powder or other use that involves prolonged contact with the body.

5. "Authorized officers of the law" means legally empowered peace officers, compliance officers of the board of pharmacy and agents of the division of narcotics enforcement and criminal intelligence of the department of public safety.

6. "Automated prescription-dispensing kiosk" means a mechanical system that is operated as an extension of a pharmacy, that maintains all transaction information within the pharmacy operating system, that is separately permitted from the pharmacy and that performs operations that either:

(a) Accept a prescription or refill order, store prepackaged or repackaged medications, label and dispense patient-specific prescriptions and provide counseling on new or refilled prescriptions.

(b) Dispense or deliver a prescription or refill that has been prepared by or on behalf of the pharmacy that oversees the automated prescription-dispensing kiosk.

7. "Board" or "board of pharmacy" means the Arizona state board of pharmacy.
8. "Certificate of composition" means a list of a product's ingredients.
9. "Certificate of free sale" means a document that authenticates a product that is generally and freely sold in domestic or international channels of trade.
10. "Color additive" means a material that either:
 - (a) Is any dye, pigment or other substance made by a process of synthesis or similar artifice, or extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from any vegetable, animal, mineral or other source.
 - (b) If added or applied to a drug, or to the human body or any part of the human body, is capable of imparting color, except that color additive does not include any material that has been or may be exempted under the federal act. Color includes black, white and intermediate grays.
11. "Compounding" means the preparation, mixing, assembling, packaging or labeling of a drug by a pharmacist or an intern or pharmacy technician under the pharmacist's supervision, for the purpose of dispensing to a patient based on a valid prescription order. Compounding includes the preparation of drugs in anticipation of prescription orders prepared on routine, regularly observed prescribing patterns and the preparation of drugs as an incident to research, teaching or chemical analysis or for administration by a medical practitioner to the medical practitioner's patient and not for sale or dispensing. Compounding does not include the preparation of commercially available products from bulk compounds or the preparation of drugs for sale to pharmacies, practitioners or entities for the purpose of dispensing or distribution.
12. "Compressed medical gas distributor" means a person who holds a current permit issued by the board to distribute compressed medical gases pursuant to a compressed medical gas order to compressed medical gas suppliers and other entities that are registered, licensed or permitted to use, administer or distribute compressed medical gases.
13. "Compressed medical gases" means gases and liquid oxygen that a compressed medical gas distributor or manufacturer has labeled in compliance with federal law.
14. "Compressed medical gas order" means an order for compressed medical gases that is issued by a medical practitioner.
15. "Compressed medical gas supplier" means a person who holds a current permit issued by the board to supply compressed medical gases pursuant to a compressed medical gas order and only to the consumer or the patient.
16. "Controlled substance" means a drug, substance or immediate precursor that is identified, defined or listed in title 36, chapter 27, article 2.
17. "Corrosive" means any substance that when it comes in contact with living tissue will cause destruction of tissue by chemical action.

18. "Counterfeit drug" means a drug that, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number or device, or any likeness of these, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed that drug.

19. "Dangerous drug" has the same meaning prescribed in section 13-3401.

20. "Day" means a business day.

21. "Decree of censure" means an official action that is taken by the board and that may include a requirement for restitution of fees to a patient or consumer.

22. "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another whether or not there is an agency relationship.

23. "Deputy director" means a pharmacist who is employed by the board and selected by the executive director to perform duties as prescribed by the executive director.

24. "Device", except as used in paragraph 18 of this section, section 32-1965, paragraph 4 and section 32-1967, subsection A, paragraph 15 and subsection C, means instruments, apparatuses and contrivances, including their components, parts and accessories, including all such items under the federal act, intended either:

(a) For use in the diagnosis, cure, mitigation, treatment or prevention of disease in the human body or other animals.

(b) To affect the structure or any function of the human body or other animals.

25. "Director" means the director of the division of narcotics enforcement and criminal investigation of the department of public safety.

26. "Direct supervision of a pharmacist" means the pharmacist is present. If relating to the sale of certain items, direct supervision of a pharmacist means that a pharmacist determines the legitimacy or advisability of a proposed purchase of those items.

27. "Dispense" means to deliver to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare for that delivery.

28. "Dispenser" means a practitioner who dispenses.

29. "Distribute" means to deliver, other than by administering or dispensing.

30. "Distributor" means a person who distributes.

31. "Drug" means:

(a) Articles recognized, or for which standards or specifications are prescribed, in the official compendium.

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in the human body or other animals.

(c) Articles other than food intended to affect the structure or any function of the human body or other animals.

(d) Articles intended for use as a component of any articles specified in subdivision (a), (b) or (c) of this paragraph but does not include devices or their components, parts or accessories.

32. "Drug enforcement administration" means the drug enforcement administration of the United States department of justice or its successor agency.

33. "Drug or device manufacturing" means the production, preparation, propagation or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis and includes any packaging or repackaging of substances or labeling or relabeling of its container and the promotion and marketing of the same. Drug or device manufacturing does not include compounding.

34. "Economic poison" means any substance that alone, in chemical combination with or in formulation with one or more other substances is a pesticide within the meaning of the laws of this state or the federal insecticide, fungicide and rodenticide act and that is used in the production, storage or transportation of raw agricultural commodities.

35. "Enteral feeding" means nourishment provided by means of a tube inserted into the stomach or intestine.

36. "Established name", with respect to a drug or ingredient of a drug, means any of the following:

(a) The applicable official name.

(b) If there is no such name and the drug or ingredient is an article recognized in an official compendium, the official title in an official compendium.

(c) If neither subdivision (a) nor (b) of this paragraph applies, the common or usual name of the drug.

37. "Executive director" means the executive director of the board of pharmacy.

38. "Federal act" means the federal laws and regulations that pertain to drugs, devices, poisons and hazardous substances and that are official at the time any drug, device, poison or hazardous substance is affected by this chapter.

39. "Full service wholesale permittee":

(a) Means a permittee who may distribute prescription-only drugs and devices, controlled substances and over-the-counter drugs and devices to pharmacies or other legal outlets from a place devoted in whole or in part to wholesaling these items.

(b) Includes a virtual wholesaler as defined in rule by the board.

40. "Good manufacturing practice" means a system for ensuring that products are consistently produced and controlled according to quality standards and covering all aspects of design, monitoring and control of manufacturing processes and facilities to ensure that products do not pose any risk to the consumer or public.

41. "Highly toxic" means any substance that falls within any of the following categories:

(a) Produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, at a single dose of fifty milligrams or less per kilogram of body weight, when orally administered.

(b) Produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, if inhaled continuously for a period of one hour or less at an atmospheric concentration of two hundred parts per million by volume or less of gas or vapor or two milligrams per liter by volume or less of mist or dust, provided the concentration is likely to be encountered by humans if the substance is used in any reasonably foreseeable manner.

(c) Produces death within fourteen days in half or more than half of a group of ten or more rabbits tested in a dosage of two hundred milligrams or less per kilogram of body weight, if administered by continuous contact with the bare skin for twenty-four hours or less.

If the board finds that available data on human experience with any substance indicate results different from those obtained on animals in the dosages or concentrations prescribed in this paragraph, the human data shall take precedence.

42. "Hospital" means any institution for the care and treatment of the sick and injured that is approved and licensed as a hospital by the department of health services.

43. "Intern" means a pharmacy intern.

44. "Internship" means the practical, experiential, hands-on training of a pharmacy intern under the supervision of a preceptor.

45. "Irritant" means any substance, other than a corrosive, that on immediate, prolonged or repeated contact with normal living tissue will induce a local inflammatory reaction.

46. "Jurisprudence examination" means a board-approved pharmacy law examination that is written and administered in cooperation with the national association of boards of pharmacy or another board-approved pharmacy law examination.

47. "Label" means a display of written, printed or graphic matter on the immediate container of any article that, unless easily legible through the outside wrapper or container, also appears on the outside wrapper or container of the article's retail package. For the purposes of this paragraph, the immediate container does not include package liners.

48. "Labeling" means all labels and other written, printed or graphic matter either:

(a) On any article or any of its containers or wrappers.

(b) Accompanying that article.

49. "Letter of reprimand" means a disciplinary letter that is a public document issued by the board and that informs a licensee or permittee that the licensee's or permittee's conduct violates state or federal law and may require the board to monitor the licensee or permittee.

50. "Limited service pharmacy" means a pharmacy that is approved by the board to practice a limited segment of pharmacy as indicated by the permit issued by the board.

51. "Manufacture" or "manufacturer":

(a) Means every person who prepares, derives, produces, compounds, processes, packages or repackages or labels any drug in a place, other than a pharmacy, that is devoted to manufacturing the drug.

(b) Includes a virtual manufacturer as defined in rule by the board.

52. "Marijuana" has the same meaning prescribed in section 13-3401.

53. "Medical practitioner" means any medical doctor, doctor of osteopathic medicine, dentist, podiatrist, veterinarian or other person who is licensed and authorized by law to use and prescribe drugs and devices for the treatment of sick and injured human beings or animals or for the diagnosis or prevention of sickness in human beings or animals in this state or any state, territory or district of the United States.

54. "Medication order" means a written or verbal order from a medical practitioner or that person's authorized agent to administer a drug or device.

55. "Narcotic drug" has the same meaning prescribed in section 13-3401.

56. "New drug" means either:

(a) Any drug the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs as safe and effective for use under the conditions prescribed, recommended or suggested in the labeling.

(b) Any drug the composition of which is such that the drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but that has not, other than in the investigations, been used to a material extent or for a material time under those conditions.

57. "Nonprescription drug" or "over-the-counter drug" means any nonnarcotic medicine or drug that may be sold without a prescription and that is prepackaged and labeled for use by the consumer in accordance with the requirements of the laws of this state and federal law. Nonprescription drug does not include:

(a) A drug that is primarily advertised and promoted professionally to medical practitioners and pharmacists by manufacturers or primary distributors.

(b) A controlled substance.

(c) A drug that is required to bear a label that states "Rx only".

(d) A drug that is intended for human use by hypodermic injection.

58. "Nonprescription drug wholesale permittee":

(a) Means a permittee who may distribute only over-the-counter drugs and devices to pharmacies or other lawful outlets from a place devoted in whole or in part to wholesaling these items.

(b) Includes a virtual wholesaler as defined in rule by the board.

59. "Notice" means personal service or the mailing of a copy of the notice by certified mail addressed either to the person at the person's latest address of record in the board office or to the person's attorney.

60. "Nutritional supplementation" means vitamins, minerals and caloric supplementation. Nutritional supplementation does not include medication or drugs.

61. "Official compendium" means the latest revision of the United States pharmacopeia and the national formulary or any current supplement.

62. "Other jurisdiction" means one of the other forty-nine states, the District of Columbia, the Commonwealth of Puerto Rico or a territory of the United States of America.

63. "Package" means a receptacle defined or described in the United States pharmacopeia and the national formulary as adopted by the board.

64. "Packaging" means the act or process of placing a drug item or device in a container for the purpose or intent of dispensing or distributing the item or device to another.

65. "Parenteral nutrition" means intravenous feeding that provides a person with fluids and essential nutrients the person needs while the person is unable to receive adequate fluids or feedings by mouth or by enteral feeding.

66. "Person" means an individual, partnership, corporation and association, and their duly authorized agents.

67. "Pharmaceutical care" means the provision of drug therapy and other pharmaceutical patient care services.

68. "Pharmacist" means an individual who is currently licensed by the board to practice the profession of pharmacy in this state.

69. "Pharmacist in charge" means the pharmacist who is responsible to the board for a licensed establishment's compliance with the laws and administrative rules of this state and of the federal government pertaining to the practice of pharmacy, the manufacturing of drugs and the distribution of drugs and devices.

70. "Pharmacist licensure examination" means a board-approved examination that is written and administered in cooperation with the national association of boards of pharmacy or any other board-approved pharmacist licensure examination.

71. "Pharmacy":

(a) Means:

(i) Any place where drugs, devices, poisons or related hazardous substances are offered for sale at retail.

(ii) Any place in which the profession of pharmacy is practiced or where prescription orders are compounded and dispensed.

(iii) Any place that has displayed on it or in it the words "pharmacist", "pharmaceutical chemist", "apothecary", "druggist", "pharmacy", "drugstore", "drugs" or "drug sundries" or any of these words or combinations of these words, or words of similar import either in English or any other language, or that is advertised by any sign containing any of these words.

(iv) Any place where the characteristic symbols of pharmacy or the characteristic prescription sign "Rx" is exhibited.

(v) Any place or a portion of any building or structure that is leased, used or controlled by the permittee to conduct the business authorized by the board at the address for which the permit was issued and that is enclosed and secured when a pharmacist is not in attendance.

(vi) A remote dispensing site pharmacy where a pharmacy technician or pharmacy intern prepares, compounds or dispenses prescription medications under remote supervision by a pharmacist.

(b) Includes a satellite pharmacy.

72. "Pharmacy intern" means a person who has all of the qualifications and experience prescribed in section 32-1923.

73. "Pharmacy technician" means a person who is licensed pursuant to this chapter.

74. "Pharmacy technician trainee" means a person who is licensed pursuant to this chapter.

75. "Poison" or "hazardous substance" includes, but is not limited to, any of the following if intended and suitable for household use or use by children:

(a) Any substance that, according to standard works on medicine, pharmacology, pharmacognosy or toxicology, if applied to, introduced into or developed within the body in relatively small quantities by its inherent action uniformly produces serious bodily injury, disease or death.

(b) A toxic substance.

(c) A highly toxic substance.

(d) A corrosive substance.

(e) An irritant.

(f) A strong sensitizer.

(g) A mixture of any of the substances described in this paragraph, if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

(h) A substance that is designated by the board to be a poison or hazardous substance. This subdivision does not apply to radioactive substances, economic poisons subject to the federal insecticide, fungicide and rodenticide act or the state pesticide act, foods, drugs and cosmetics subject to state laws or the federal act or substances intended for use as fuels when stored in containers and used in the heating, cooking or refrigeration system of a house. This subdivision applies to any substance or article that is not itself an economic poison within the meaning of the federal insecticide, fungicide and rodenticide act or the state pesticide act, but that is a poison or hazardous substance within the meaning of this paragraph by reason of bearing or containing an economic poison or hazardous substance.

76. "Practice of pharmacy":

(a) Means furnishing the following health care services as a medical professional:

(i) Interpreting, evaluating and dispensing prescription orders in the patient's best interests.

(ii) Compounding drugs pursuant to or in anticipation of a prescription order.

(iii) Labeling drugs and devices in compliance with state and federal requirements.

(iv) Participating in drug selection and drug utilization reviews, drug administration, drug or drug-related research and drug therapy monitoring or management.

(v) Providing patient counseling necessary to provide pharmaceutical care.

(vi) Properly and safely storing drugs and devices in anticipation of dispensing.

(vii) Maintaining required records of drugs and devices.

(viii) Offering or performing acts, services, operations or transactions necessary in the conduct, operation, management and control of a pharmacy.

(ix) Initiating, monitoring and modifying drug therapy pursuant to a protocol-based drug therapy agreement with a provider as outlined in section 32-1970.

(x) Initiating and administering immunizations or vaccines pursuant to section 32-1974.

(b) Does not include initiating a prescription order for any medication, drug or other substance used to induce or cause a medication abortion as defined in section 36-2151.

77. "Practitioner" means any physician, dentist, veterinarian, scientific investigator or other person who is licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state, or any pharmacy, hospital or other institution that is licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state.

78. "Preceptor" means a pharmacist who is serving as the practical instructor of an intern and complies with section 32-1923.

79. "Precursor chemical" means a substance that is:

(a) The principal compound that is commonly used or that is produced primarily for use and that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(b) Listed in section 13-3401, paragraph 26 or 27.

80. "Prescription" means either a prescription order or a prescription medication.

81. "Prescription medication" means any drug, including label and container according to context, that is dispensed pursuant to a prescription order.

82. "Prescription-only device" includes:

(a) Any device that is limited by the federal act to use under the supervision of a medical practitioner.

(b) Any device required by the federal act to bear on its label essentially the legend "Rx only".

83. "Prescription-only drug" does not include a controlled substance but does include:

(a) Any drug that because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner.

(b) Any drug that is limited by an approved new drug application under the federal act or section 32-1962 to use under the supervision of a medical practitioner.

(c) Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer.

(d) Any drug, other than a controlled substance, required by the federal act to bear on its label the legend "Rx only".

84. "Prescription order" means any of the following:

(a) An order to a pharmacist for drugs or devices issued and signed by a duly licensed medical practitioner in the authorized course of the practitioner's professional practice.

(b) An order transmitted to a pharmacist through word of mouth, telephone or other means of communication directed by that medical practitioner. Prescription orders received by word of mouth, telephone or other means of communication shall be maintained by the pharmacist pursuant to section 32-1964, and the record so made by the pharmacist constitutes the original prescription order to be dispensed by the pharmacist. This paragraph does not alter or affect laws of this state or any federal act requiring a written prescription order.

(c) An order initiated by a pharmacist pursuant to a protocol-based drug therapy agreement with a provider as outlined in section 32-1970, or immunizations or vaccines administered by a pharmacist pursuant to section 32-1974.

(d) A diet order or an order for enteral feeding, nutritional supplementation or parenteral nutrition that is initiated by a registered dietitian or other qualified nutrition professional in a hospital pursuant to section 36-416.

85. "Professionally incompetent" means:

(a) Incompetence based on a variety of factors, including a lack of sufficient pharmaceutical knowledge or skills or experience to a degree likely to endanger the health of patients.

(b) When considered with other indications of professional incompetence, a pharmacist or pharmacy intern who fails to obtain a passing score on a board-approved pharmacist licensure examination or a pharmacy technician or pharmacy technician trainee who fails to obtain a passing score on a board-approved pharmacy technician licensure examination.

86. "Radioactive substance" means a substance that emits ionizing radiation.

87. "Remote dispensing site pharmacy" means a pharmacy where a pharmacy technician or pharmacy intern prepares, compounds or dispenses prescription medications under remote supervision by a pharmacist.

88. "Remote supervision by a pharmacist" means that a pharmacist directs and controls the actions of pharmacy technicians and pharmacy interns through the use of audio and visual technology.

89. "Revocation" or "revoke" means the official cancellation of a license, permit, registration or other approval authorized by the board for a period of two years unless otherwise specified by the board. A request or new application for reinstatement may be presented to the board for review before the conclusion of the specified revocation period upon review of the executive director.

90. "Safely engage in employment duties" means that a permittee or the permittee's employee is able to safely engage in employment duties related to the manufacture, sale, distribution or dispensing of drugs, devices, poisons, hazardous substances, controlled substances or precursor chemicals.

91. "Satellite pharmacy" means a work area located within a hospital or on a hospital campus that is not separated by other commercial property or residential property, that is under the direction of a pharmacist, that is a remote extension of a centrally licensed hospital pharmacy and that is owned by and dependent on the centrally licensed hospital pharmacy for administrative control, staffing and drug procurement and that is not required to be separately permitted.

92. "Symbol" means the characteristic symbols that have historically identified pharmacy, including show globes and mortar and pestle, and the sign "Rx".

93. "Third-party logistics provider" means an entity that provides or coordinates warehousing or other logistics services for a prescription or over-the-counter dangerous drug or dangerous device in intrastate or interstate commerce on behalf of a manufacturer, wholesaler or dispenser of the prescription or over-the-counter dangerous drug or dangerous device but that does not take ownership of the prescription or over-the-counter dangerous drug or dangerous device or have responsibility to direct its sale or disposition.

94. "Toxic substance" means a substance, other than a radioactive substance, that has the capacity to produce injury or illness in humans through ingestion, inhalation or absorption through any body surface.

95. "Ultimate user" means a person who lawfully possesses a drug or controlled substance for that person's own use, for the use of a member of that person's household or for administering to an animal owned by that person or by a member of that person's household.

32-1901.01. Definition of unethical and unprofessional conduct; permittees; licensees

A. In this chapter, unless the context otherwise requires, for the purposes of disciplining a permittee, "unethical conduct" means the following, whether occurring in this state or elsewhere:

1. Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-related offense. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

2. Committing an act that is substantially related to the qualifications, functions or duties of a permittee and that demonstrates either a lack of good moral character or an actual or potential unfitness to hold a permit in light of the public's safety.

3. Working under the influence of alcohol or other drugs.
4. Being addicted to the use of alcohol or other drugs to such a degree as to render the permittee unfit to perform the permittee's employment duties.
5. Violating a federal or state law or administrative rule relating to the manufacture, sale or distribution of drugs, devices, poisons, hazardous substances or precursor chemicals.
6. Violating a federal or state law or administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous drugs, controlled substances or precursor chemicals.
7. Violating state or federal reporting or recordkeeping requirements on transactions relating to precursor chemicals.
8. Failing to report in writing to the board any evidence that a pharmacist or pharmacy intern is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of pharmacy.
9. Failing to report in writing to the board any evidence that a pharmacy technician or pharmacy technician trainee is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the permissible activities of a pharmacy technician or pharmacy technician trainee.
10. Failing to report in writing to the board any evidence that appears to show that a permittee or permittee's employee is or may be guilty of unethical conduct, is or may be mentally or physically unable safely to engage in employment duties related to manufacturing, selling, distributing or dispensing of drugs, devices, poisons, hazardous substances, controlled substances or precursor chemicals or is or may be in violation of this chapter or a rule adopted under this chapter.
11. Intending to sell, transfer or distribute, or to offer for sale, transfer or distribution, or selling, transferring, distributing or dispensing or offering for sale, transfer or distribution an imitation controlled substance, imitation over-the-counter drug or imitation prescription-only drug as defined in section 13-3451.
12. Having the permittee's permit to manufacture, sell, distribute or dispense drugs, devices, poisons, hazardous substances or precursor chemicals denied or disciplined in another jurisdiction.
13. Committing an offense in another jurisdiction that if committed in this state would be grounds for discipline.
14. Obtaining or attempting to obtain a permit or a permit renewal by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another person or an agency.
15. Wilfully making a false report or record required by this chapter, required by federal or state laws pertaining to drugs, devices, poisons, hazardous substances or precursor chemicals or required for the payment for drugs, devices, poisons or hazardous substances or precursor chemicals or for services pertaining to such drugs or substances.

16. Knowingly filing with the board any application, renewal or other document that contains false or misleading information.

17. Providing false or misleading information or omitting material information in any communication to the board or the board's employees or agents.

18. Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, this chapter.

19. Violating a formal order, terms of probation, a consent agreement or a stipulation issued or entered into by the board or its executive director pursuant to this chapter.

20. Failing to comply with a board subpoena or failing to comply in a timely manner with a board subpoena without providing any explanation to the board for not complying with the subpoena.

21. Failing to provide the board or its employees or agents or an authorized federal or state official conducting a site investigation, inspection or audit with access to any place for which a permit has been issued or for which an application for a permit has been submitted.

22. Failing to notify the board of a change of ownership, management or pharmacist in charge.

23. Failing to promptly produce on the request of the official conducting a site investigation, inspection or audit any book, record or document.

24. Overruling or attempting to overrule a pharmacist in matters of pharmacy ethics or interpreting laws pertaining to the practice of pharmacy or the distribution of drugs or devices.

25. Distributing premiums or rebates of any kind in connection with the sale of prescription medication, other than to the prescription medication recipient.

26. Failing to maintain effective controls against the diversion of controlled substances or precursor chemicals to unauthorized persons or entities.

27. Fraudulently claiming to have performed a service.

28. Fraudulently charging a fee for a service.

29. Advertising drugs or devices, or services pertaining to drugs or devices, in a manner that is untrue or misleading in any particular, and that is known, or that by the exercise of reasonable care should be known, to be untrue or misleading.

B. In this chapter, unless the context otherwise requires, for the purposes of disciplining a pharmacist or pharmacy intern, "unprofessional conduct" means the following, whether occurring in this state or elsewhere:

1. Being addicted to the use of alcohol or other drugs to such a degree as to render the licensee unfit to practice the profession of pharmacy.

2. Violating any federal or state law, rule or regulation relating to the manufacture or distribution of drugs and devices or the practice of pharmacy.
3. Dispensing a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without the express permission in each case of the orderer, or in the case of a prescription order, the medical practitioner. The conduct prohibited by this paragraph does not apply to substitutions authorized pursuant to section 32-1963.01.
4. Obtaining or attempting to obtain a license to practice pharmacy or a license renewal by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another person or an agency.
5. Having the licensee's license to practice pharmacy denied or disciplined in another jurisdiction.
6. Claiming professional superiority in compounding or dispensing prescription orders.
7. Failing to comply with the mandatory continuing professional pharmacy education requirements of sections 32-1936 and 32-1937 and rules adopted by the board.
8. Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-related offense. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.
9. Working under the influence of alcohol or other drugs.
10. Violating a federal or state law or administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous drugs, controlled substances or precursor chemicals when determined by the board or by conviction in a federal or state court.
11. Knowingly dispensing a drug without a valid prescription order as required pursuant to section 32-1968, subsection A.
12. Knowingly dispensing a drug on a prescription order that was issued in the course of the conduct of business of dispensing drugs pursuant to diagnosis by mail or the internet, unless the order was any of the following:
 - (a) Made by a physician who provides temporary patient supervision on behalf of the patient's regular treating licensed health care professional or provides a consultation requested by the patient's regular treating licensed health care professional.
 - (b) Made in an emergency medical situation as defined in section 41-1831.
 - (c) Written to prepare a patient for a medical examination.
 - (d) Written or the prescription medications were issued for use by a county or tribal public health department for immunization programs or emergency treatment or in response to an infectious disease investigation, a public health emergency, an infectious disease outbreak or an act of bioterrorism. For the purposes of this subdivision, "bioterrorism" has the same meaning prescribed in section 36-781.

(e) Written or antimicrobials were dispensed by the prescribing or dispensing physician to a contact as defined in section 36-661 who is believed to have had significant exposure risk as defined in section 36-661 with another person who has been diagnosed with a communicable disease as defined in section 36-661.

(f) Written or the prescription medications were issued for administration of immunizations or vaccines listed in the United States centers for disease control and prevention's recommended immunization schedule to a household member of a patient.

(g) For epinephrine auto-injectors that are written or dispensed for a school district or charter school and that are to be stocked for emergency use pursuant to section 15-157 or for an authorized entity to be stocked pursuant to section 36-2226.01.

(h) Written by a licensee through a telemedicine program that is covered by the policies and procedures adopted by the administrator of a hospital or outpatient treatment center.

(i) Written pursuant to a physical or mental health status examination that was conducted during a real-time telemedicine encounter with audio and video capability.

(j) For naloxone hydrochloride or any other opioid antagonist approved by the United States food and drug administration and written or dispensed for use pursuant to section 36-2228 or 36-2266.

13. Failing to report in writing to the board any evidence that a pharmacist or pharmacy intern is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to safely engage in the practice of pharmacy.

14. Failing to report in writing to the board any evidence that a pharmacy technician or pharmacy technician trainee is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to safely engage in the permissible activities of a pharmacy technician or pharmacy technician trainee.

15. Failing to report in writing to the board any evidence that a permittee or a permittee's employee is or may be guilty of unethical conduct or is or may be in violation of this chapter or a rule adopted under this chapter.

16. Committing an offense in another jurisdiction that if committed in this state would be grounds for discipline.

17. Knowingly filing with the board any application, renewal or other document that contains false or misleading information.

18. Providing false or misleading information or omitting material information in any communication to the board or the board's employees or agents.

19. Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violation of, or conspiring to violate, this chapter.

20. Violating a formal order, terms of probation, a consent agreement or a stipulation issued or entered into by the board or its executive director pursuant to this chapter.
21. Failing to comply with a board subpoena or failing to comply in a timely manner with a board subpoena without providing any explanation to the board for not complying with the subpoena.
22. Refusing without just cause to allow authorized agents of the board to examine documents that are required to be kept pursuant to this chapter or title 36.
23. Participating in an arrangement or agreement to allow a prescription order or a prescription medication to be left at, picked up from, accepted by or delivered to a place that is not licensed as a pharmacy. This paragraph does not prohibit a pharmacist or a pharmacy from using an employee or a common carrier to pick up prescription orders at or deliver prescription medications to the office or home of a medical practitioner, the residence of a patient or a patient's hospital.
24. Paying rebates or entering into an agreement for the payment of rebates to a medical practitioner or any other person in the health care field.
25. Providing or causing to be provided to a medical practitioner prescription order blanks or forms bearing the pharmacist's or pharmacy's name, address or other means of identification.
26. Fraudulently claiming to have performed a professional service.
27. Fraudulently charging a fee for a professional service.
28. Failing to report a change of the licensee's home address, contact information, employer or employer's address as required by section 32-1926.
29. Failing to report a change in the licensee's residency status as required by section 32-1926.01.
30. Failing to maintain effective controls against the diversion of controlled substances or precursor chemicals to unauthorized persons or entities.

C. In this chapter, unless the context otherwise requires, for the purposes of disciplining a pharmacy technician or pharmacy technician trainee, "unprofessional conduct" means the following, whether occurring in this state or elsewhere:

1. Being addicted to the use of alcohol or other drugs to such a degree as to render the licensee unfit to perform the licensee's employment duties.
2. Violating a federal or state law or administrative rule relating to the manufacture or distribution of drugs or devices.
3. Obtaining or attempting to obtain a pharmacy technician or pharmacy technician trainee license or a pharmacy technician license renewal by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another person or an agency.

4. Having the licensee's license to practice as a pharmacy technician denied or disciplined in another jurisdiction.
5. Failing to comply with the mandatory continuing professional education requirements of section 32-1925, subsection H and rules adopted by the board.
6. Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-related offense. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.
7. Working under the influence of alcohol or other drugs.
8. Violating a federal or state law or administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous drugs, controlled substances or precursor chemicals when determined by the board or by conviction in a federal or state court.
9. Failing to report in writing to the board any evidence that a pharmacist or pharmacy intern is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to safely engage in the practice of pharmacy.
10. Failing to report in writing to the board any evidence that a pharmacy technician or pharmacy technician trainee is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to safely engage in the permissible activities of a pharmacy technician or pharmacy technician trainee.
11. Failing to report in writing to the board any evidence that a permittee or a permittee's employee is or may be guilty of unethical conduct or is or may be in violation of this chapter or a rule adopted under this chapter.
12. Committing an offense in another jurisdiction that if committed in this state would be grounds for discipline.
13. Knowingly filing with the board any application, renewal or other document that contains false or misleading information.
14. Providing false or misleading information or omitting material information in any communication to the board or the board's employees or agents.
15. Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violation of, or conspiring to violate, this chapter.
16. Violating a formal order, terms of probation, a consent agreement or a stipulation issued or entered into by the board or its executive director pursuant to this chapter.
17. Failing to comply with a board subpoena or failing to comply in a timely manner with a board subpoena without providing any explanation to the board for not complying with the subpoena.

18. Failing to report a change of the licensee's home address, contact information, employer or employer's address as required by section 32-1926.

19. Failing to report a change in the licensee's residency status as required by section 32-1926.01.

32-1902. Arizona state board of pharmacy; immunity

A. The Arizona state board of pharmacy is established consisting of the following members who are appointed by the governor:

1. Six pharmacists at least one of whom is a pharmacist employed by a licensed hospital and at least one of whom is employed by a community pharmacy and engaged in the day-to-day practice of pharmacy.

2. One pharmacy technician.

3. Two public members.

B. To be qualified for appointment:

1. A pharmacist must be licensed as a pharmacist in this state or any other jurisdiction for a period of at least ten years and licensed as a pharmacist and a resident in this state for a period of at least five years immediately before the date of appointment.

2. Each public member must be a resident of this state for a period of at least five years immediately before the date of appointment.

3. A pharmacy technician must be a practicing pharmacy technician in this state or any other jurisdiction for at least five years and be licensed as a pharmacy technician and a resident of this state for at least five years immediately before the date of appointment. A pharmacy technician appointed before July 1, 2009 does not have to meet the minimum five year licensure requirement of this paragraph.

C. Each pharmacist and pharmacy technician member shall serve for a term of five years. Public members may serve for a term of five years unless removed by the governor. The public members shall after the first of every year present a written report to the governor. Vacancies occurring on the board other than by expiration of term of office shall be filled for the unexpired portion of the term only.

D. On or before January 15 of each year in which a pharmacist or a pharmacy technician is to be appointed, the executive director of the pharmacy association of Arizona may submit to the governor a list of the names of at least seven of its members who have been nominated by the association, and who meet the requirements as provided in this section for the next occurring vacancy on the board. The governor may make appointments of licensed pharmacists and pharmacy technicians to the board from the nominees on the list or from others having the necessary qualifications.

E. Appointees to the board within thirty days after their appointment shall take and subscribe to an oath or affirmation, before a properly qualified officer, that they will faithfully and impartially perform the duties of their office. The executive director shall file the oath or affirmation with the secretary of state.

F. Members of the board are personally exempt from suit with respect to all acts done and actions taken in good faith and in furtherance of this chapter.

32-1903. Organization; meetings; quorum; compensation of board; executive director; compensation; powers and duties

A. The board shall annually elect a president and a vice-president from among its membership and, subject to title 41, chapter 4, article 4, select an executive director who may or may not be a member of the board. The executive director shall serve at the pleasure of the board.

B. The president of the board shall preside at all of its meetings. The vice-president shall act if the president is absent. A majority of the membership of the board constitutes a quorum.

C. The executive director is the executive officer in charge of the board's office and shall administer this chapter under the direction of the board. The executive director shall make, keep and be in charge of all records and record books required to be kept by the board, including a register of all licensees and registered businesses under this chapter. The executive director shall attend to the correspondence of the board and perform other duties the board requires. The executive director is eligible to receive compensation as determined pursuant to section 38-611.

D. Any member of the board or the executive director may administer oaths in connection with the duties of the board. The books, registers and records of the board as made and kept by the executive director or under the executive director's supervision are prima facie evidence of the matter therein recorded in any court of law. Members of the board are eligible to receive compensation in the amount of two hundred dollars for each day of actual service in the business of the board and reimbursement for all expenses necessarily and properly incurred in attending meetings of or for the board.

E. The executive director may designate the deputy director to sign claims and other documents in the executive director's absence. If the executive director dies, becomes incapacitated or resigns, the deputy director shall serve as the executive director until the board selects a new executive director.

F. The executive director may cause to be published reports summarizing judgments, decrees, court orders and board action that may have been rendered under this chapter, including the nature of charges and the disposition of the charges. The executive director may disseminate information regarding drugs, devices, poisons or hazardous substances in situations the executive director believes involve imminent danger to health or gross deception of the consumer and report the results of investigations carried out under this chapter.

32-1904. Powers and duties of board; immunity

A. The board shall:

1. Make bylaws and adopt rules that are necessary to protect the public and that pertain to the practice of pharmacy, the manufacturing, wholesaling or supplying of drugs, devices, poisons or hazardous substances, the use of pharmacy technicians and support personnel and the lawful performance of its duties.

2. Fix standards and requirements to register and reregister pharmacies, except as otherwise specified.

3. Investigate compliance as to the quality, label and labeling of all drugs, devices, poisons or hazardous substances and take action necessary to prevent the sale of these if they do not conform to the standards prescribed in this chapter, the official compendium or the federal act.
4. Enforce its rules. In so doing, the board or its agents have free access, during the hours reported with the board or the posted hours at the facility, to any pharmacy, manufacturer, wholesaler, third-party logistics provider, nonprescription drug permittee or other establishment in which drugs, devices, poisons or hazardous substances are manufactured, processed, packed or held, or to enter any vehicle being used to transport or hold such drugs, devices, poisons or hazardous substances for the purpose of:
 - (a) Inspecting the establishment or vehicle to determine whether any provisions of this chapter or the federal act are being violated.
 - (b) Securing samples or specimens of any drug, device, poison or hazardous substance after paying or offering to pay for the sample.
 - (c) Detaining or embargoing a drug, device, poison or hazardous substance in accordance with section 32-1994.
5. Examine and license as pharmacists and pharmacy interns all qualified applicants as provided by this chapter.
6. Require each applicant for an initial license to apply for a fingerprint clearance card pursuant to section 41-1758.03. If an applicant is issued a valid fingerprint clearance card, the applicant shall submit the valid fingerprint clearance card to the board with the completed application. If an applicant applies for a fingerprint clearance card and is denied, the applicant may request that the board consider the application for licensure notwithstanding the absence of a valid fingerprint clearance card. The board, in its discretion, may approve an application for licensure despite the denial of a valid fingerprint clearance card if the board determines that the applicant's criminal history information on which the denial was based does not alone disqualify the applicant from licensure.
7. Issue duplicates of lost or destroyed permits on the payment of a fee as prescribed by the board.
8. Adopt rules to rehabilitate pharmacists and pharmacy interns as provided by this chapter.
9. At least once every three months, notify pharmacies regulated pursuant to this chapter of any modifications on prescription writing privileges of podiatrists, dentists, doctors of medicine, registered nurse practitioners, osteopathic physicians, veterinarians, physician assistants, optometrists and homeopathic physicians of which it receives notification from the state board of podiatry examiners, state board of dental examiners, Arizona medical board, Arizona state board of nursing, Arizona board of osteopathic examiners in medicine and surgery, Arizona state veterinary medical examining board, Arizona regulatory board of physician assistants, state board of optometry or board of homeopathic and integrated medicine examiners.
10. Charge a permittee a fee, as determined by the board, for an inspection if the permittee requests the inspection.
11. Issue only one active or open license per individual.

12. Allow a licensee to regress to a lower level license on written explanation and review by the board for discussion, determination and possible action.

B. The board may:

1. Employ chemists, compliance officers, clerical help and other employees subject to title 41, chapter 4, article 4 and provide laboratory facilities for the proper conduct of its business.

2. Provide, by educating and informing the licensees and the public, assistance in curtailing abuse in the use of drugs, devices, poisons and hazardous substances.

3. Approve or reject the manner of storage and security of drugs, devices, poisons and hazardous substances.

4. Accept monies and services to assist in enforcing this chapter from other than licensees:

(a) For performing inspections and other board functions.

(b) For the cost of copies of the pharmacy and controlled substances laws, the annual report of the board and other information from the board.

5. Adopt rules for professional conduct appropriate to the establishment and maintenance of a high standard of integrity and dignity in the profession of pharmacy.

6. Grant permission to deviate from a state requirement for experimentation and technological advances.

7. Adopt rules for the training and practice of pharmacy interns, pharmacy technicians and support personnel.

8. Investigate alleged violations of this chapter, conduct hearings in respect to violations, subpoena witnesses and take such action as it deems necessary to revoke or suspend a license or a permit, place a licensee or permittee on probation or warn a licensee or permittee under this chapter or to bring notice of violations to the county attorney of the county in which a violation took place or to the attorney general.

9. By rule, approve colleges or schools of pharmacy.

10. By rule, approve programs of practical experience, clinical programs, internship training programs, programs of remedial academic work and preliminary equivalency examinations as provided by this chapter.

11. Assist in the continuing education of pharmacists and pharmacy interns.

12. Issue inactive status licenses as provided by this chapter.

13. Accept monies and services from the federal government or others for educational, research or other purposes pertaining to the enforcement of this chapter.

14. By rule, except from the application of all or any part of this chapter any material, compound, mixture or preparation containing any stimulant or depressant substance included in section 13-3401, paragraph 6, subdivision (c) or (d) from the definition of dangerous drug if the material, compound, mixture or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, provided that such admixtures are included in such combinations, quantity,

proportion or concentration as to vitiate the potential for abuse of the substances that do have a stimulant or depressant effect on the central nervous system.

15. Adopt rules for the revocation, suspension or reinstatement of licenses or permits or the probation of licensees or permittees as provided by this chapter.

16. Issue a certificate of free sale to any person that is licensed by the board as a manufacturer for the purpose of manufacturing or distributing food supplements or dietary supplements as defined in rule by the board and that wants to sell food supplements or dietary supplements domestically or internationally. The application shall contain all of the following:

(a) The applicant's name, address, e-mail address, telephone and fax number.

(b) The product's full, common or usual name.

(c) A copy of the label for each product listed. If the product is to be exported in bulk and a label is not available, the applicant shall include a certificate of composition.

(d) The country of export, if applicable.

(e) The number of certificates of free sale requested.

17. Establish an inspection process to issue certificates of free sale or good manufacturing practice certifications. The board shall establish in rule:

(a) A fee to issue certificates of free sale.

(b) A fee to issue good manufacturing practice certifications.

(c) An annual inspection fee.

18. Delegate to the executive director the authority to:

(a) Void a license or permit application and deem all fees forfeited by the applicant if the applicant provided inaccurate information on the application. The applicant shall have the opportunity to correct the inaccurate information within thirty days after the initial application was reviewed by board staff and the applicant was informed of the inaccuracy.

(b) If the president or vice president of the board concurs after reviewing the case, enter into an interim consent agreement with a licensee or permittee if there is evidence that a restriction against the license or permit is needed to mitigate danger to the public health and safety. The board may subsequently formally adopt the interim consent agreement with any modifications the board deems necessary.

(c) Take no action or dismiss a complaint that has insufficient evidence that a violation of statute or rule governing the practice of pharmacy occurred.

(d) Request an applicant or licensee to provide court documents and police reports if the applicant or licensee has been charged with or convicted of a criminal offense. The executive director may do either of the following if the applicant or licensee fails to provide the requested documents to the board within thirty business days after the request:

(i) Close the application, deem the application fee forfeited and not consider a new application complete unless the requested documents are submitted with the application.

(ii) Notify the licensee of an opportunity for a hearing in accordance with section 41-1061 to consider suspension of the licensee.

(e) Pursuant to section 36-2604, subsection B, review prescription information collected pursuant to title 36, chapter 28, article 1.

C. At each regularly scheduled board meeting the executive director shall provide to the board a list of the executive director's actions taken pursuant to subsection B, paragraph 18, subdivisions (a), (c) and (d) of this section since the last board meeting.

D. The board shall develop substantive policy statements pursuant to section 41-1091 for each specific licensing and regulatory authority the board delegates to the executive director.

E. The executive director and other personnel or agents of the board are not subject to civil liability for any act done or proceeding undertaken or performed in good faith and in furtherance of the purposes of this chapter.

32-1905. Meetings; time and place; annual report

A. The board of pharmacy shall hold meetings to consider license and permit applications and to transact other business legally coming before it. The board must hold at least four meetings in each fiscal year.

B. The board shall designate the time and place of its meetings at least thirty days before each meeting.

C. The board shall submit an annual written report to the governor and to the Arizona pharmacy association that includes the names of all pharmacists, interns, pharmacy technicians, pharmacy technician trainees, pharmacies, wholesalers, third-party logistics providers and manufacturers authorized to practice under this chapter and a record of licenses, permits and renewals.

32-1906. Membership in national associations; official attendance at professional meetings

A. The board may join and subscribe to state, district, regional or national organizations or publications relating to and dealing with pharmacy and manufacturing, wholesaling, and distribution of drugs, devices, poisons, and hazardous substances.

B. Members of the board, the executive director and compliance officers, if authorized by the board, and subject to legislative appropriation therefor, may attend the state, district, regional and national meetings and other educational meetings relating to any of the subjects as provided in subsection A that, in the discretion of the board, are necessary and for its best interests.

32-1907. Arizona state board of pharmacy fund

A. Except as provided in section 32-1939, the executive director shall receive and receipt for all fees and other monies provided for in this chapter and shall deposit, pursuant to sections 35-146 and 35-147, ten percent of such monies in the state general fund and ninety percent in the Arizona state board of pharmacy fund. All monies derived from civil penalties collected pursuant to this chapter shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

B. Except as provided in subsection C of this section, monies deposited in the Arizona state board of pharmacy fund shall be subject to section 35-143.01.

C. From monies deposited in the Arizona state board of pharmacy fund pursuant to subsection A of this section, the executive director may transfer up to five hundred thousand dollars annually to the controlled substances prescription monitoring program fund established by section 36-2605 for expenses related to the controlled substances prescription monitoring program as required by title 36, chapter 28.

D. From monies deposited in the Arizona state board of pharmacy fund pursuant to subsection A of this section, the executive director may transfer up to one million dollars annually to the Arizona poison and drug information center for the purposes specified in section 36-1161 to supplement, and not supplant, any state general fund appropriation for those purposes.

32-1908. Scope of chapter

A. The provisions of this chapter regarding the selling of drugs, poisons, or hazardous substances shall be considered to include the sale, dispensing, furnishing or giving of any such article, or the supplying or applying of any such articles in the conduct of any drug, poison, or hazardous substance establishment.

B. Nothing in this chapter shall be construed to confer authority to license or regulate the collection, processing or distribution of whole human blood or its plasma, fractionations, products, derivatives or other human tissue procured, processed or distributed by federally licensed or regulated blood banks or tissue banks.

32-1909. Prescription medication donation program; distribution; immunity; rules

A. Pursuant to board rules and this section, the board shall establish a prescription medication donation program to accept and dispense prescription medications. Prescription medications may be donated at a physician's office, a pharmacy or a health care institution as defined in section 36-401 that elects to participate in the program and that meets the requirements of this section and board rules. Prescription medications shall be accepted or dispensed under the prescription medication donation program only in their original sealed and tamper-evident unit dose packaging. Prescription medication that is packaged in single unit doses may be accepted and dispensed even if the outside packaging is opened if the single unit dose packaging is undisturbed. The program shall not accept a donation of a prescription medication that either:

1. Expires within six months after the donation.
2. Is deemed adulterated pursuant to section 32-1966.

B. A person, manufacturer or health care institution may donate prescription medication to a physician's office, pharmacy, hospital or health care institution that volunteers to participate in the program and that meets the requirements prescribed by the board.

C. A physician's office, pharmacy, hospital or health care institution that participates in the program shall dispense donated prescription medication:

1. Either directly or through participating governmental or nonprofit private entities.

2. Only pursuant to a prescription order.

3. Only to a recipient who is a resident of this state and who meets the eligibility standards prescribed by the board by rule.

D. Before dispensing donated prescription medication, the physician's office, pharmacy, hospital or health care institutions participating in the program:

1. Shall comply with all applicable federal laws and the laws of this state dealing with the storage and distribution of dangerous drugs.

2. Shall examine the donated prescription medication to determine that it has not been adulterated and certify that the medication has been stored in compliance with the requirements of the product label.

3. May charge persons receiving donated prescription medication pursuant to this section a handling fee as prescribed by the board by rule to cover the costs of inspection, stocking and dispensing the prescription medication.

E. A pharmaceutical manufacturer is not liable for any claim or injury arising from the transfer of any prescription medication pursuant to this section including liability for failure to transfer or communicate product or consumer information regarding the transferred prescription medication, including the expiration date of the transferred prescription medication.

F. Persons and entities participating in the program as prescribed by this section and board rules are not subject to civil liability or professional disciplinary action.

G. In consultation with the director of the department of health services, the board shall adopt rules prescribing the following:

1. Eligibility criteria for physicians' offices, pharmacies, hospitals and health care institutions to receive and dispense donated prescription medication.

2. Standards and procedures for accepting, storing and dispensing donated prescription medication.

3. Standards and procedures for inspecting donated prescription medication to determine that the original unit dose packaging is sealed and tamper-evident and that the donated prescription medication is unadulterated, safe and suitable for dispensing.

4. Eligibility standards, based on economic need, for persons receiving donated prescription medication.

5. A means, such as an identification card, by which persons prove that they are eligible to receive donated prescription medication.

6. A form that each recipient shall sign before the recipient may receive donated prescription medication to confirm that the recipient understands the immunity provisions of the program.

7. A formula to determine the amount of the handling fee that a physician's office, pharmacy, hospital or health care institution may charge recipients.
8. A list of prescription medication, arranged either by category or by individual drug, that the program may accept from individuals.
9. A list of prescription medication, arranged either by category or by individual drug, that the program shall not accept from individuals.
10. A form each individual shall sign stating that the donor is the owner of the prescription medication and wishes to voluntarily donate the prescription medication to the program.
11. A list of prescription medication, arranged either by category or by individual drug, that the program may accept from a health care institution.
12. A list of prescription medication, arranged either by category or by individual drug, that the program shall not accept from a health care institution. The list shall include a statement as to why the prescription medication is ineligible for donation.
13. Any other standards the board determines are necessary and appropriate.

H. Notwithstanding any other law, a dispenser of donated prescription medication pursuant to this section shall not submit a claim or otherwise seek reimbursement from a public or private third party payor for the donation and a public or private third party payor shall not provide reimbursement for donations made pursuant to this section.

32-1910. Emergencies; continued provision of services

A. If a natural disaster or terrorist attack occurs and, as a consequence of the natural disaster or terrorist attack, a state of emergency is declared by the governor or by a county, city or town pursuant to its authority and the declared state of emergency results in individuals being unable to refill existing prescriptions, the board shall cooperate with this state and the county, city or town to ensure the provision of drugs, devices and professional services to the public.

B. If a natural disaster or terrorist attack occurs in another state and, as a consequence of the natural disaster or terrorist attack, a state of emergency is declared by the governor of that state and the declared state of emergency results in individuals being temporarily relocated to Arizona and unable to refill existing prescriptions, the board shall cooperate with this state to ensure the provision of drugs, devices and professional services to the relocated individuals.

C. When a state of emergency has been declared pursuant to this section, a pharmacist may work in the affected county, city or town and may dispense a one-time emergency refill prescription of up to a thirty-day supply of a prescribed medication if both of the following apply:

1. In the pharmacist's professional opinion the medication is essential to the maintenance of life or to the continuation of therapy.

2. The pharmacist makes a good faith effort to reduce the information to a written prescription marked "emergency prescription" and then files and maintains the prescription as required by law.

D. If the state of emergency declared pursuant to this section continues for at least twenty-one days after the pharmacist dispenses an emergency prescription pursuant to subsection C, the pharmacist may dispense one additional emergency refill prescription of up to a thirty day supply of the prescribed medication.

E. A pharmacist who is not licensed in this state, but who is currently licensed in another state, may dispense prescription medications in those affected counties, cities or towns in this state during the time that a declared state of emergency exists pursuant to this section if both of the following apply:

1. The pharmacist has proof of licensure in another state.
2. The pharmacist is engaged in a legitimate relief effort during the period of time an emergency has been declared pursuant to this section.

F. The board may adopt rules for the provision of pharmaceutical care and drug and device delivery during a declared emergency that is the consequence of a natural disaster or terrorist attack, including the use of temporary or mobile pharmacy facilities and nonresident licensed pharmacy professionals.

G. A pharmacist's authority to dispense prescriptions pursuant to this section ends when the declared state of emergency is terminated.

32-1921. Exempted acts; exemption from registration fees; definition

A. This chapter does not prevent:

1. The prescription and dispensing of drugs or prescription medications by a registered nurse practitioner or clinical nurse specialist pursuant to rules adopted by the Arizona state board of nursing in consultation with the Arizona medical board, the Arizona board of osteopathic examiners in medicine and surgery and the Arizona state board of pharmacy.
2. The sale of nonprescription drugs that are sold at retail in original packages by a person holding a permit issued by the board under this chapter.
3. The sale of drugs at wholesale by a wholesaler or manufacturer that holds the required permit issued by the board to a person who holds the required permit issued under this chapter.
4. The manufacturing of drugs by a person who is not a pharmacist and who holds the required permit issued by the board under this chapter.
5. The following health professionals from dispensing or personally administering drugs or devices to a patient for a condition being treated by the health professional:
 - (a) A doctor of medicine licensed pursuant to chapter 13 of this title.
 - (b) An osteopathic physician licensed pursuant to chapter 17 of this title.
 - (c) A homeopathic physician licensed pursuant to chapter 29 of this title.
 - (d) A podiatrist licensed pursuant to chapter 7 of this title.

(e) A dentist licensed pursuant to chapter 11 of this title.

(f) A doctor of naturopathic medicine who is authorized to prescribe natural substances, drugs or devices and who is licensed pursuant to chapter 14 of this title.

(g) An optometrist who is licensed pursuant to chapter 16 of this title and who is certified for topical or oral pharmaceutical agents.

6. A veterinarian licensed pursuant to chapter 21 of this title from dispensing or administering drugs to an animal or from dispensing or administering devices to an animal being treated by the veterinarian.

7. The use of any pesticide chemical, soil or plant nutrient or other agricultural chemical that is a color additive solely because of its effect in aiding, retarding or otherwise affecting directly or indirectly the growth or other natural physiological process of produce of the soil and thereby affecting its color whether before or after harvest.

8. A licensed practical or registered nurse employed by a person licensed pursuant to chapter 7, 11, 13, 14, 17 or 29 of this title from assisting in the delivery of drugs and devices to patients, in accordance with chapter 7, 11, 13, 14, 17 or 29 of this title.

9. The use of any mechanical device or vending machine in connection with the sale of any nonprescription drug, including proprietary and patent medicine. The board may adopt rules to prescribe conditions under which nonprescription drugs may be dispensed pursuant to this paragraph.

B. A person who is licensed pursuant to chapter 7, 11, 13, 14, 17 or 29 of this title and who employs a licensed practical or registered nurse who in the course of employment assists in the delivery of drugs and devices is responsible for the dispensing process.

C. Pursuant to a prescription order written by a physician for the physician's patients and dispensed by a licensed pharmacist, a physical therapist licensed pursuant to chapter 19 of this title, an occupational therapist licensed pursuant to chapter 34 of this title or an athletic trainer licensed pursuant to chapter 41 of this title may procure, store and administer nonscheduled legend and topical anti-inflammatories and topical anesthetics for use in phonophoresis and iontophoresis procedures and within the scope of practice of physical or occupational therapy or athletic training.

D. A public health facility operated by this state or a county and a qualifying community health center may dispense medication or devices to patients at no cost without providing a written prescription if the public health facility or the qualifying community health center meets all storage, labeling, safety and record keeping rules adopted by the board of pharmacy.

E. A person who is licensed pursuant to chapter 7, 11, 13, 14, 17 or 29 of this title, who is practicing at a public health facility or a qualifying community health center and who is involved in the dispensing of medication or devices only at a facility or center, whether for a charge or at no cost, shall register to dispense with the appropriate licensing board but is exempt from paying registration fees.

F. For the purposes of this section, "qualifying community health center" means a primary care clinic that is recognized as nonprofit under section 501(c)(3) of the United States internal revenue code and whose board of directors includes patients of the center and residents of the center's service area.

32-1921.01. [Disclosures on applications; licensees; applicability](#)

A. A pharmacist, pharmacy intern, pharmacy technician and pharmacy technician trainee are not required to disclose the following information when filing an application under this chapter:

1. A single misdemeanor charge that was dismissed, expunged or set aside more than five years before the date of application.
2. A single misdemeanor conviction that occurred more than ten years before the date of application.
3. A single felony conviction that was reduced to a misdemeanor conviction or that was dismissed, expunged or set aside more than ten years before the date of application.

B. An applicant or licensee who has had more than one of any charge or conviction specified in subsection A of this section shall disclose that information to the board.

C. Subsection A of this section applies to current licensees.

32-1922. Qualifications of applicant; reciprocity; preliminary equivalency examination; honorary certificate; fee

A. An applicant for licensure as a pharmacist shall:

1. Be of good moral character.
2. Be a graduate of a school or college of pharmacy or department of pharmacy of a university recognized by the board or the accreditation council for pharmacy education, or qualify under subsection D of this section.
3. Have successfully completed, as substantiated by proper affidavits, a program of practical experience under the direct supervision of a licensed pharmacist who is approved by the board.
4. Pass the pharmacist licensure examination and jurisprudence examination approved by the board. An applicant who fails an examination three times shall petition the board for permission before retaking the examination. The board shall evaluate the petition and determine whether to require additional educational training before approving each additional retake of the examination.
5. Pay an application fee prescribed by the board of not more than five hundred dollars. An applicant for reciprocal licensure shall pay the fee prescribed in section 32-1924, subsection D.

B. The board may license as a pharmacist, without a pharmacist licensure examination, a person who is licensed as a pharmacist by a pharmacist licensure examination in some other jurisdiction if that person:

1. Produces satisfactory evidence to the board of having had the required secondary and professional education and training.
2. Is possessed of good morals as demanded of applicants for licensure and relicensure under this chapter.
3. Presents proof to the board's satisfaction that the person is licensed by a pharmacist licensure examination equivalent to the pharmacist licensure examination required by the board and that the person holds the license in good standing. If the applicant was examined after June 1, 1979, the applicant must present proof to the board's satisfaction of having passed the national association of boards of pharmacy licensure examination or the north American pharmacist licensure examination.

4. Presents proof to the board's satisfaction that any other license granted to the applicant by any other jurisdiction has not been suspended, revoked or otherwise restricted for any reason except nonrenewal or for failure to obtain the required continuing education credits in any jurisdiction where the applicant is currently licensed but not engaged in the practice of pharmacy.

5. Passes a board-approved jurisprudence examination.

C. Subsection B of this section applies only if the jurisdiction in which the person is licensed grants, under like conditions, reciprocal licensure as a pharmacist to a pharmacist who is licensed by examination in this state and the person holds a license in good standing issued by an active member board of the national association of boards of pharmacy.

D. If an applicant for licensure is a graduate of a pharmacy degree program at a school or college of pharmacy that was not recognized by the board at the time of the person's graduation, the applicant shall pass a preliminary equivalency examination approved by the board in order to qualify to take the examinations prescribed in subsection A of this section.

E. The preliminary equivalency examination required pursuant to subsection D of this section shall cover proficiency in English and academic areas the board deems essential to a satisfactory pharmacy curriculum.

F. An applicant who fails the preliminary equivalency examination required pursuant to subsection D of this section shall not retake the preliminary equivalency examination until the applicant files written proof with the board that the applicant has completed additional remedial academic work previously approved by the board to correct deficiencies in the applicant's education that were indicated by the results of the applicant's last preliminary equivalency examination.

G. A pharmacist who has been licensed in this state for at least fifty years shall be granted an honorary certificate of licensure by the board without the payment of the usual renewal fee, but that certificate of licensure does not confer an exemption from any other requirement of this chapter.

H. The board may require a pharmacist who has not been actively engaged in the practice of pharmacy for over one year to serve not more than four hundred hours in an internship training program approved by the board or its designee before the pharmacist may resume the active practice of pharmacy.

I. An applicant must complete the application process within twelve months after submitting the application.

32-1923. Interns and intern preceptors; qualifications; licensure; purpose of internship

A. A pharmacist who meets the qualifications established by the board to supervise the training of a pharmacy intern shall comply with the rules of the board and be known as a pharmacy intern preceptor.

B. A person shall not act as a pharmacy intern until that person is licensed by the board. An employer shall verify that a person is currently licensed as a pharmacy intern before the employer allows that person to act as a pharmacy intern.

C. The board shall establish the preliminary educational qualifications for all pharmacy interns, which may include enrollment and attendance in a school or college of pharmacy approved by the board.

D. A pharmacy intern who is currently licensed may be employed in a pharmacy or any other place approved and authorized by the board for training interns and shall receive instruction in the practice of pharmacy, including manufacturing, wholesaling, dispensing of drugs and devices, compounding and dispensing prescription orders, clinical pharmacy, providing drug information, keeping records and making reports required by state and federal laws and other experience that, in the discretion of the board, provides the intern with the necessary experience to practice the profession of pharmacy. Pharmacy interns may compound, dispense and sell drugs, devices and poisons or perform other duties of a pharmacist only in the presence and under the immediate personal supervision of a pharmacist.

E. Intern training and licensure as a pharmacy intern under this section are for the purpose of acquiring practical experience in the practice of the profession of pharmacy before becoming licensed as a pharmacist and are not for the purpose of continued licensure under the pharmacy laws. If a pharmacy intern fails to complete pharmacy education within a period of six years, the intern is not eligible for relicensure as an intern without an acceptable explanation to the board that the intern intends to be and is working toward becoming a pharmacist.

F. The board may accept the experience of a pharmacy intern acquired in another jurisdiction on proper certification by the other jurisdiction.

[32-1923.01. Pharmacy technicians; pharmacy technician trainees; qualifications; remote dispensing site pharmacies](#)

A. An applicant for licensure as a pharmacy technician must:

1. Be of good moral character.
2. Be at least eighteen years of age.
3. Have a high school diploma or the equivalent of a high school diploma.
4. Complete a training program prescribed by board rules.
5. Pass a board-approved pharmacy technician examination.

B. An applicant for licensure as a pharmacy technician trainee must:

1. Be of good moral character.
2. Be at least eighteen years of age.
3. Have a high school diploma or the equivalent of a high school diploma.

C. Before a pharmacy technician prepares, compounds or dispenses prescription medications at a remote dispensing site pharmacy, the pharmacy technician shall:

1. Complete, in addition to any other board-approved mandatory continuing professional education requirements, a two-hour continuing education program on remote dispensing site pharmacy practices provided by an approved provider.
2. Have at least one thousand hours of experience working as a pharmacy technician in an outpatient pharmacy setting under the direct supervision of a pharmacist.

D. A pharmacy technician working at a remote dispensing site pharmacy:

1. Shall maintain an active, nationally recognized pharmacy technician certification approved by the board.
2. May not perform extemporaneous sterile or nonsterile compounding but may prepare commercially available medications for dispensing, including the reconstitution of orally administered powder antibiotics.

[32-1924. Licenses; fees; rules; signatures; online profiles](#)

A. An applicant for licensure as a pharmacist who passes the board-approved examinations shall pay the board an initial licensure fee of not more than five hundred dollars.

B. An applicant for licensure as a pharmacist, intern, pharmacy technician or pharmacy technician trainee shall pay a fee prescribed by the board that does not exceed fifty dollars for issuance of a wall license. On payment of a fee of not more than fifty dollars, the board may issue a replacement wall license to a licensee who requests a replacement because the original was damaged or destroyed, because of a change of name or for other good cause as prescribed by the board.

C. An applicant for licensure as an intern shall pay a fee of not more than seventy-five dollars. A license issued pursuant to this subsection expires five years after it is issued. The board shall adopt rules to prescribe the requirements for the renewal of a license that expires before the pharmacy intern completes the education or training required for licensure as a pharmacist.

D. An applicant for reciprocal licensure as a pharmacist shall pay a fee of not more than five hundred dollars for the application and expense of making an investigation of the applicant's character, general reputation and pharmaceutical standing in the jurisdiction in which the applicant is licensed.

E. All pharmacist licenses shall bear the signatures of the executive director and a majority of the members of the board.

F. An applicant for licensure as a pharmacy technician trainee shall submit with the application a fee prescribed by the board that does not exceed one hundred dollars. A license issued pursuant to this subsection expires thirty-six months after it is issued. A pharmacy technician trainee license may not be renewed or reissued.

G. An applicant for licensure as a pharmacy technician shall submit with the application a fee prescribed by the board that does not exceed one hundred dollars.

H. A licensee shall create an online profile using the board's licensing software.

[32-1925. Renewal of license of pharmacists, interns and pharmacy technicians; fees; expiration dates; penalty for failure to renew; continuing education](#)

A. Except for interns and pharmacy technician trainees, the board shall assign all persons who are licensed under this chapter to one of two license renewal groups. Except as provided in section 32-4301, a holder of a license certificate designated in the licensing database as even by way of verbiage or numerical value shall renew it biennially on or before November 1 of the even-numbered year, two years from the last renewal date. Except as provided in section 32-4301, a holder of a license certificate designated in the licensing database as odd by way of verbiage or numerical value shall renew it

biennially on or before November 1 of the odd-numbered year, two years from the last renewal date. Failure to renew and pay all required fees on or before November 1 of the year in which the renewal is due suspends the license. The board shall vacate a suspension when the licensee pays all past due fees and penalties. Penalties shall not exceed three hundred fifty dollars. The board may waive collection of a fee or penalty due after suspension under conditions established by a majority of the board.

B. A person shall not apply for license renewal more than sixty days before the expiration date of the license.

C. A person who is licensed as a pharmacist or a pharmacy technician and who has not renewed the license for five consecutive years shall furnish to the board satisfactory proof of fitness to be licensed as a pharmacist or a pharmacy technician, in addition to the payment of all past due fees and penalties before being reinstated.

D. Biennial renewal fees for licensure shall be not more than:

1. For a pharmacist, two hundred fifty dollars.
2. For a pharmacy technician, one hundred dollars.
3. For a duplicate renewal license, twenty-five dollars.

E. Fees that are designated to be not more than a maximum amount shall be set by the board for the following two fiscal years beginning November 1. The board shall establish fees approximately proportionate to the maximum fee allowed to cover the board's anticipated expenditures for the following two fiscal years. Variation in a fee is not effective except at the expiration date of a license.

F. The board shall not renew a license for a pharmacist unless the pharmacist has complied with the mandatory continuing professional pharmacy education requirements of sections 32-1936 and 32-1937.

G. The board shall prescribe intern licensure renewal fees that do not exceed seventy-five dollars. The license of an intern who does not receive specific board approval to renew the intern license or who receives board approval to renew but who does not renew and pay all required fees before the license expiration date is suspended after the license expiration date. The board shall vacate a suspension if the licensee pays all past due fees and penalties. Penalties shall not exceed three hundred fifty dollars. The board may waive collection of a fee or penalty due after suspension under conditions established by the board.

H. The board shall not renew a license for a pharmacy technician unless that person has a current board-approved license and has complied with board-approved mandatory continuing professional education requirements. If a pharmacy technician prepares, compounds or dispenses prescription medications at a remote dispensing site pharmacy the pharmacy technician shall complete, in addition to any other board-approved mandatory continuing professional education requirements, a two-hour continuing education program on remote dispensing site pharmacy practices provided by an approved provider.

32-1926. Notice of change of information required

A. Except as prescribed in subsection B of this section, a pharmacist, intern, pharmacy technician or pharmacy technician trainee, within ten days after a change in that person's employer, employer's address,

home address or contact information, shall electronically update the person's online board profile or give written notice to the board office staff of the new information.

B. Pursuant to board rule, a pharmacist designated as the pharmacist in charge for a permit issued under this chapter shall give immediate notice to the board office staff of the initiation and termination of such responsibility. The pharmacist shall either electronically update the pharmacist's online board profile or give written notice to the board office staff of the new information.

32-1926.01. Change in residency status; written notice required

A. A licensee shall give written notice to the board office staff of a change in the licensee's residency status authorized by the United States citizenship and immigration services.

B. If the licensee's residency status ceases to be authorized by the United States citizenship and immigration services, the licensee shall give written notice to the board office staff that the licensee voluntarily terminates the license.

32-1927. Pharmacists; pharmacy interns; disciplinary action

A. A pharmacist or pharmacy intern is subject to disciplinary action by the board for any of the following:

1. The board determines that the licensee has committed an act of unprofessional conduct.
2. The licensee is found by psychiatric examination to be mentally unfit to practice the profession of pharmacy.
3. The licensee is found to be physically or mentally incapacitated to such a degree as to render the licensee unfit to practice the profession of pharmacy.
4. The licensee is found to be professionally incompetent to such a degree as to render the licensee unfit to practice the profession of pharmacy.
5. The license was issued through error.

B. A pharmacist or pharmacy intern who after a formal hearing is found by the board to be guilty of unprofessional conduct, to be mentally or physically unable safely to engage in the practice of pharmacy or to be professionally incompetent is subject to any one or combination of the following:

1. A civil penalty of not to exceed one thousand dollars for each violation of this chapter or a rule adopted under this chapter.
2. A letter of reprimand.
3. A decree of censure.
4. Completion of board-designated continuing pharmaceutical education courses.
5. Probation.
6. Suspension or revocation of the license.

C. The board may charge the costs of formal hearings to the licensee whom it finds to be in violation of this chapter or a rule adopted under this chapter.

D. The board on its own motion may investigate any evidence that appears to show that a pharmacist or pharmacy intern is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of pharmacy. Any person may, and a licensee or permittee of the board must, report to the board any information that appears to show that a pharmacist or pharmacy intern is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of pharmacy. The board or the executive director shall notify the pharmacist or pharmacy intern as to the content of the complaint as soon as reasonable. Any person or entity that reports or provides information to the board in good faith is not subject to an action for civil damages. It is an act of unprofessional conduct for any pharmacist or pharmacy intern to fail to report as required by this subsection.

E. The pharmacy permittee or pharmacist in charge of a pharmacy located in this state must inform the board if a pharmacist or pharmacy intern employed by the pharmacy is terminated because of actions by the pharmacist or pharmacy intern that appear to show that the pharmacist or pharmacy intern is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of pharmacy, along with a general statement of the reasons that led the pharmacy to take the action. The pharmacy permittee or pharmacist in charge of a pharmacy located in this state must inform the board if a pharmacist or pharmacy intern under investigation resigns or if a pharmacist or pharmacy intern resigns in lieu of disciplinary action by the pharmacy. Notification must include a general statement of the reasons for the resignation. A person who reports information in good faith pursuant to this subsection is not subject to civil liability.

F. The board or, if delegated by the board, the executive director shall require any combination of mental, physical, psychological, psychiatric or medical competency examinations or pharmacist licensure examinations and conduct necessary investigations including investigational interviews between representatives of the board and the pharmacist or pharmacy intern to fully inform itself about any information filed with the board under this section. These examinations may also include biological fluid testing. The board may require the pharmacist or pharmacy intern, at that person's expense, to undergo assessment by a board-approved substance abuse treatment and rehabilitation program.

G. If after completing its investigation the board finds that the information provided pursuant to this section is not of sufficient seriousness to merit disciplinary action against the license of the pharmacist or pharmacy intern, the board may take any of the following actions:

1. Dismiss if the complaint is without merit.
2. File an advisory letter. The licensee may file a written response with the board within thirty days after receiving the advisory letter.
3. Require the licensee to complete board-designated continuing pharmaceutical education courses.

H. The board shall not disclose the name of the person who provides information regarding a licensee's drug or alcohol impairment or the name of the person who files a complaint if that person requests anonymity.

I. If after completing its investigation the board believes that the information is or may be true, it may request a conference with the pharmacist or pharmacy intern. If the pharmacist or pharmacy intern refuses

the invitation for a conference and the investigation indicates that grounds may exist for revocation or suspension of a license, probation, issuance of a decree of censure or a letter of reprimand or imposition of a civil penalty, the board shall issue a formal notice that a hearing be held pursuant to title 41, chapter 6, article 10.

J. If through information provided pursuant to this section or by other means the board finds that the protection of the public health, welfare and safety requires emergency action against the license of a pharmacist or pharmacy intern, the board may restrict a license or order a summary suspension of a license pending proceedings for revocation or other action. If the board acts pursuant to this subsection, the board shall also serve the licensee with a written notice of complaint and formal hearing that sets forth the charges and licensee's right to a formal hearing before the board or an administrative law judge on the charges within sixty days pursuant to title 41, chapter 6, article 10.

K. If after completing the conference the board finds the information provided pursuant to this section is not of sufficient seriousness to merit revocation or suspension of a license, probation, issuance of a decree of censure or a letter of reprimand or imposition of a civil penalty, it may take the following actions:

1. Dismiss if the information is without merit.
2. File an advisory letter. The licensee may file a written response with the board within thirty days after the licensee receives the advisory letter.
3. Require the licensee to complete board-designated continuing pharmaceutical education courses.

L. If during a conference the board finds that the information provided pursuant to this section indicates that grounds may exist for revocation or suspension of a license, probation, issuance of a decree of censure or a letter of reprimand or imposition of a civil penalty, it may take the following actions:

1. Dismiss if the information is without merit.
2. File an advisory letter. The licensee may file a written response with the board within thirty days after the licensee receives the advisory letter.
3. Require the licensee to complete board-designated continuing pharmaceutical education courses.
4. Enter into an agreement with the licensee to discipline the licensee, restrict the licensee's practice or professional activities or rehabilitate, retrain or assess the licensee in order to protect the public and ensure the licensee's ability to safely engage in the practice of pharmacy. The agreement may include at least the following:
 - (a) Issuance of a letter of reprimand.
 - (b) Issuance of a decree of censure.
 - (c) Practice or professional restrictions, such as not acting as a pharmacist in charge or pharmacy intern preceptor or working with another pharmacist.
 - (d) Rehabilitative, retraining or assessment programs, including:
 - (i) Board-approved community service.

(ii) Successful completion of additional board-designated continuing pharmaceutical education courses.

(iii) Successful passage of board-approved pharmacist licensure examinations.

(iv) Successful completion of a board-approved substance abuse treatment and rehabilitation program at the licensee's own expense.

(e) A civil penalty not to exceed one thousand dollars for each violation of this chapter or a rule adopted under this chapter.

(f) A period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the licensee concerned. Probation may include temporary suspension and any or all of the disciplinary actions, practice or professional restrictions, rehabilitative, retraining or assessment programs listed in this section or any other program agreed to by the board and the licensee.

M. If the board finds that the information provided pursuant to this section and additional information provided during the conference warrants revocation or suspension of a license, probation, issuance of a decree of censure or a letter of reprimand or imposition of a civil penalty, it shall initiate formal proceedings pursuant to title 41, chapter 6, article 10.

N. If the licensee wishes to be present at the formal hearing in person or by representation, or both, the licensee must file with the board an answer to the charges in the notice of hearing. The answer must be in writing, be verified under oath and be filed within thirty days after service of the notice of hearing. Failure to answer the board's notice of hearing is deemed an admission of the charges in the notice of hearing.

O. An advisory letter is a nondisciplinary public document.

P. If the board during an investigation determines that a criminal violation might have occurred, it shall disclose its investigative evidence and information to the appropriate criminal justice agency for its consideration.

Q. In determining the appropriate disciplinary action under this section, the board shall consider all previous nondisciplinary and disciplinary actions against a licensee.

R. The board may deny a license to an applicant for the grounds prescribed in subsection A of this section.

S. A person who is licensed pursuant to this chapter or by any other jurisdiction and who has a license revoked or suspended shall not obtain a license as a pharmacy intern, pharmacy technician or pharmacy technician trainee or work as a pharmacy intern, pharmacy technician or pharmacy technician trainee without the approval of the board or its designee.

32-1927.01. Pharmacy technicians; pharmacy technician trainees; disciplinary action

A. A pharmacy technician or pharmacy technician trainee is subject to disciplinary action by the board for any of the following:

1. The board determines that the licensee has committed an act of unprofessional conduct.

2. The licensee is found by psychiatric examination to be mentally unfit to safely perform the licensee's employment duties.

3. The licensee is found to be physically or mentally incapacitated to such a degree as to render the licensee unfit to safely perform the licensee's employment duties.

4. The licensee is found to be professionally incompetent to such a degree as to render the licensee unfit to safely perform the licensee's employment duties.

5. The license was issued through error.

B. A pharmacy technician or pharmacy technician trainee who after a formal hearing is found by the board to be guilty of unprofessional conduct, to be mentally or physically unable safely to engage in the practice of pharmacy or to be professionally incompetent is subject to any one or combination of the following:

1. A civil penalty of not to exceed one thousand dollars for each violation of this chapter or a rule adopted under this chapter.

2. A letter of reprimand.

3. A decree of censure.

4. Completion of board designated continuing education courses.

5. Probation.

6. Suspension or revocation of the license.

C. The board may charge the costs of formal hearings to the licensee whom it finds to be in violation of this chapter or a rule adopted under this chapter.

D. The board on its own motion may investigate any evidence that appears to show that a pharmacy technician or pharmacy technician trainee is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the permissible activities of a pharmacy technician or pharmacy technician trainee. Any person may, and a licensee or permittee of the board must, report to the board any information that appears to show that a pharmacy technician or pharmacy technician trainee is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the permissible activities of a pharmacy technician or pharmacy technician trainee. The board or the executive director shall notify the pharmacy technician or pharmacy technician trainee as to the content of the complaint as soon as reasonable. Any person or entity that reports or provides information to the board in good faith is not subject to an action for civil damages. It is an act of unprofessional conduct for any pharmacy technician or pharmacy technician trainee to fail to report as required by this subsection.

E. The pharmacy permittee or pharmacist in charge of a pharmacy located in this state must inform the board if a pharmacy technician or pharmacy technician trainee employed by the pharmacy is terminated because of actions by that person that appear to show that the person is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the permissible activities of a pharmacy technician or pharmacy technician trainee, along with a general statement of the reasons that led the pharmacy to take the action. The pharmacy

permittee or pharmacist in charge of a pharmacy located in this state must inform the board if a pharmacy technician or pharmacy technician trainee under investigation resigns or if a pharmacy technician or pharmacy technician trainee resigns in lieu of disciplinary action by the pharmacy. Notification must include a general statement of the reasons for the resignation. A person who reports information in good faith pursuant to this subsection is not subject to civil liability.

F. The board or, if delegated by the board, the executive director shall require any combination of mental, physical, psychological, psychiatric or medical competency examinations or pharmacy technician licensure examinations and conduct necessary investigations including investigational interviews between representatives of the board and the pharmacy technician or pharmacy technician trainee to fully inform itself about any information filed with the board pursuant to this section. These examinations may also include biological fluid testing. The board may require the licensee, at that person's expense, to undergo assessment by a board approved substance abuse treatment and rehabilitation program.

G. If after completing its investigation the board finds that the information provided pursuant to this section is not of sufficient seriousness to merit disciplinary action against the license of the pharmacy technician or pharmacy technician trainee, the board may take any of the following actions:

1. Dismiss if the complaint is without merit.
2. File an advisory letter. The licensee may file a written response with the board within thirty days after receiving the advisory letter.
3. Require the licensee to complete board designated continuing pharmaceutical education courses.

H. The board shall not disclose the name of the person who provides information regarding a licensee's drug or alcohol impairment or the name of the person who files a complaint if that person requests anonymity.

I. If after completing its investigation the board believes that the information is or may be true, it may request a conference with the licensee. If the licensee refuses the invitation for a conference and the investigation indicates that grounds may exist for revocation or suspension of a license, probation, issuance of a decree of censure or a letter of reprimand or imposition of a civil penalty, the board shall issue a formal notice that a hearing be held pursuant to title 41, chapter 6, article 10.

J. If through information provided pursuant to this section or by other means the board finds that the protection of the public health, welfare and safety requires emergency action against the license of a pharmacy technician or pharmacy technician trainee, the board may restrict a license or order a summary suspension of a license pending proceedings for revocation or other action. If the board acts pursuant to this subsection, the board shall also serve the licensee with a written notice of complaint and formal hearing that sets forth the charges made against the licensee and the licensee's right to a formal hearing before the board or an administrative law judge on the charges within sixty days pursuant to title 41, chapter 6, article 10.

K. If after completing the conference the board finds the information provided pursuant to this section is not of sufficient seriousness to merit revocation or suspension of a license, probation, issuance of a decree of censure or a letter of reprimand or imposition of a civil penalty, it may take the following actions:

1. Dismiss if the information is without merit.

2. File an advisory letter. The licensee may file a written response with the board within thirty days after the licensee receives the advisory letter.

3. Require the licensee to complete board designated continuing pharmaceutical education courses.

L. If during a conference the board finds that the information provided pursuant to this section indicates that grounds may exist for revocation or suspension of a license, probation, issuance of a decree of censure or a letter of reprimand or imposition of a civil penalty, it may take the following actions:

1. Dismiss if the information is without merit.

2. File an advisory letter. The licensee may file a written response with the board within thirty days after the licensee receives the advisory letter.

3. Require the licensee to complete board designated continuing pharmaceutical education courses.

4. Enter into an agreement with the licensee to discipline the licensee, restrict the licensee's practice or professional activities or rehabilitate, retrain or assess the licensee in order to protect the public and ensure the licensee's ability to safely engage in the permissible activities of a pharmacy technician or pharmacy technician trainee. The agreement may include at least the following:

(a) Issuance of a letter of reprimand.

(b) Issuance of a decree of censure.

(c) Practice or professional restrictions, such as doing the following only under pharmacist supervision:

(i) Entering prescription or patient data.

(ii) Initiating or accepting verbal refill authorization.

(iii) Counting, pouring, packaging or labeling prescription medication.

(iv) Compounding, reconstituting, prepackaging or repackaging drugs.

(d) Rehabilitative, retraining or assessment programs, including:

(i) Board approved community service.

(ii) Successful completion of additional board designated continuing pharmaceutical education courses.

(iii) Successful passage of board approved pharmacist technician licensure examinations.

(iv) Successful completion of a board approved substance abuse treatment and rehabilitation program at the licensee's own expense.

(e) A civil penalty not to exceed one thousand dollars for each violation of this chapter or a rule adopted under this chapter.

(f) A period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the licensee concerned. Probation may include temporary suspension and any or all of the

disciplinary actions, practice or professional restrictions, rehabilitative, retraining or assessment programs listed in this section or any other program agreed to by the board and the licensee.

M. If the board finds that the information provided pursuant to this section and additional information provided during the conference warrants revocation or suspension of a license, probation, issuance of a decree of censure or a letter of reprimand or imposition of a civil penalty, it shall initiate formal proceedings pursuant to title 41, chapter 6, article 10.

N. If the licensee wishes to be present at the formal hearing in person or by representation, or both, the licensee must file with the board an answer to the charges in the notice of hearing. The answer must be in writing, be verified under oath and be filed within thirty days after service of the notice of hearing. Failure to answer the board's notice of hearing is deemed an admission of the charges in the notice of hearing.

O. An advisory letter is a nondisciplinary public document.

P. If the board during an investigation determines that a criminal violation might have occurred, it shall disclose its investigative evidence and information to the appropriate criminal justice agency for its consideration.

Q. In determining the appropriate disciplinary action under this section, the board shall consider all previous nondisciplinary and disciplinary actions against a licensee.

R. The board may deny a license to an applicant for the grounds prescribed in subsection A of this section.

S. A person licensed pursuant to this chapter or by any other jurisdiction who has a license revoked or suspended shall not obtain a license as a pharmacy technician or pharmacy technician trainee or work as a pharmacy technician or pharmacy technician trainee without the approval of the board or its designee.

32-1927.02. Permittees; disciplinary action

A. The board may discipline a permittee if:

1. The board determines that the permittee or permittee's employee is guilty of unethical conduct pursuant to section 32-1901.01, subsection A.

2. Pursuant to a psychiatric examination, the permittee or the permittee's employee is found to be mentally unfit to safely engage in employment duties.

3. The board determines that the permittee or the permittee's employee is physically or mentally incapacitated to such a degree as to render the permittee or permittee's employee unfit to safely engage in employment duties.

4. The permit was issued through error.

5. A permittee or permittee's employee allows a person who does not possess a current license issued by the board to work as a pharmacist, pharmacy intern, pharmacy technician or pharmacy technician trainee.

B. A permittee who after a formal hearing is found by the board to be guilty of unethical conduct, to be mentally or physically unable safely to engage in employment duties or to be in violation of this chapter or a rule adopted under this chapter or whose employee after a formal hearing is found by the board to be

guilty of unethical conduct, to be mentally or physically unable safely to engage in employment duties or to be in violation of this chapter or a rule adopted under this chapter is subject to any one or combination of the following:

1. A civil penalty not to exceed one thousand dollars for each violation of this chapter or a rule adopted under this chapter.
2. A letter of reprimand.
3. A decree of censure.
4. Completion of board-designated pharmacy law continuing education courses.
5. Probation.
6. Suspension or revocation of the permit.

C. The board may charge the costs of formal hearings to the permittee whom it finds to be in violation of this chapter or a rule adopted under this chapter or whose employee it finds to be in violation of this chapter or a rule adopted under this chapter.

D. The board on its own motion may investigate any evidence that appears to show that a permittee or permittee's employee is or may be guilty of unethical conduct, is or may be mentally or physically unable safely to engage in employment duties or is or may be in violation of this chapter or a rule adopted under this chapter. Any person may, and any licensee or permittee must, report to the board any information that appears to show that a permittee or permittee's employee is or may be guilty of unethical conduct, is or may be mentally or physically unable safely to engage in employment duties or is or may be in violation of this chapter or a rule adopted under this chapter. The board or the executive director shall notify the permittee as to the content of the complaint as soon as reasonable. Any person or entity that reports or provides information to the board in good faith is not subject to an action for civil damages. It is an act of unethical conduct for any permittee to fail to report as required by this subsection.

E. The board or, if delegated by the board, the executive director shall require any combination of mental, physical, psychological, psychiatric or medical competency examinations and conduct necessary investigations including investigational interviews between representatives of the board and the permittee or permittee's employee to fully inform itself about any information filed with the board under subsection D of this section. These examinations may also include biological fluid testing. The board may require the permittee or permittee's employee, at that person's expense, to undergo assessment by a board-approved substance abuse treatment and rehabilitation program.

F. If after completing its investigation the board finds that the information provided pursuant to subsection D of this section is not of sufficient seriousness to merit disciplinary action against the permit, the board may take any of the following actions:

1. Dismiss if the complaint is without merit.
2. File an advisory letter. The permittee may file a written response with the board within thirty days after receiving the advisory letter.
3. Require the permittee to complete board-designated pharmacy law continuing education courses.

G. The board shall not disclose the name of the person who provides information regarding a permittee's or permittee's employee's drug or alcohol impairment or the name of the person who files a complaint if that person requests anonymity.

H. If after completing its investigation the board believes that the information is or may be true, it may request a conference with the permittee or permittee's employee. If the permittee or permittee's employee refuses the invitation for a conference and the investigation indicates that grounds may exist for revocation or suspension of a permit, probation, issuance of a decree of censure or a letter of reprimand or imposition of a civil penalty, the board shall issue a formal notice that a hearing be held pursuant to title 41, chapter 6, article 10.

I. If through information provided pursuant to subsection D of this section or by other means the board finds that the protection of the public health, welfare and safety requires emergency action against the permit, the board may restrict a permit or order a summary suspension of a permit pending proceedings for revocation or other action. If the board acts pursuant to this subsection, the board shall also serve the permittee with a written notice of complaint and formal hearing that sets forth the charges and the permittee's right to a formal hearing on the charges before the board or an administrative law judge within sixty days pursuant to title 41, chapter 6, article 10.

J. If after completing the conference the board finds the information provided pursuant to subsection D of this section is not of sufficient seriousness to merit revocation or suspension of a permit, probation, issuance of a decree of censure or a letter of reprimand or imposition of a civil penalty, it may take the following actions:

1. Dismiss if the information is without merit.
2. File an advisory letter. The permittee may file a written response with the board within thirty days after receiving the advisory letter.
3. Require the permittee to complete board-designated pharmacy law continuing education courses.

K. If during a conference the board finds that the information provided pursuant to subsection D of this section indicates that grounds may exist for revocation or suspension of a permit, probation, issuance of a decree of censure or a letter of reprimand or imposition of a civil penalty, it may take the following actions:

1. Dismiss if the information is without merit.
2. File an advisory letter. The permittee may file a written response with the board within thirty days after the permittee receives the advisory letter.
3. Require the permittee to complete board-designated pharmacy law continuing education courses.
4. Enter into an agreement with the permittee to discipline the permittee, restrict the permittee's business activities or rehabilitate or assess the permittee in order to protect the public and ensure the permittee's ability to safely engage in employment duties. The agreement may include, at a minimum, the following disciplinary actions, business activity restrictions and rehabilitative or assessment programs:

(a) Issuance of a letter of reprimand.

- (b) Issuance of a decree of censure.
 - (c) Business activity restrictions, including limitations on the number, type, classification or schedule of drug, device, poison, hazardous substance, controlled substance or precursor chemical that may be manufactured, sold, distributed or dispensed.
 - (d) Successful completion of board-designated pharmacy law continuing education courses.
 - (e) Rehabilitative or assessment programs, including board-approved community service or successful completion of a board-approved substance abuse treatment and rehabilitation program at the permittee's own expense.
 - (f) A civil penalty not to exceed one thousand dollars for each violation of this chapter or a rule adopted under this chapter.
 - (g) A period and terms of probation best adapted to protect the public health and safety and rehabilitate or assess the permittee concerned. Probation may include temporary suspension and any or all of the disciplinary actions, business practice restrictions, rehabilitative or assessment programs listed in this section or any other program agreed to by the board and the permittee.
- L. If the board finds that the information provided pursuant to subsection D of this section and additional information provided during the conference indicate that grounds may exist for revocation or suspension of a permit, probation, issuance of a decree of censure or a letter of reprimand or imposition of a civil penalty, it shall initiate formal proceedings pursuant to title 41, chapter 6, article 10.
- M. If the permittee wishes to be present at the formal hearing in person or by representation, or both, the permittee must file with the board an answer to the charges in the notice of hearing. The answer must be in writing, be verified under oath and be filed within thirty days after service of the notice of hearing. Failure to answer the board's notice of hearing is deemed an admission of the charges in the notice of hearing.
- N. If the board, during any investigation, determines that a criminal violation might have occurred, it shall disclose its investigative evidence and information to the appropriate criminal justice agency for its consideration.
- O. In determining the appropriate disciplinary action under this section, the board shall consider all previous nondisciplinary and disciplinary actions against a permittee.
- P. The board may deny a permit to an applicant for the grounds prescribed in subsection A of this section.
- Q. If the board approves a permit and the business fails to become operational within nine months after the date the permit is granted, the permit is no longer valid. The board may grant a onetime extension for the business to become operational.

32-1927.03. Persons required to be permitted; formal hearing; disciplinary action

A. A person that resides in this state or in any other jurisdiction and that sells a narcotic or other controlled substance, a prescription-only drug or device, a nonprescription drug, a precursor chemical or a restricted chemical within or into this state shall hold a valid board-issued permit. If the person does not hold a valid board-issued permit, the person is subject to disciplinary action by the board.

B. A person that after a formal hearing is found by the board to be in violation of subsection A of this section may be subject to a civil penalty not to exceed one thousand dollars for each violation of this chapter or a rule adopted pursuant to this chapter.

C. The board may charge the cost of a formal hearing to the person that the board finds to be in violation of this chapter or a rule adopted pursuant to this chapter or whose employee the board finds to be in violation of this chapter or a rule adopted pursuant to this chapter.

D. The board on its own motion or in response to a complaint may inspect or investigate, or delegate to the executive director the authority to inspect or investigate, any evidence that appears to show a person is or may be acting in violation of subsection A of this section. The board may:

1. Send, or delegate to the executive director the authority to send, a cease and desist letter regarding the person's unauthorized business in this state.

2. Request a conference with the person if the board believes the information is or may be true. If the person refuses the invitation or fails to appear for the conference and the investigation indicates that grounds may exist for the board to impose a civil penalty, the board shall issue a formal notice that a hearing be held pursuant to title 41, chapter 6, article 10.

3. Dismiss the complaint if the complaint is without merit.

32-1928. Hearings; restraining order; judicial review

A. Except as provided in subsection B of this section, a license shall be denied, revoked or suspended or a pharmacist or pharmacy intern shall be placed on probation or censured and a civil penalty imposed only after due notice and a hearing pursuant to title 41, chapter 6, article 10. A licensee shall respond in writing to the board when the licensee receives notice of the hearing.

B. If the board has reasonable grounds to believe and finds that the licensee has been guilty of deliberate and wilful violations, or that the public health, safety and welfare imperatively require immediate action, and incorporates a finding to that effect in its order, the board may order a summary suspension of the license pending a hearing. If the board issues an order of summary suspension, it shall serve the licensee with written notice of the complaint and hearing setting forth the charges and informing the licensee of the licensee's right to the hearing. The board shall institute the hearing within ten days after ordering the summary suspension. Service shall be by personal service as provided by the Arizona rules of civil procedure.

C. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

D. With or without conditions, the board may reinstate the license of any pharmacist or pharmacy intern that it has placed on probation or whose license it has suspended or revoked.

32-1929. Biennial registration of pharmacies, wholesalers, third-party logistics providers, manufacturers and similar places; application

A. Except as provided in section 32-4301, the board shall require and provide for biennial registration of every pharmacy, wholesaler, third-party logistics provider and manufacturer and any other place in which

or from which drugs are sold, compounded, dispensed, stocked, exposed, manufactured or offered for sale.

B. Any person desiring to operate, maintain, open or establish a pharmacy, wholesaling firm or manufacturing plant, or any other place in which or from which drugs are manufactured, compounded, dispensed, stocked, exposed, sold or offered for sale, shall apply to the board for a permit before engaging in any such activity.

C. The application for a permit to operate a pharmacy, drug manufacturing facility or wholesaling facility in this state shall be made on a form prescribed and furnished by the board, which, when properly executed, indicates the ownership, trustee, receiver or other person or persons desiring the permit, including the pharmacist responsible to the board for the operation of a pharmacy or drug manufacturing facility, or other individual approved by and responsible to the board for the operation of wholesaling facilities, as well as the location, including the street name and number, and such other information as required by the board to establish the identity, exact location and extent of activities, in which or from which drugs are sold, manufactured, compounded, dispensed, stocked, exposed or offered for sale.

D. The application for a permit to operate a pharmacy, drug manufacturing facility or wholesaling facility outside of this state that will dispense, sell, transfer or distribute drugs into this state shall be made on a form prescribed and furnished by the board, which, when properly executed, indicates the ownership, trustee, receiver or other person or persons desiring the permit, including the individual approved by and responsible to the board for the operation of the pharmacy, drug manufacturing facility or wholesaling facility, as well as the location, including the street name and number, and such other information as required by the board to establish the identity, exact location and extent of activities, in which or from which drugs are sold, manufactured, compounded, dispensed, stocked, exposed or offered for sale.

E. If it is desired to operate, maintain, open or establish more than one pharmacy, or any other place of business in which or from which drugs are sold, manufactured, compounded, dispensed, stocked, exposed or offered for sale, a separate application shall be made and a separate permit shall be issued for each place, business or outlet.

32-1930. Types of permits; restrictions on permits; discontinuance of pharmacy permit

A. On application, the board may issue the following classes or kinds of permits:

1. If approved by the board, a pharmacy, limited service pharmacy, automated prescription-dispensing kiosk, full service wholesale drug, third-party logistics provider, nonprescription drug wholesale and drug manufacturer's permit.

2. Drug packager or drug prepacker permit to an individual or establishment that is currently listed by the United States food and drug administration and has met the requirements of that agency to purchase, repackage, relabel or otherwise alter the manufacturer's original package of an approved drug product with the intent of reselling these items to persons or businesses authorized to possess or resell the repackaged, prepackaged or relabeled drug.

3. A compressed medical gas distributor permit and a durable medical equipment and compressed medical gas supplier permit.

B. The board shall deny or revoke a pharmacy permit if a medical practitioner receives compensation, either directly or indirectly, from a pharmacy as a result of the practitioner's prescription orders. This

does not include compensation to a medical practitioner who is the owner of a building where space is leased to a pharmacy at the prevailing rate, not resulting in a rebate to the medical practitioner.

C. If a pharmacy permanently discontinues operation, the permittee shall immediately surrender the permit to the executive director. The permittee shall remove all drug signs and symbols, either within or without the premises, and shall remove or destroy all drugs, devices, poisons and hazardous substances.

D. An automated prescription-dispensing kiosk may not contain or dispense a controlled substance as defined in section 36-2501 and the controlled substances act (P.L. 91-513; 84 Stat. 1242; 21 United States Code section 802).

32-1931. Permit fees; issuance; expiration; renewals; online profiles

A. The board shall assign the permit of all persons or firms issued under this chapter to one of two permit renewal groups. Except as provided in section 32-4301, a holder of a permit designated in the licensing database as even by way of verbiage or numerical value shall renew it biennially on or before November 1 of the even-numbered year, two years from the last renewal date. Except as provided in section 32-4301, a holder of a permit designated in the licensing database as odd by way of verbiage or numerical value shall renew it biennially on or before November 1 of the odd-numbered year, two years from the last renewal date. Failure to renew and pay all required fees on or before November 1 of the year in which the renewal is due suspends the permit. The board shall vacate a suspension when the permittee pays penalties of not to exceed \$350 and all past due fees. The board may waive collection of a fee or penalty due after suspension under conditions established by a majority of the board.

B. Permit fees that are designated to be not more than a maximum amount shall be set by the board for the following two fiscal years beginning November 1. The board shall establish the fees approximately proportionate to the maximum fee allowed to cover the board's anticipated expenditures for the following two fiscal years. Variation in a fee is not effective except at the expiration date of the permit.

C. Applications for permits shall be accompanied by the following biennial fees as determined by subsection B of this section:

1. A drug manufacturer's permit, not more than \$1,000.
2. A pharmacy permit, not more than \$500.
3. A limited service pharmacy permit or an automated prescription-dispensing kiosk permit, not more than \$500.
4. A full service wholesale drug permit or a third-party logistics provider permit, not more than \$1,000.
5. A nonprescription drug wholesale permit, not more than \$500.
6. A drug repackager's permit, not more than \$1,000.
7. A compressed medical gas distributor permit, not more than \$200.
8. A durable medical equipment and compressed medical gas supplier permit, not more than \$100.

D. If an applicant is found to be satisfactory to the board, the executive director shall issue to the applicant a permit for each pharmacy, manufacturer, wholesaler or other place of business in which drugs are sold,

manufactured, compounded, dispensed, stocked, exposed or offered for sale, for which application is made.

E. Permits issued under this section are not transferable.

F. If a permittee does not apply for renewal, the permit expires pursuant to subsection A of this section. A person may activate and renew an expired permit by filing the required application and fee. Renewal thirty days after the expiration date of a permit may be made only on payment of the required biennial renewal fee, all past due fees and a penalty of one-half of the amount of the applicable biennial renewal fee. The board may waive the collection of a fee or penalty due after suspension pursuant to conditions prescribed by the board.

G. A permittee shall create an online profile using the board's licensing software.

32-1932.01. Substance abuse treatment and rehabilitation program; private contract; funding

A. The board may establish a program for the treatment and rehabilitation of licensees who are impaired by alcohol or drug abuse. This program shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. The board may contract with other organizations to operate the program established pursuant to subsection A of this section. A contract with a private organization shall include the following requirements:

1. Periodic reports to the board regarding treatment program activity.
2. Pursuant to a written request by the board or its executive director, release of all treatment records.
3. Quarterly reports to the board, by case number, regarding each participant's diagnosis, prognosis and recommendations for continuing care, treatment and supervision.
4. Immediate reporting to the board of the name of an impaired licensee who the treating organization believes to be a danger to self or others.
5. Reports to the board, as soon as possible, of the name of a participant who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.

C. The board may allocate an amount of not to exceed twenty dollars from each fee it collects from biennial renewal licenses pursuant to section 32-1925 for the operation of the program established by this section.

D. A licensee who is impaired by alcohol or drug abuse may enter into a stipulation order with the board, or the licensee may be placed on probation or be subject to other action as provided by law.

32-1933. Display of license or permit

A. The holder of a permit granted under this chapter shall conspicuously display it in the location to which it applies.

B. A licensee shall maintain the licensee's current renewal license or duplicate current renewal license, if practicing in more than one location, in the practice site for inspection by the board or its designee or review by the public.

C. If a licensee practices in more than one place, the board may issue one or more duplicate current renewal licenses to the licensee on payment of a fee of not more than twenty-five dollars for each duplicate current renewal license.

32-1934. [Pharmacy operated by hospital](#)

A. A pharmacy operating in connection with a hospital shall comply with all the provisions of this chapter requiring registration and regulation of pharmacies and with board rules.

B. A pharmacy operating in connection with a hospital shall also meet the following requirements:

1. In hospitals with fifty beds or more, the pharmacy shall be under the continuous supervision of a pharmacist during the time it is open for pharmacy services, except that the board by rule may establish requirements to allow a pharmacist who is engaged in hospital business to be in other areas of the hospital that are located outside the pharmacy.

2. In hospitals with less than fifty beds, with the written approval and recommendations of the board, the services of a pharmacist shall be required on a part-time basis according to the needs of the hospital, provided that this approval does not permit the compounding, manufacturing, dispensing, labeling, packaging or processing of drugs by other than a pharmacist.

3. In the pharmacist's absence from the hospital, the supervisory registered nurse may obtain from the pharmacy necessary doses of drugs that are ordered by a medical practitioner and that are needed by a patient in an emergency, according to procedures recommended and approved by the board for each hospital.

4. All drugs and medications furnished from the pharmacy to patients on discharge from the hospital shall be dispensed by a pharmacist and the medication shall be properly labeled.

5. The pharmacist in charge shall initiate procedures to provide for the administrative and technical guidance in all matters pertaining to the acquiring, stocking, record keeping and dispensing of drugs and devices.

32-1935. [Approval of schools and colleges of pharmacy](#)

The board of pharmacy shall adopt and promulgate standards and requirements for approval of schools and colleges of pharmacy.

32-1936. [Mandatory continuing professional pharmacy education](#)

A. All pharmacists licensed in this state shall satisfactorily complete approved courses of continuing professional pharmacy education or continue their education by other means in accordance with rules adopted by the board before renewing a license.

B. The board by rule shall establish the form and content of courses for continuing professional pharmacy education and the number of hours required for renewal of a license.

32-1937. Exceptions to continuing education requirements

- A. The requirements of continuing professional pharmacy education provided in section 32-1936 do not apply to licensees during the year of their graduation from an accredited college of pharmacy.
- B. The board may make exceptions from the requirements of section 32-1936 in emergency or hardship cases or for good cause shown based on a written request for an exception from the requirements.
- C. Pharmacists who are exempted from the requirements of continuing professional pharmacy education pursuant to subsection B of this section shall satisfactorily pass a written examination approved by the board for such purpose prior to license renewal.

32-1939. Condition of probation; repayment of inspection costs

- A. As a condition of probation, the board may require that a licensee or permittee be subject to additional compliance inspections or audits and pay the reasonable costs of these inspections and audits. These costs shall not exceed one thousand dollars. The board shall limit these additional inspections to no more than two per year.
- B. Monies received pursuant to subsection A of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona state board of pharmacy fund.
- C. If a licensee or permittee fails to comply with a board order regarding the costs of additional inspections and audits, the board may enforce its order in the superior court in Maricopa County. The board may also impose additional sanctions against the licensee or permittee.

32-1940. Investigations; hearings; conferences; records; confidentiality

- A. Information received and records kept by the board in connection with investigations conducted pursuant to this chapter are confidential and are not open to the public or subject to civil discovery.
- B. Notwithstanding any other law or code of ethics regarding practitioner confidences, the physician-patient privilege between a medical practitioner and a patient, both as it relates to the competency of the witness and to the exclusion of confidential communications, does not pertain to any board investigations or other proceedings conducted pursuant to this chapter to the extent necessary to determine whether a violation of this chapter has occurred. Communications or records disclosed pursuant to this subsection are confidential and may be used only in a judicial or administrative proceeding or investigation resulting from a report, investigation or hearing required or authorized under this chapter.
- C. The board, its employees and agents and any other person receiving this information shall keep the identity of the patient confidential at all times.
- D. The board shall report evidence of a crime uncovered during an investigation to the appropriate criminal justice agency.
- E. This section does not prevent the board from disclosing investigative materials concerning a licensee's alleged violation of this chapter to the licensee, the licensee's attorney, another state or federal regulatory agency or a law enforcement agency.

32-1941. Third-party logistics providers; permit required; designated representative; fingerprinting requirements

A. A third-party logistics provider that engages in the logistics services of prescription or over-the-counter dangerous drugs or dangerous devices into, within or from this state shall hold a third-party logistics provider permit in this state.

B. A third-party logistics provider shall comply with storage practices, including all of the following:

1. Maintain access to warehouse space of suitable size to facilitate safe operations, including a suitable area to quarantine a suspect product.

2. Maintain adequate security.

3. Have written policies and procedures to:

(a) Address the receipt, security, storage, inventory, shipment and distribution of a product.

(b) Identify, record and report confirmed significant losses or thefts in the United States.

(c) Correct errors and inaccuracies in inventories.

(d) Provide support for manufacturer recalls.

(e) Prepare for, protect against and address any reasonably foreseeable crisis that affects a facility's security or operation, such as an employee strike, fire or flood.

(f) Ensure that any expired product is segregated from other products and returned to the manufacturer, repackager or agent of the manufacturer or repackager or is destroyed.

(g) Maintain records reflecting the receipt and distribution of products and supplies and records of inventories.

(h) Quarantine or destroy a suspect product if directed to do so by the respective manufacturer, wholesale distributor or dispenser or an authorized governmental agency.

C. A third-party logistics provider shall make its facility available to the board for inspection during regular business hours to ensure compliance with this section.

D. A third-party logistics provider shall have a designated representative at each facility who has not been convicted of any felony violation under any federal, state or local law relating to wholesale or retail prescription or over-the-counter dangerous drugs or dangerous devices distribution or the distribution of controlled substances.

E. A third-party logistics provider shall provide the board on the board's request with a list of all manufacturers, wholesale distributors and dispensers for whom the third-party logistics provider provides services at a facility.

F. A third-party logistics provider's designated representative shall have a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1, which shall be submitted with the completed application. If the third-party logistics provider changes its designated representative, the new designated representative shall have a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1 and submitted to the board before the change in representation is made.

32-1961. [Limit on dispensing, compounding and sale of drugs](#)

A. Except as otherwise provided in this chapter, it is unlawful for any person to compound, sell or dispense any drugs or to dispense or compound the prescription orders of a medical practitioner, unless that person is a pharmacist or a pharmacy intern acting under the direct supervision of a pharmacist. This subsection does not prevent a pharmacy technician or support personnel from assisting in the dispensing of drugs if this is done pursuant to rules adopted by the board and under the direct supervision of a licensed pharmacist or under remote supervision by a pharmacist.

B. Except as otherwise provided in this chapter, it is unlawful for any person, without placing a pharmacist in active personal charge at each place of business, to:

1. Open, advertise or conduct a pharmacy.
2. Stock, expose or offer drugs for sale at retail, except as otherwise specifically provided.
3. Use or exhibit the title "drug", "drugs", "drugstore", "pharmacy", "apothecary" or "prescription" or any combination of these words or titles or any title, symbol or description of like import or any other term designed to take its place.

32-1961.01. Remote dispensing site pharmacies

A. A remote dispensing site pharmacy shall obtain and maintain a pharmacy license issued by the board.

B. A remote dispensing site pharmacy shall meet all of the following requirements:

1. Either be jointly owned by a supervising pharmacy in this state or be operated under a contract with a pharmacy licensed and located in this state.
2. Be supervised by a pharmacist licensed and located in this state who is designated as the pharmacist who is responsible for the oversight of the remote dispensing site pharmacy.
3. Display a sign visible to the public indicating that the facility is a remote dispensing site pharmacy, that the facility is under continuous video surveillance and that the video is recorded and retained.
4. Use a common electronic recordkeeping system between the supervising pharmacy and the remote dispensing site pharmacy or allow the supervising pharmacy to access all of the remote dispensing site pharmacy's dispensing system records.

C. A pharmacist may supervise one remote dispensing site pharmacy if the pharmacist is also supervising and dispensing in a licensed pharmacy. A pharmacist may supervise up to two remote dispensing site pharmacies if the pharmacist is not simultaneously supervising and dispensing at another licensed pharmacy. A pharmacist may supervise additional remote dispensing site pharmacies with board approval.

D. A remote dispensing site pharmacy may store, hold and dispense all prescription medications. The remote dispensing site pharmacy shall:

1. Maintain a perpetual inventory of controlled substances.
2. Secure schedule II controlled substances that are opioids separately from other prescription medications used by this pharmacy locked by key, combination or other mechanical or electronic means to prohibit access by unauthorized personnel.

3. Require that the controlled substances prescription monitoring program's central database tracking system be queried pursuant to section 36-2606 by a pharmacist who is designated as the pharmacist responsible for the oversight of the remote dispensing site pharmacy before a prescription order for a schedule II controlled substance is dispensed.

4. Comply with any dispensing limits associated with the prescribing of schedule II controlled substances that are opioids.

5. Maintain a continuous system of video surveillance and recording of the pharmacy department for at least sixty days after the date of recording.

E. Each remote dispensing site pharmacy shall maintain a policy and procedures manual, which shall be made available to the board or its agent on request. In addition to any board-approved community pharmacy policy and procedure requirements, the policy and procedures manual shall include all of the following information:

1. A description of how the remote dispensing site pharmacy will comply with federal and state laws, rules and regulations.

2. The procedure for supervising the remote dispensing site pharmacy and counseling the patient or patient's caregiver using audio and visual technology that complies with the health insurance portability and accountability act of 1996.

3. The elements of a monthly inspection of the remote dispensing site pharmacy by the pharmacist who is designated as the pharmacist responsible for the oversight of the remote dispensing site pharmacy, including requirements for documentation and retention of the results of each inspection.

4. The procedure for reconciling on a monthly basis the perpetual inventory of controlled substances to the on-hand count of controlled substances at the remote dispensing site pharmacy.

5. A description of how the remote dispensing site pharmacy will improve patient access to a pharmacist and pharmacy services.

32-1962. [New drug; compliance with federal act; exception](#)

A. No person shall manufacture, sell, offer or hold for sale or give away any new drug or device unless it fully complies with the provisions of the federal act.

B. This section shall not apply to the nutritional supplement amygdalin, a cyano-genetic glycoside, also known as laetrile and vitamin B-17, which is processed from the seeds of certain fruits including apricots, peaches and plums.

32-1963. [Liability of manager, proprietor or pharmacist in charge of a pharmacy; variances in quality of drugs or devices prohibited](#)

A. The proprietor, manager, and pharmacist in charge of a pharmacy shall be responsible for the quality of drugs and devices sold or dispensed in the pharmacy, except those sold in original packages of the manufacturer.

B. No pharmacist or other person shall manufacture, compound, dispense, or offer for sale or cause to be manufactured, compounded, dispensed, or offered for sale any drug or device under or by a name

recognized in the official compendium or the federal act which differs from the standard of strength, purity and quality specified therein as official at the time of manufacture, compounding, dispensing, or offering for sale, nor shall a pharmacist or other person manufacture, compound, dispense, or offer for sale, or cause to be manufactured, compounded, dispensed, or offered for sale, any drug or device, the strength, purity or quality of which falls below the required strength, purity or quality under which it is sold.

C. Within four working days of receiving a request, the proprietor, manager or pharmacist in charge shall provide the following documents relating to the acquisition or disposal of prescription-only and controlled substance medication if this information is requested by an authorized board agent in the course of his official duties:

1. Invoices.
2. Stock transfer documents.
3. Merchandise return memos.
4. Other related documentation.

32-1963.01. Substitution for prescription drugs or biological products; requirements; label; definitions

A. If a medical practitioner prescribes a brand name drug and does not indicate an intent to prevent substitution as prescribed in subsection E of this section, a pharmacist may fill the prescription with a generic equivalent drug.

B. A pharmacist may substitute a biological product for a prescribed biological product only if all of the following conditions are met:

1. The United States food and drug administration has determined the substituted product to be an interchangeable biological product.
2. The prescribing physician does not designate in writing or electronically that substitution is prohibited in a manner pursuant to subsection E of this section.
3. The pharmacy informs the patient or person presenting the prescription of the substitution pursuant to subsection C of this section.
4. Within five business days after dispensing a biological product, the dispensing pharmacist or the pharmacist's designee makes an entry of the specific product provided to the patient, including the name of the product and the manufacturer. The communication shall be conveyed by making an entry that is electronically accessible to the prescriber through an interoperable electronic medical records system, an electronic prescribing technology, a pharmacy benefit management system, or a pharmacy record. Entry into an electronic records system as described in this paragraph is presumed to provide notice to the prescriber. Otherwise, the pharmacist shall communicate the biological product dispensed to the prescriber using fax, telephone, electronic transmission or other prevailing means, except that communication is not required if one of the following applies:

(a) There is no interchangeable biological product approved by the United States food and drug administration for the product prescribed.

(b) A refill prescription is not changed from the product dispensed on the prior filling of the prescription.

5. The pharmacy retains a record of the biological product dispensed pursuant to section 32-1964, subsection A.

C. Any pharmacy personnel shall notify the person presenting the prescription of the amount of the price difference between the brand name drug or biological product prescribed and the generic equivalent drug or interchangeable biological product, if both of the following apply:

1. The medical practitioner does not indicate an intent to prevent substitution with a generic equivalent drug or interchangeable biological product.

2. The transaction is not subject to third-party reimbursement.

D. The pharmacist shall place on the container the name of the drug or biological product dispensed followed by the words "generic equivalent for" or "interchangeable biological product for" followed by the brand or trade name of the product that is being replaced by the generic equivalent drug or interchangeable biological product. The pharmacist shall include the brand or trade name on the container or label of any contact lenses dispensed pursuant to this chapter.

E. A prescription generated in this state must be dispensed as written only if the prescriber writes or clearly displays "DAW", "dispense as written", "do not substitute" or "medically necessary" or any statement by the prescriber that clearly indicates an intent to prevent substitution on the face of the prescription form. A prescription from out of state or from agencies of the United States government must be dispensed as written only if the prescriber writes or clearly displays "do not substitute", "dispense as written" or "medically necessary" or any statement by the prescriber that clearly indicates an intent to prevent substitution on the face of the prescription form.

F. This section applies to all prescriptions, including those presented by or on behalf of persons receiving state or federal assistance payments.

G. An employer or agent of an employer of a pharmacist shall not require the pharmacist to dispense any specific generic equivalent drug or interchangeable biological product or to substitute any specific generic equivalent drug or interchangeable biological product for a brand name drug or biological product against the professional judgment of the pharmacist or the order of the prescriber.

H. The liability of a pharmacist in substituting according to this section is no greater than that incurred in the filling of a generically written prescription. This subsection does not limit or diminish the responsibility for the strength, purity or quality of drugs provided in section 32-1963. The failure of a prescriber to specify that no substitution is authorized does not constitute evidence of negligence.

I. A pharmacist may not make a substitution pursuant to this section unless the manufacturer or distributor of the generic equivalent drug or interchangeable biological product has shown that:

1. All products dispensed have an expiration date on the original package.

2. The manufacturer or distributor maintains recall and return capabilities for unsafe or defective drugs or biological products.

J. The board shall maintain on its public website a link to the current list of each biological product determined by the United States food and drug administration to be an interchangeable biological product.

K. The labeling and oral notification requirements of this section do not apply to pharmacies serving patients in a health care institution as defined in section 36-401. However, in order for this exemption to apply to hospitals, the hospital must have a formulary to which all medical practitioners of that hospital have agreed and that is available for inspection by the board.

L. For the purposes of this section:

1. "Biological product" has the same meaning prescribed in 42 United States Code section 262.

2. "Brand name drug" means a drug with a proprietary name assigned to it by the manufacturer or distributor.

3. "Formulary" means a list of medicinal drugs.

4. "Generic equivalent" or "generically equivalent" means a drug that has an identical amount of the same active chemical ingredients in the same dosage form, that meets applicable standards of strength, quality and purity according to the United States pharmacopeia or other nationally recognized compendium and that, if administered in the same amounts, will provide comparable therapeutic effects. Generic equivalent or generically equivalent does not include a drug that is listed by the United States food and drug administration as having unresolved bioequivalence concerns according to the administration's most recent publication of approved drug products with therapeutic equivalence evaluations.

5. "Interchangeable biological product" means a biological product that either:

(a) The United States food and drug administration has licensed and determined meets the safety standards for determining interchangeability pursuant to 42 United States Code section 262(k)(4).

(b) Is determined to be therapeutically equivalent as set forth in the latest edition of the supplement to the United States food and drug administration's approved drug products with therapeutic equivalence evaluations.

[32-1964. Record of prescription orders; inspections; confidentiality](#)

A. Every proprietor, manager or pharmacist in charge of a pharmacy shall keep in the pharmacy a book or file in which that person places the original of every prescription order of drugs, devices or replacement soft contact lenses that are compounded or dispensed at the pharmacy. This information shall be serially numbered, dated and filed in the order in which the drugs, devices or replacement soft contact lenses were compounded or dispensed. A prescription order shall be kept for at least seven years. The proprietor, manager or pharmacist shall produce this book or file in court or before any grand jury on lawful order. The book or file of original prescription orders is open for inspection at all times by the prescribing medical practitioner, the board and its agents and officers of the law in performance of their duties.

B. The board, by rule, shall permit pharmacies to maintain the book or file of all original prescription orders by means of electronic media or image of the original prescription order maintained in a retrievable format in a form that contains information the board requires to provide an adequate record of drugs, devices or replacement soft contact lenses compounded or dispensed.

C. The board, by rule, shall require a similar book or file for a hospital pharmacy in a form that contains information the board requires to provide an adequate record of drugs compounded or dispensed. A prescription order or medication order must be kept for at least seven years. The administrator, manager or pharmacist must produce this book or file in court or before any grand jury on lawful order. The book or file of original prescription orders or medication orders is open for inspection at all times by the prescribing medical practitioner, the board and its agents and officers of the law in performance of their duties.

D. A pharmacist, pharmacy permittee or pharmacist in charge shall comply with applicable state and federal privacy statutes and regulations when releasing patient prescription information.

32-1965. Prohibited acts

The following acts or the causing of any thereof, in addition to any others so specified in this chapter, are prohibited:

1. The manufacture, sale, holding or offering for sale of any drug, device, poison, or hazardous substance that is adulterated or misbranded.
2. The adulteration or misbranding of any drug, device, poison, or hazardous substance.
3. The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a drug, device, poison, or hazardous substance, if such act is done while such article is held for sale and results in such article being adulterated or misbranded.
4. The manufacture, sale, holding or offering for sale of a counterfeit drug or forging, counterfeiting, simulating, or falsely representing or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by rules adopted under the provisions of this chapter, or of the federal act.
5. The using, on the labeling of any drug or device, or in any advertisement, relating to such drug or device, of any representation or suggestion that such drug or device complies with the provisions of this chapter.
6. In the case of a prescription-only drug or a controlled substance that requires a prescription order by state or federal law, the failure of the manufacturer, packer, or distributor to transmit, to any medical practitioner who makes a written request for information about such drug, true and correct copies of all printed matter included in any package in which that drug is distributed or other printed matter approved under the federal act.
7. Engaging in the practice of pharmacy without first having a current license in good standing issued by the board.
8. Making or offering to make a forged, counterfeit, altered or photocopied prescription or drug order for the purpose of obtaining prescription-only or controlled substance drugs.

32-1966. Acts constituting adulteration of a drug or device

A drug or device shall be deemed to be adulterated:

1. If it consists in whole or in part of any filthy, putrid or decomposed substance.

2. If it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have been contaminated with filth, or is not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from all foreign or injurious contamination, or whereby it may have been rendered injurious to health.

3. If the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug or device meets the requirements of this chapter as to safety and has the identity and strength, and meets the quality, which it is represented to possess.

4. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

5. If:

(a) It bears or contains a color additive which is unsafe within the meaning of the federal act.

(b) It is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, and is unsafe within the meaning of the federal act.

6. If it is a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. No drug defined in an official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, or purity set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label.

7. If it is not subject to the provisions of paragraph 6 of this section and its strength differs from, or its purity or quality falls below that which it purports or is represented to possess.

8. If it is a drug or device to which any substance has been mixed or packed therewith so as to reduce its quality or strength, or to be substituted for it in whole or in part.

32-1967. Acts constituting misbranding of a drug or device; exceptions; interpretation of misleading label; definition

A. A drug or device is misbranded:

1. If its labeling is false or misleading in any particular.

2. If in package form unless it bears a label containing both:

(a) The name and place of business of the manufacturer, packer or distributor.

(b) An accurate statement of the quantity of the contents in terms of weight, measure or numerical count.

3. If any word, statement or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed on the label or labeling. Compliance with the federal act shall be deemed compliance with this chapter except for compliance with paragraph 16 of this subsection.

4. If it is for use by humans and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote or sulfonmethane, or any chemical derivative of such

substance, which derivative or other substance has been found to be habit-forming, unless its label bears the name and quantity or proportion of such substance or derivative.

5. If it is a drug unless its label bears, to the exclusion of any other nonproprietary name, both:

(a) The established name of the drug, if there is an established name.

(b) In case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glycosides, mercury, strychnine or thyroid, or derivative or preparation of any such substances, provided that the requirements for stating the quantity of the active ingredients, other than those specifically named in this subdivision, apply only to prescription drugs.

6. Unless its labeling bears both:

(a) Adequate directions for use.

(b) Adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in a manner and form as are necessary for the protection of users.

7. If it is recognized in an official compendium, unless it is packed and labeled as prescribed in such compendium, provided that the method of packing may be modified with the consent of the board.

8. If it has been found by the board to be a drug or device liable to deterioration, unless it is packaged in that form and manner, and its label bears a statement of such precautions, as the rules issued by the board require as necessary for the protection of public health.

9. If its container is so made, formed or filled as to be misleading.

10. If it is an imitation of another drug or device.

11. If it is offered for sale under the name of another drug or device.

12. If it is dangerous to health when used in the dosage or manner or with the frequency or duration prescribed, recommended or suggested in the labeling of the drug or device.

13. If it is a color additive, the intended use of which in or on drugs or devices is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive in the federal act or board rule.

14. In the case of any prescription-only drug or controlled substance distributed or offered for sale in this state, unless the manufacturer, packer or distributor of such drug or substance includes in all advertisements and other printed matter with respect to that drug a true statement of:

(a) The established name.

(b) The formula showing quantitatively each ingredient.

(c) Other information in brief summary relating to side effects, contraindications or effectiveness as required in board rules or the federal act.

15. If a trademark, trade name or other identifying mark, imprint or device of another drug or device or any likeness of another drug or device has been placed on the drug or device or on its container with intent to defraud.

16. In the case of any prescription-only drug or controlled substance if in final dosage form unless it bears a label containing both:

(a) The name and place of business of the manufacturer, and if different, the packer or distributor.

(b) An accurate statement of the quantity of the contents in terms of weight, measure or numerical count.

17. In the case of any foreign dangerous drug, if it is not approved by the United States food and drug administration or is obtained outside of the licensed supply chain regulated by the United States food and drug administration, the board or the department of health services. This paragraph does not apply to a foreign dangerous drug that is authorized for use by a state law or that is imported lawfully under the food, drug and cosmetic act (21 United States Code section 301, et seq.) or pursuant to an announcement by the United States food and drug administration of the exercise of enforcement discretion for instances, including clinical research purposes, drug shortages, development of countermeasures against chemical, biological, radiological and nuclear terrorism agents, or pandemic influenza preparedness and response.

B. Drugs and devices that are to be processed, labeled or repacked at establishments other than those where originally processed or packed are exempt from any labeling or packaging requirements of this chapter, provided that such drugs and devices are being delivered, manufactured, processed, labeled, repacked or otherwise held in compliance with board rules or under the federal act.

C. If an article is alleged to be misbranded because the labeling is misleading, then in determining whether the labeling is misleading there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device or any combination of them, but also the extent to which the labeling fails to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the article to which the labeling relates under the conditions of use prescribed in the labeling or under such conditions of use as are customary or usual.

D. A drug or device is not considered misbranded if it is either of the following:

1. Intended for the use in pharmaceutical compounding by a licensed pharmacist, physician, drug manufacturer or distributor or registered outsourcing facility in compliance with the requirements of chapter 18 of this title and the food, drug and cosmetic act (21 United States Code section 321a and 321b).

2. Misbranded or incorrectly filled because of a filling error by a pharmacy or a pharmacist.

E. This section does not apply to any drug or device, whether or not approved by the United States food and drug administration, that is manufactured, packed or distributed for use in pharmaceutical compounding by a licensed pharmacist, physician, drug manufacturer or distributor or registered outsourcing facility in compliance with the requirements of chapter 18 of this title, and the food, drug and cosmetic act (21 United States Code section 321a and 321b).

F. For the purposes of this section, "dangerous drug" means any drug that is unsafe for self-use in humans or animals and includes:

1. Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription", "Rx only", or words of similar import.
2. Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____", "Rx only", or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.
3. Any other drug or device that by federal or state law can be lawfully dispensed only on prescription.

32-1968. Dispensing prescription-only drug; prescription orders; refills; labels; misbranding; dispensing soft contact lenses; opioid antagonists

A. A prescription-only drug shall be dispensed only under one of the following conditions:

1. By a medical practitioner in conformance with section 32-1921.
2. On a written prescription order bearing the prescribing medical practitioner's manual signature.
3. On an electronically transmitted prescription order containing the prescribing medical practitioner's electronic or digital signature.
4. On a written prescription order generated from electronic media containing the prescribing medical practitioner's electronic or manual signature. A prescription order that contains only an electronic signature must be applied to paper that uses security features that will ensure the prescription order is not subject to any form of copying or alteration.
5. On an oral prescription order that is reduced promptly to writing and filed by the pharmacist.
6. By refilling any written, electronically transmitted or oral prescription order if a refill is authorized by the prescriber either in the original prescription order, by an electronically transmitted refill order that is documented promptly and filed by the pharmacist or by an oral refill order that is documented promptly and filed by the pharmacist.
7. On a prescription order that the prescribing medical practitioner or the prescribing medical practitioner's agent transmits by fax or e-mail.
8. On a prescription order that the patient transmits by fax or by e-mail if the patient presents a written prescription order bearing the prescribing medical practitioner's manual signature when the prescription-only drug is picked up at the pharmacy.

B. A prescription order shall not be refilled if it is either:

1. Ordered by the prescriber not to be refilled.
2. More than one year since it was originally ordered.

C. A prescription order shall contain the date it was issued, the name and address of the person for whom or owner of the animal for which the drug is ordered, refills authorized, if any, the legibly printed name,

address and telephone number of the prescribing medical practitioner, the name, strength, dosage form and quantity of the drug ordered and directions for its use.

D. Any drug dispensed in accordance with subsection A of this section is exempt from the requirements of section 32-1967, except section 32-1967, subsection A, paragraphs 1, 10 and 11 and the packaging requirements of section 32-1967, subsection A, paragraphs 7 and 8, if the drug container bears a label containing the name and address of the dispenser, the serial number, the date of dispensing, the name of the prescriber, the name of the patient, or, if an animal, the name of the owner of the animal and the species of the animal, directions for use and cautionary statements, if any, contained in the order. This exemption does not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail or the internet or to a drug dispensed in violation of subsection A of this section.

E. The board by rule also may require additional information on the label of prescription medication that the board believes to be necessary for the best interest of the public's health and welfare.

F. A prescription-only drug or a controlled substance that requires a prescription order is deemed to be misbranded if, at any time before dispensing, its label fails to bear the statement "Rx only". A drug to which subsection A of this section does not apply is deemed to be misbranded if, at any time before dispensing, its label bears the caution statement quoted in this subsection.

G. A pharmacist may fill a prescription order for soft contact lenses only as provided in this chapter.

H. A pharmacist may dispense naloxone hydrochloride or any other opioid antagonist that is approved by the United States food and drug administration on the receipt of a standing order and according to protocols adopted by the board pursuant to section 32-1979. For the purposes of this subsection, "standing order" means a signed prescription order that authorizes the pharmacist to dispense naloxone hydrochloride or any other opioid antagonist for emergency purposes and that is issued by a medical practitioner licensed in this state or a state or county health officer who is a medical practitioner licensed in this state.

32-1969. Filling foreign prescription orders; records; exception

A. This chapter does not prohibit a pharmacist or an intern under a pharmacist's supervision from filling a new written prescription order for a drug or device issued by a medical practitioner licensed by the appropriate licensing board of a foreign country.

B. The proprietor, manager or pharmacist in charge of a pharmacy shall keep a separate record of prescriptions filled pursuant to this section.

C. A pharmacist or intern shall not fill a prescription order issued by a medical practitioner licensed by the appropriate licensing board of a foreign country for a controlled substance as defined pursuant to title 36, chapter 27, article 2.

32-1970. Initiating, monitoring and modifying drug therapy and use; conditions; definitions

A. A pharmacist who is licensed pursuant to this chapter may initiate, monitor and modify drug therapy and use only under the following circumstances:

1. The patient's drug therapy and use are pursuant to a provider.

2. The pharmacist complies with rules adopted by the board of pharmacy.

3. The pharmacist follows the written drug therapy management protocols prescribed by the provider who made the diagnosis and initiates, monitors or modifies a person's drug therapy and use only pursuant to those protocols. Each protocol developed pursuant to the drug therapy agreement shall contain detailed directions concerning the actions that the pharmacist may perform for a patient referred by the provider. The protocol shall specify, at a minimum, the specific drug or drugs to be managed by the pharmacist, the conditions and events for which the pharmacist must notify the provider and the laboratory tests that may be ordered. A provider who enters into a protocol-based drug therapy agreement must have a legitimate provider-patient relationship.

B. A licensee who violates this section commits an act of unprofessional conduct.

C. A pharmacist is responsible for the pharmacist's negligent acts that are the result of the pharmacist's change of medication or that relate to patient drug usage pursuant to drug therapy management protocols. This subsection does not limit a provider's liability for negligent acts that are not related to a pharmacist's change of medication pursuant to the protocols.

D. For the purposes of this section:

1. "Initiate, monitor and modify":

(a) Means that a pharmacist may perform specific acts as authorized by a provider pursuant to written guidelines and protocols.

(b) Does not include a pharmacist's selection of drug products that are not prescribed by the provider unless selection of the specific drug product is authorized by the written guidelines and protocols.

2. "Protocol" means a provider's written order, written standing medical order or other written order of protocol as defined by rules adopted by the Arizona medical board, the Arizona board of osteopathic examiners in medicine and surgery and the Arizona state board of nursing and that is patient, provider and pharmacist specific for prescriptions or orders given by the provider authorizing the written protocol.

3. "Provider" means a physician who is licensed pursuant to chapter 13 or 17 of this title or a registered nurse practitioner who is licensed pursuant to chapter 15 of this title and who acts as a primary care practitioner.

32-1972. [Poison or hazardous substances; misbranding and labeling; prohibitions; exemption](#)

A. A poison or hazardous substance shall be misbranded unless the label bears, and accompanied information that it includes or bears, any directions for use which states conspicuously:

1. The name and address of the manufacturer or seller.

2. The common or usual name or the chemical name, if there is no common or usual name, of the poison or hazardous substance or of each component which contributes substantially to its poisonous or hazardous property, unless the board by rule permits or requires the use of a recognized generic name.

3. The signal words "poison" and "danger" and the skull and crossbones symbol on poisons or hazardous substances which are highly toxic.

4. The signal word "danger" on poisons or hazardous substances that are corrosive.
 5. The signal word "warning" or "caution" on all other poisons or hazardous substances.
 6. An affirmative statement as to the principal poisonous property, such as "flammable", "vapor harmful", "causes burns", "absorbed through skin", or similar wording descriptive of the poison or hazardous substance.
 7. Precautionary measures describing the action to be followed or avoided.
 8. Instruction, when necessary or appropriate, for first-aid treatment.
 9. Instructions for handling and storage of packages which require special care in handling or storage.
 10. The statement "keep out of reach of children" or its practical equivalent, or, if the poison or hazardous substance is intended for use by children, adequate directions for the protection of children from the poison or hazardous substance.
 11. Directions for using the poison or hazardous substance.
- B. A poison or hazardous substance is also misbranded by the reuse of a food, drug or cosmetic container, or in a container which, though not reused, is identifiable as a food, drug or cosmetic container by its labeling or by other identification, as a container for the poison or hazardous substance.
- C. Any statement required on the label of a poison or hazardous substance under subsection A shall be:
1. Located prominently.
 2. In the English language.
 3. In conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the label.
- D. If the board finds that the requirements of subsections A and B are not adequate for the protection of the public health and safety in view of the special hazard presented by any particular poison or hazardous substance, it may establish by rule such reasonable variations or additional label requirements as it finds necessary, and any such poison or hazardous substance intended, or packaged in a form suitable, for use in the household or by children which fails to bear a label in accordance with such rules shall be deemed to be a misbranded poison or hazardous substance.
- E. If the board finds that, because of the size of the package involved or because of the minor hazard presented by the poison or hazardous substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under this section is impracticable or is not necessary for the adequate protection of the public health and safety, the board shall adopt rules exempting such poisons or hazardous substances from these requirements to the extent they determine to be consistent with adequate protection of the public health and safety.
- F. If the board finds that the poisonous or hazardous nature of a poison or hazardous substance subject to this section is such that the labeling adequate to protect the public health and safety cannot be devised, or the poison or hazardous substance presents an imminent danger to the public health and safety, the board

by rule may restrict the sale of such poison or hazardous substance or declare it to be banned and require its removal from commerce.

G. The board shall conform the rules adopted under this section as far as practicable with the regulations established pursuant to the federal hazardous substances act.

32-1973. Pharmacies; quality assurance

A. As prescribed by the board by rule, each pharmacy shall implement or participate in a continuous quality assurance program to review pharmacy procedures in order to identify methods for addressing pharmacy medication errors. The rules shall prescribe requirements to document compliance and any other provisions necessary for the administration of the program.

B. Records that are generated as a component of a pharmacy's ongoing quality assurance program and that are maintained for that program are peer review documents and are not subject to subpoena or discovery in an arbitration or civil proceeding. This subsection does not prohibit a patient from accessing the patient's prescription records or affect the discoverability of any records that are not generated only as a component of a pharmacy's ongoing quality assurance program and maintained only for that program.

C. A pharmacy meets the requirements of this section if it holds a current general, special or rural general hospital license from the department of health services and is any of the following:

1. Certified by the centers for medicare and medicaid services to participate in the medicare or medicaid programs.
2. Accredited by the joint commission on the accreditation of health care organizations.
3. Accredited by the American osteopathic association.

32-1974. Pharmacists; administration of immunizations, vaccines and emergency medications; certification; reporting requirements; advisory committee; definitions

A. Except as prescribed pursuant to subsection I of this section, a pharmacist who is licensed pursuant to this chapter and who meets the requirements of this section may administer the following to adults without a prescription order pursuant to rules and protocols adopted by the board pursuant to this section:

1. Immunizations or vaccines recommended for adults by the United States centers for disease control and prevention.
2. Immunizations or vaccines recommended by the United States centers for disease control and prevention's health information for international travel.

B. A pharmacist who is licensed pursuant to this chapter and who meets the requirements of this section may administer the following to minors without a prescription order pursuant to rules and protocols adopted by the board pursuant to this section:

1. Influenza immunizations or vaccines to a person who is at least three years of age.
2. Booster doses for the primary adolescent series as recommended by the United States centers for disease control and prevention.

3. Immunizations or vaccines recommended by the United States centers for disease control and prevention to a person who is at least thirteen years of age.

C. Except as prescribed in subsection B of this section, a pharmacist who is licensed pursuant to this chapter and who meets the requirements of this section may administer immunizations and vaccines, including the first dose for the primary adolescent series, to a person who is at least six years of age but under thirteen years of age only with a prescription order and pursuant to rules and protocols adopted by the board pursuant to this section.

D. A pharmacist who wishes to administer immunizations and vaccines pursuant to this section must be certified to do so by the board. The board shall issue a certificate to a pharmacist who meets board requirements for certification as prescribed by the board by rule.

E. A pharmacist who is certified to administer immunizations and vaccines pursuant to this section may administer without a prescription order:

1. Emergency medication to manage an acute allergic reaction to an immunization, vaccine or medication in accordance with the United States centers for disease control and prevention immunization guidelines.
2. Immunizations or vaccines to any person regardless of age during a public health emergency response of this state pursuant to section 36-787.

F. A pharmacist who administers an immunization, vaccine or emergency medication pursuant to this section must:

1. Report the administration to the person's identified primary care provider or physician within forty-eight hours after administering the immunization, vaccine or emergency medication and as prescribed by the board by rule. Failure to report the administration of an immunization, vaccine or emergency medication pursuant to this section is a violation of section 32-1901.01, subsection B, paragraph 2. The pharmacist shall make a reasonable effort to identify the person's primary care provider or physician by one or more of the following methods:

(a) Checking any adult immunization information system or vaccine registry established by the department of health services.

(b) Checking pharmacy records.

(c) Requesting the information from the person or, in the case of a minor, the person's parent or guardian.

2. Report information to any adult immunization information system or vaccine registry established by the department of health services.

3. Maintain a record of the immunization pursuant to title 12, chapter 13, article 7.1 and as prescribed by the board by rule.

4. Report to the person's identified primary care provider or physician, within twenty-four hours of occurrence, any adverse reaction that is reported to or witnessed by the pharmacist and that is listed by the vaccine manufacturer as a contraindication to further doses of the vaccine.

5. Participate in any federal vaccine adverse event reporting system or successor database.

G. This section does not establish a cause of action against a patient's primary care provider or physician for any adverse reaction, complication or negative outcome arising from the administration of any immunization, vaccine or emergency medication by a pharmacist to the patient pursuant to this section if it is administered without a prescription order written by the patient's primary care provider or physician.

H. The board shall adopt rules for the administration of vaccines or immunizations pursuant to this section regarding:

1. Protocols that are based on protocols approved by the United States centers for disease control and prevention and any advisory committee appointed by the board for the purpose of recommending protocols.
2. Recordkeeping and reporting requirements.
3. Requirements and qualifications for pharmacist certification pursuant to this section.
4. Vaccine information and educational materials for those requesting vaccines and immunizations.
5. The administration of emergency medication pursuant to this section.

I. The department of health services, by rule, shall establish and maintain a list of immunizations or vaccines that may be administered to adults by a pharmacist only pursuant to a prescription order. In adopting and maintaining this list, the department is exempt from the rulemaking requirements of title 41, chapter 6. The department shall adopt its initial rules within six months after receipt of the recommendations of the advisory committee appointed by the board and shall hold one public hearing before implementing the rules and any amendments to the rules. The list shall include those immunizations or vaccines listed in the United States centers for disease control and prevention's recommended adult immunization schedule or recommended by the United States centers for disease control and prevention's health information for international travel that have adverse reactions that could cause significant harm to a patient's health. A pharmacist may not administer immunizations or vaccines without a prescription order pursuant to this section before the department has established the list pursuant to this subsection. The board may not authorize a pharmacist to administer new immunizations or vaccines without a prescription order pursuant to this section until the department reviews the new immunizations and vaccines to determine if they should be added to the list established pursuant to this subsection.

J. The board may appoint an advisory committee to assist the board in adopting and amending rules and developing protocols relating to the administration of immunizations, vaccines and emergency medications and certification requirements.

K. A pharmacy intern who is certified by the board to administer immunizations and vaccines pursuant to this section may do so only in the presence and under the immediate personal supervision of a pharmacist who is certified as prescribed in this section.

L. This section does not prevent a pharmacist who administers an immunization or vaccine from participating in the federal vaccines for children program.

M. A pharmacist may not administer an immunization or vaccine to a minor without the consent of the minor's parent or guardian.

N. For the purposes of this section:

1. "Emergency medication" means emergency epinephrine and antihistamines in accordance with the United States centers for disease control and prevention immunization guidelines.
2. "Primary adolescent series" means those immunizations or vaccines recommended by the United States centers for disease control and prevention for children starting at age eleven or twelve.

32-1975. Legend drug products; listing; code identification; exemption; definitions

A. A legend drug product in finished solid dosage form shall not be manufactured or commercially distributed within this state unless it is clearly or prominently marked or imprinted with a code imprint identifying the drug product and the manufacturer or distributor of the drug.

B. All manufacturers or distributors of legend drugs in solid dosage form shall make available on request to the board a listing of all such legend drugs identifying by code imprint the manufacturer or distributor and the specific type of drug. The listing shall at all times be kept current by all manufacturers and distributors subject to this section.

C. The board may grant exemptions from the requirements of this section on application of any drug manufacturer or distributor showing size, physical characteristics or other unique characteristics that render the application of a code imprint to a legend drug subject to this section impractical or impossible. Any exemption granted by the board shall be included by the manufacturer or distributor in the listing required by subsection B of this section, describing the physical characteristics and type of drug to which the exemption relates.

D. This section does not apply to drug products compounded by a pharmacist licensed under section 32-1924 in a pharmacy operating under a permit issued by the board.

E. For the purposes of this section:

1. "Code imprint" means a series of letters or numbers assigned by the manufacturer or distributor to a specific drug or marks or monograms unique to the manufacturer or distributor of the drug, or both.
2. "Distributor" means a person who distributes for resale a drug in solid dosage form under that person's own label even if that person is not the actual manufacturer of the drug.
3. "Legend drug" means any drug defined by section 503(b) of the federal food, drug and cosmetic act and under which definition its label is required to bear the statement "Rx only".
4. "Solid dosage form" means capsules or tablets intended for oral use.

32-1976. Dispensing replacement soft contact lenses; prescription

A. A prescription order for replacement soft contact lenses may be dispensed under the following conditions:

1. The prescription order shall be in the form required by this chapter and shall include the name of the prescribing physician or optometrist.
2. The prescription order contains the date of issuance.

3. The prescription order for contact lenses includes the lens brand name, type, tint and all other specifications necessary to accurately dispense the prescription.

B. The prescription shall be dispensed with the exact lenses prescribed and no substitutions shall be made. The expiration date of the prescription shall be the earlier of the expiration date provided by the prescribing physician or optometrist or one year after the date of issuance. A refill of a prescription that is within sixty days of its expiration date shall be filled with no more than the sufficient quantity of replacement soft contact lenses needed through the expiration date.

C. The prescription shall be dispensed with a written notice containing the following wording or its substantial equivalent:

Warning: If you are having any unexplained eye discomfort, watering, vision change or redness, remove your lenses immediately and consult your eye care practitioner before wearing your lenses again.

D. Any advertisement by a pharmacy or pharmacist for replacement soft contact lenses shall include all charges associated with the purchase of replacement soft contact lenses from the pharmacy or pharmacist.

32-1977. Sale of methamphetamine precursors by a pharmacy permittee; electronic sales tracking system; violation; classification; state preemption

A. A permittee under this chapter shall not sell to the same person, and a person shall not purchase, products containing more than three and six-tenths grams per day or more than nine grams per thirty-day period of ephedrine or pseudoephedrine base, or their salts, isomers or salts of isomers. These limits apply to the total amount of base ephedrine and pseudoephedrine contained in the products and not to the overall weight of the products.

B. The permittee must keep nonprescription products containing pseudoephedrine or ephedrine behind the counter or in a locked case where a customer does not have direct access.

C. The permittee shall require a person purchasing a nonprescription product that contains pseudoephedrine or ephedrine to present valid government-issued photo identification at the point of sale. The permittee shall record all of the following:

1. The name and address of the purchaser.
2. The name and quantity of product purchased.
3. The date and time of purchase.
4. Purchaser identification type and number.

D. Before completing a sale pursuant to this section, a permittee must use an electronic sales tracking system and electronically submit the required information to the national precursor log exchange administered by the national association of drug diversion investigators if the system is available to permittees without a charge for access. For the purposes of this subsection, "available to permittees without a charge for access":

1. Includes:

(a) Access to the web-based electronic sales tracking software, including inputting and retrieving data free of charge.

(b) Training free of charge.

(c) Technical support to integrate to point of sale vendors without a charge, if necessary.

2. Does not include:

(a) Costs relating to required internet access.

(b) Optional hardware that a pharmacy may choose to purchase for workflow purposes.

(c) Other equipment.

E. If a permittee that sells a nonprescription product containing pseudoephedrine or ephedrine experiences mechanical or electronic failure of the electronic sales tracking system and is unable to comply with the electronic sales tracking requirements of this section, the permittee must maintain a written log or an alternative electronic recordkeeping mechanism until the permittee is able to comply with the electronic sales tracking system requirements. A permittee that does not have internet access to the electronic sales tracking system is compliant with the requirements of this section if the retailer maintains a written log or an alternative electronic recordkeeping mechanism.

F. The national association of drug diversion investigators shall forward state transaction records in the national precursor log exchange to the board of pharmacy each week and provide real-time access to the national precursor log exchange information through the national precursor log exchange online portal to law enforcement in this state as authorized by the board of pharmacy.

G. The system prescribed in this section must be capable of generating a stop sale alert notification that completing the sale would result in the permittee or purchaser violating the quantity limits prescribed in this section. The permittee may not complete the sale if the system generates a stop sale alert. The electronic sales tracking system prescribed in this section must contain an override function that may be used by dispensers of ephedrine or pseudoephedrine who have a reasonable fear of imminent bodily harm if they do not complete a sale. The system must log each instance that a permittee uses the override function.

H. A person who violates this section is guilty of a class 3 misdemeanor, punishable by fine only.

I. This section does not apply to a person who obtains the product pursuant to a valid prescription order.

J. The reporting of sales of ephedrine or pseudoephedrine products is of statewide concern. The regulation of sales pursuant to this section is not subject to further regulation by a county, city, town or other political subdivision of this state.

32-1978. [Sale of dextromethorphan; age requirement; exception; violation; civil penalty; definitions](#)

A. It is prohibited for:

1. Any commercial entity to knowingly or wilfully sell or trade a finished drug product containing any quantity of dextromethorphan to a person who is under eighteen years of age.

2. Any person who is under eighteen years of age to purchase a finished drug product containing any quantity of dextromethorphan.

3. Any person to possess, receive or distribute unfinished dextromethorphan, unless the person is registered pursuant to the federal food, drug, and cosmetic act or is appropriately licensed with the board.

B. A person making a retail sale of a finished drug product containing any quantity of dextromethorphan must require and obtain proof of age from the purchaser before completing the sale, unless the person making the sale reasonably presumes the purchaser to be at least twenty-five years of age based on the purchaser's outward appearance.

C. Subsection A of this section does not apply to common carriers that possess, receive or distribute unfinished dextromethorphan for purposes of distributing such unfinished dextromethorphan between persons that are registered under section 510 of the federal food, drug, and cosmetic act or that are appropriately licensed with the board.

D. This section does not impose any compliance requirement on a retail entity other than manually obtaining and verifying proof of age as a condition of sale, including placement of products in a specific place within a store, other restrictions on a consumer's direct access to finished drug products or the maintenance of transaction records.

E. A person who sells or trades a finished drug product containing any quantity of dextromethorphan to a person who is under eighteen years of age shall receive a warning for a first offense and shall pay a civil penalty of fifty dollars for a second offense, unless the person provides documentation that there is an employee training program in place.

F. This section does not apply to a medication containing dextromethorphan that is sold pursuant to a valid prescription.

G. For the purposes of this section:

1. "Common carrier" means any person that holds itself out to the general public as a provider for hire of the transportation of merchandise, whether or not the person actually operates the vehicle by which the transportation is provided within, to or from the United States.

2. "Finished drug product" means a drug that is legally marketed under the federal food, drug, and cosmetic act and that is in finished dosage form.

3. "Unfinished dextromethorphan" means dextromethorphan in any form, compound, mixture or preparation that is not a finished drug product.

[32-1979. Pharmacists; dispensing opioid antagonists; board protocols; immunity](#)

A. A pharmacist may dispense, pursuant to a standing order issued pursuant to section 36-2266 and according to protocols adopted by the board, naloxone hydrochloride or any other opioid antagonist that is approved by the United States food and drug administration for use according to the protocols specified by board rule to a person who is at risk of experiencing an opioid-related overdose or to a family member or community member who is in a position to assist that person.

B. A pharmacist who dispenses naloxone hydrochloride or any other opioid antagonist pursuant to subsection A of this section shall:

1. Document the dispensing consistent with board rules.
2. Instruct the individual to whom the opioid antagonist is dispensed to summon emergency services as soon as practicable after administering the opioid antagonist.

C. This section does not affect the authority of a pharmacist to fill or refill a prescription for naloxone hydrochloride or any other opioid antagonist that is approved by the United States food and drug administration.

D. A pharmacist who dispenses an opioid antagonist pursuant to this section is immune from professional liability and criminal prosecution for any decision made, act or omission or injury that results from that act if the pharmacist acts with reasonable care and in good faith, except in cases of wanton or wilful neglect.

32-1979.02. Oral fluoride varnish; prescription and administration authority; requirements

A. A pharmacist who is licensed pursuant to this chapter and who meets the requirements of this section may prescribe and administer oral fluoride varnish pursuant to rules adopted by the board.

B. A pharmacist who wishes to administer oral fluoride varnish pursuant to this section shall successfully complete a course of training accredited by the accreditation council for pharmacy education on the use of a caries risk assessment and oral fluoride varnish application, or other board-approved training that complies with American dental association guidelines.

C. A pharmacist who administers oral fluoride varnish pursuant to this section shall do all of the following:

1. Perform a caries risk assessment with each patient and make any necessary referrals to a dentist or physician for moderate or high-risk patients within five business days.
2. Provide each patient with a fluoride record card to be shared with other providers to track fluoride treatments.
3. Inform each patient that fluoride varnish is not sufficient dental care and encourage each patient to see a dentist on a regular basis.
4. Make and keep records for at least one year following the administration of oral fluoride varnish.

D. A pharmacist may not give or receive, either directly or indirectly, a payment, kickback, rebate, bonus or other remuneration for a referral to a dentist or physician pursuant to subsection C of this section.

32-1979.03. Tobacco cessation drug therapies; prescription authority; requirements; definition

A. A pharmacist who is licensed pursuant to this chapter and who meets the requirements of this section may prescribe and dispense tobacco cessation drug therapies to a qualified patient pursuant to rules adopted by the board. Prescriptive authority is limited to nicotine-replacement tobacco cessation drug therapies, including prescription and nonprescription therapies.

B. A pharmacist who wishes to prescribe and dispense tobacco cessation drug therapies pursuant to this section shall successfully complete a course of training accredited by the accreditation council for pharmacy education in the subject area of tobacco cessation and successfully complete two hours of accreditation council for pharmacy education accredited tobacco cessation continuing education programs on license renewal. The course of training shall include all of the following:

1. Epidemiology and health consequences of tobacco-containing products.
2. Biological, psychological and sociocultural components of tobacco dependence.
3. Assessment of a patient's willingness to quit.
4. Development of a quit plan.
5. Relapse prevention strategies.
6. Approved medications used for nicotine addiction and the effectiveness of current drug therapies for smoking cessation.
7. Nonpharmacological and behavioral interventions.

C. A pharmacist who prescribes and dispenses prescription nicotine-replacement tobacco cessation drug therapies pursuant to this section shall:

1. Notify the qualified patient's designated primary care provider within seventy-two hours after the medication is prescribed.
2. Keep records that include the qualified patient's initial assessment information, the education provided and the medication plan, and any drug therapies prescribed. The records shall be made available to the qualified patient's designated primary care provider on request.

D. This section does not apply to pharmacists who are either:

1. Filling or refilling prescriptions for tobacco cessation products written by another provider.
2. Recommending nonprescription tobacco cessation therapies to a patient without a prescription.

E. For the purposes of this section, "qualified patient" means a patient who:

1. Is at least eighteen years of age.
2. Is enrolled in a structured tobacco cessation program consisting of an initial evaluation and appropriate follow-up visits with the pharmacist or primary care provider if prescribing a prescription nicotine replacement.
3. Has been educated on symptoms of nicotine toxicity and when to seek medical treatment.

32-1981. [Definitions](#)

In this article, unless the context otherwise requires:

1. "Chain pharmacy warehouse" means a physical location for prescription-only drugs that acts as a central warehouse and that performs intracompany sales or transfers of the prescription-only drugs to a

group of pharmacies that are under common ownership or control. A chain pharmacy warehouse is not limited to the distribution of prescription-only drugs under this article.

2. "Company under common ownership" has the same meaning as affiliated group as defined in 26 United States Code section 1504.

3. "Intracompany transaction" means any sale, transfer or trade between a division, subsidiary, parent or affiliated or related company under the common ownership of a person.

4. "Normal distribution channel" means the chain of custody for a prescription-only drug that begins with the delivery of the drug by a manufacturer to a wholesale distributor who then delivers the drug to a pharmacy or a practitioner for final receipt by a patient. Normal distribution channel includes the receipt of a prescription-only drug by a common carrier or other delivery service that delivers the drug at the direction of a manufacturer, full service wholesale permittee or pharmacy and that does not purchase, sell, trade or take title to any prescription-only drug.

5. "Wholesale distribution" means distribution of a drug to a person other than a consumer or patient. Wholesale distribution does not include:

(a) Any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership and control of a corporate entity.

(b) Selling, purchasing, distributing, transferring or trading a drug or offering to sell, purchase, distribute, transfer or trade a drug for emergency medical reasons. For the purposes of this subdivision, "emergency medical reasons" includes transferring a prescription drug by a community pharmacy or hospital pharmacy to another community pharmacy or hospital pharmacy to alleviate a temporary shortage.

(c) Drug returns if conducted by a hospital, health care entity, retail pharmacy or charitable institution in accordance with 21 Code of Federal Regulations section 203.23.

(d) The sale of prescription drugs by a pharmacy, not to exceed five percent of the pharmacy's gross sales, to practitioners for office use.

(e) Dispensing by a retail pharmacy of prescription drugs to a patient or patient's agent pursuant to the lawful order of a practitioner.

(f) Distributing a drug sample by a manufacturer's representative.

(g) Selling, purchasing or trading blood or blood components intended for transfusion.

32-1982. Full service wholesale permittees; bonds; designated representatives; application

A. A full service wholesale permittee that engages in the wholesale distribution of prescription-only drugs into, within or from this state must maintain a bond and have a designated representative.

B. The designated representative of a full service wholesale permittee must:

1. Be at least twenty-one years of age.

2. Have been employed full time for at least three years in a pharmacy or with a full service wholesale permittee in a capacity related to the dispensing and distribution of, and record keeping relating to, prescription-only drugs.
3. Be employed by the full service wholesale permittee in a managerial level position.
4. Be actively involved in the daily operation of the wholesale distribution of prescription-only drugs.
5. Be physically present at the full service wholesale permittee facility during regular business hours unless the absence of the designated representative is authorized.
6. Serve as a designated representative for only one full service wholesale permittee.
7. Not have any criminal convictions under any federal, state or local laws relating to wholesale or retail prescription-only drug distribution or distribution of controlled substances.

C. The board may require the applicant's designated representative to submit a full set of fingerprints to the board. The board shall submit the fingerprints to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange the fingerprint data with the federal bureau of investigation. The board may charge each applicant a fee determined by the department of public safety. The board shall forward this fee to the department of public safety.

D. The board shall require every full service wholesale permittee that is applying for an initial permit or renewal of a permit to submit a bond of at least one hundred thousand dollars or other equivalent means of security acceptable to the board. The board may use this bond to secure payment of any fines or penalties that are imposed by the board and any fees or costs that are incurred by the board regarding the permit authorized by law and that the permittee fails to pay within thirty days after the fine, penalty or cost becomes final. The bond must cover all permits held by the permittee in this state.

E. The board may waive the bond requirement if the full service wholesale permittee has previously obtained a comparable surety bond or other equivalent means of security for the purpose of licensure in another state where the full service wholesale permittee possesses a valid license in good standing.

F. For the purposes of this article, a full service wholesale permittee does not include a hospital, chain pharmacy warehouse or third party logistics provider.

32-1983. Restrictions on transactions

A. A full service wholesale permittee may accept prescription-only drug returns or exchanges from a pharmacy or chain pharmacy warehouse pursuant to the terms of an agreement between the full service wholesale permittee and the pharmacy or chain pharmacy warehouse. The full service wholesale permittee shall not accept as returns or exchanges from the pharmacy or chain pharmacy warehouse:

1. Adulterated or counterfeited prescription-only drugs.
2. An amount or quantity of a prescription-only drug that exceeds the amount or quantity that the full service wholesale permittee or another full service wholesale permittee under common ownership sold to the pharmacy or chain pharmacy warehouse.

B. A full service wholesale permittee may furnish prescription-only drugs only to a pharmacy or medical practitioner. The full service wholesale permittee must first verify that person holds a valid license or permit.

C. The full service wholesale permittee must deliver prescription-only drugs only to the premises listed on the license or permit. A full service wholesale permittee may furnish prescription-only drugs to an authorized person or agent of that premises if:

1. The full service wholesale permittee properly establishes the person's identity and authority.
2. Delivery to an authorized person or agent is used only to meet the immediate needs of a particular patient of the authorized person.

D. A full service wholesale permittee may furnish prescription-only drugs to a pharmacy receiving area if a pharmacist or authorized receiving personnel sign, at the time of delivery, a receipt showing the type and quantity of the prescription-only drug received. Any discrepancy between receipt and the type and quantity of the prescription-only drug actually received must be reported to the full service wholesale permittee by the next business day after the delivery to the pharmacy receiving area.

E. A full service wholesale permittee shall not accept payment for or allow the use of a person or entity's credit to establish an account for the purchase of prescription-only drugs from any person other than the owner of record, the chief executive officer or the chief financial officer listed on the license or permit of a person or entity legally authorized to receive prescription-only drugs. Any account established for the purchase of prescription-only drugs must bear the name of the licensee or permittee.

32-1985. Injunctive relief

The board, through the appropriate county attorney or the office of the attorney general, may apply for injunctive relief in any court of competent jurisdiction or enjoin any person from committing any act in violation of this article. Injunctive proceedings are in addition to all penalties and other remedies prescribed in this chapter.

32-1991. Enforcement of chapter

The state board of pharmacy, the division of narcotics enforcement and criminal intelligence within the department of public safety, all officers exercising police powers, and county attorneys shall enforce the provisions of this chapter, unless such enforcement is otherwise specifically delegated, and they shall cooperate with all officers and agencies charged with enforcement of laws of other states and the United States pertaining to the subject matter of this chapter.

32-1992. Provisions of marijuana, prescription-only drugs, narcotics, dangerous drugs or controlled substances laws not invalidated by this chapter; medicated feed not included

A. Nothing in this chapter shall be construed to relieve any person from any requirement prescribed by or under authority of law with respect to marijuana, prescription-only drugs, narcotics, dangerous drugs or controlled substances as defined in the applicable federal and state laws relating to these drugs or substances.

B. Nothing in this chapter shall be interpreted to include medicated feed for veterinary use.

32-1993. Authorization to seize certain drugs, counterfeit drugs and equipment; disposition of seized equipment

A. The following may be seized by the division of narcotics enforcement and criminal intelligence within the department of public safety and its designated agents and all officers exercising police powers when they have reasonable grounds to believe it is:

1. A drug that is a counterfeit.
2. A container of such counterfeit drug.
3. Equipment used in manufacturing, compounding, or processing a drug with respect to which drug a prohibited act within the meaning of section 32-1965 has occurred.
4. Any punch, die, plate, stone, labeling, container or other thing used or designed for use in making a counterfeit drug.
5. Any conveyance being used to transport, carry or hold a counterfeit drug in violation of section 32-1965, paragraph 4.

B. When any article, equipment, conveyance, or other thing is seized pursuant to this chapter the peace officer shall, within five days thereafter, cause to be filed in the proper court in whose jurisdiction the merchandise is seized or detained a complaint for condemnation of such merchandise as provided in this chapter.

C. Any person, firm, or corporation having an interest in the alleged article, equipment, or other thing proceeded against, or any person, firm or corporation against whom a civil or criminal liability would exist if the merchandise is in violation of section 32-1965, paragraph 4 may, within twenty days following the seizure, serve and file an answer or responsive pleading to the complaint which shall allege the interest or liability of the party filing it.

D. Any article, equipment, conveyance or other thing condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds thereof, if sold, less the legal costs and other charges shall be deposited, pursuant to sections 35-146 and 35-147, with the state treasurer.

32-1994. Authorization to embargo adulterated or misbranded drugs or devices; condemnation; destruction; costs

A. When the board or its authorized agent finds or has probable cause to believe that any drug, device, poison, or hazardous substance is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of this chapter, he shall affix to such article an appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons it is unlawful to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by the board or the court.

B. When an article detained or embargoed under subsection A of this section has been found by the board to be adulterated or misbranded, it shall petition the court in whose jurisdiction the article is detained or

embargoed for condemnation of such article, or if feasible, the board may permit the article to be brought into compliance with this chapter.

C. If the court finds that a detained or embargoed article is adulterated or misbranded, and it is not feasible to bring it into compliance with this chapter, such article shall be destroyed at the expense of the claimant who shall also pay all court costs, fees, storage and other proper expenses.

32-1995. Injunctions; restraining orders

In addition to other remedies provided, the board may apply to the proper court for, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary restraining order, or a temporary or permanent injunction restraining any person from violating any provision of this chapter.

32-1996. Violations; classification; civil penalty

A. Except as provided in this section, a person who violates this chapter:

1. Without the intent to defraud or mislead is guilty of a class 2 misdemeanor.
2. With the intent to defraud or mislead is guilty of a class 5 felony.

B. A person who violates section 32-1965, paragraph 4 or article 3.1 of this chapter is guilty of a class 2 felony.

C. Any person who secures a license or permit for that person or for another person by knowingly making a false representation, who fraudulently claims to be licensed as a pharmacist or pharmacy intern within the meaning of this chapter or who knowingly engages in the practice of pharmacy without a license is guilty of a class 2 misdemeanor.

D. A person who secures a license as a pharmacy technician or a pharmacy technician trainee for that person or for another person by knowingly making a false representation, who fraudulently claims to be licensed as a pharmacy technician or a pharmacy technician trainee or who knowingly performs the duties of a pharmacy technician or a pharmacy technician trainee without a license is guilty of a class 2 misdemeanor.

E. A person who dispenses a human growth hormone in violation of this chapter is guilty of a class 6 felony.

F. A court convicting any person for a violation of this chapter shall, immediately after the date of conviction, send a complete copy of the record of the conviction, including the person's name and offense committed, to the executive director of the board.

G. A person who violates section 32-1978 shall be issued a civil penalty only as set forth in that section.

32-1997. Misbranding; promotion of off-label use; definitions

A. Notwithstanding any other law, a pharmaceutical manufacturer or its representative may engage in truthful promotion of an off-label use of a drug, biological product or device.

B. This section does not require a health care insurer, other third-party payor or other health plan sponsor to provide coverage for the cost of any off-label use of a drug, biological product or device as a treatment.

C. Notwithstanding any other law, an official, employee or agent of this state may not enforce or apply section 32-1967 against or otherwise prosecute a pharmaceutical manufacturer or its representative for engaging in truthful promotion of an off-label use of a drug, biological product or device.

D. Notwithstanding any other law, the Arizona state board of pharmacy, the Arizona medical board, the Arizona board of osteopathic examiners in medicine and surgery and the department of health services may not revoke, fail to renew or take any other action against the license of a pharmaceutical manufacturer or its representative, a health care institution or a physician solely for engaging in truthful promotion of an off-label use of a drug, biological product or device.

E. For the purposes of this section:

1. "Biological product" has the same meaning prescribed in 42 United States Code section 262.
2. "Misbranding" has the same meaning described in section 32-1967 or 21 United States Code section 352.
3. "Off-label use" means the use of a United States food and drug administration-approved drug, biological product or device in a manner other than the use approved by the United States food and drug administration.
4. "Truthful promotion" means the sharing of information that is not misleading, not contrary to fact, and consistent with generally accepted scientific principles, between pharmaceutical manufacturers and licensed professionals who can prescribe medication within the provider's scope of practice.

STATE BOARD FOR PRIVATE POSTSECONDARY EDUCATION
Title 4, Chapter 39, Board for Private Postsecondary Education



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 7, 2021

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

FROM: Council Staff

DATE: November 10, 2021

SUBJECT: Board of Private Postsecondary Education
Title 4, Chapter 39

This Five-Year-Review Report (5YRR) from the Board of Private Postsecondary Education relates to rules in Title 4, Chapter 39.

The last 5YRR for these rules was due in June 2016, but the report was rescheduled for May 2021. The Board indicates they submitted a Rulemaking to the Council in April 2016. The rulemaking included all the changes identified in the last 5YRR submitted in 2011. The Rulemaking was approved by the Council in June 2016.

Proposed Action

The Board is currently seeking legislative support to amend A.R.S. §32-3027(A) "Fees" to align with current and future funding requirements. If approved, the legislative change will require R4-39-201, regarding the Board's fees, to be amended. The Board indicates they will seek official approval for a rulemaking after the 2022 legislative session, but no later than July 1, 2022.

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

Yes, the Board cites to both specific and general statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The 2011 rulemaking updated and clarified rules and ensured that they are consistent with statute, agency, and industry practice. They also made needed changes that were identified in the 2011 five-year-review report.

In the economic impact statement provided in the 2011 rulemaking, the Board anticipated the rulemaking to produce minimal economic impact for licensees, applicants, and students. Private postsecondary educational institutions licensed by the Board, as well as the Board itself, were expected to bear the costs of and directly benefit from the rulemaking. Students who attend licensed private postsecondary educational institutions were anticipated to be indirectly affected by the rulemaking.

The Board did not provide a comparison of the anticipated economic impact and the realized economic impact.

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

The rules, as currently written, align with requirements outlined by the United States Department of Education (ED), accrediting agencies, The National Council for State Authorization Reciprocity Agreement (NC-SARA), and other governmental agencies. The Board believes that the substantive content of the rules represents the minimum requirements for licensed institutions to participate in State and Federal educational programs. Additionally, the rules provide for basic levels of protection for the 275,000 students currently attending institutions licensed by the Board. The Board is confident that current rules impose the least burden, paperwork, and compliance costs to the institutions served.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Board indicates they have not received any written criticisms to the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Board indicates the rules are overall clear, concise, and understandable with the exception of the following:

R4-39-101(5) & (10) - Definitions

R4-39-103(E)(2)(b)(c), (4), (5) - Requirements for a Regular License to Operate a Private Accredited Vocational or Degree-granting Institution in Arizona

R4-39-104(D)(15) - Requirements for Conditional License to Operate a Private Non-accredited Vocational Institution in Arizona

R4-39-105(C)(2) - Requirements for Regular License to Continue to Operate a Private Non-Accredited Vocational Institution in Arizona

R4-39-107(C)(2) - Requirements for Provisional License to Continue to Operate a Private Non-accredited Degree-granting Institution in Arizona

R4-39-301 - Catalog

R4-39-601(A) - Submission of Assessments

R4-39-603(B)(1) - Student Records Requests

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

Yes, the Board indicates the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

Yes, the Board indicates the rules are overall effective in achieving their objectives with the exception of the following:

R4-39-201 - Fees

R4-39-403 (A)(2) - Complaint Procedures

8. Has the agency analyzed the current enforcement status of the rules?

Yes, the Board indicates the rules are enforced as written.

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

The Board indicates the rules are not more stringent than the corresponding federal law, 34 CFR PART 99.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The rules do not require the issuance of a general permit.

11. Conclusion

As mentioned above, the Board is currently seeking legislative support to amend A.R.S. §32-3027(A) "Fees" to align with current and future funding requirements. The impact of the legislative change will require a future change in rule R4-39-201. The Board indicates they will seek official approval for a rulemaking after the 2022 legislative session, but no later than July 1, 2022. The rulemaking will address the changes mentioned in the report.

Council staff recommends approval of this report.

Douglas A. Ducey
Governor



Kevin La Mountain
Executive Director

**Arizona State Board for Private Postsecondary
Education**

1740 West Adams Street, Suite 3008
Phoenix, AZ 85007
Telephone (602) 542-5716

September 21, 2021

VIA EMAIL: grrc@azdoa.gov

Ms. Nicole Sornsin, Chair
Governor's Regulator Review Council
100 N. 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Five-Year Review Report for A.A.C. Title 4, Chapter 39

Ms. Sornsin and Members of the Review Council:

Attached is the Five-Year Review Report for the Arizona State Board for Private Postsecondary Education for A.A.C. Title 4, Chapter 39.

The Board certifies compliance with A.R.S § 41-1091.

As this is my first Five-Year review period as the Executive Director for the PPSE, I look forward to the review process and answering any question you may have regarding the current rules.

Sincerely,

A handwritten signature in cursive script that reads "Kevin J. LaMountain".

Kevin J. LaMountain M.Ed.
Executive Director

**Arizona State Board For
Private Postsecondary
Education**

5 YEAR REVIEW REPORT

**Title 4. Professions and
Occupations**

**Chapter 39. Board for Private
Postsecondary Education**

September 2021

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 32-3001 et seq.

2. The objective of each rule:

Article 1. Definitions, Licensure, Reporting

Rule	Objective
R4-39-101	To establish definitions specific to the Board
R4-39-102	To establish licensing types and specific timeframes for licensure
R4-39-103	To establish requirements for a regular license to operate a private accredited vocational or degree-granting institution in Arizona
R4-39-104	To establish requirements for a conditional license to operation a private non-accredited vocational institution in Arizona
R4-39-105	To establish requirements for a regular license to continue to operate a private non-accredited vocational institution in Arizona
R4-39-106	To establish requirements for a conditional license to operate a private non-accredited degree-granting institution in Arizona
R4-39-107	To establish requirements for a provisional license to continue to operate a private non-accredited degree-granting institution in Arizona
R4-39-108	To establish requirements for a surety bond, cash deposit, or letter of credit; Insurance; Financial Statement Requirements; and Finance Committee
R4-39-109	To establish requirements for a supplemental license application for new/additional vocational or degree-granting program, operating a new or additional location, or changing the name of the institution
R4-39-110	To establish requirements for a change in ownership of an institution
R4-39-111	To establish requirements to offer honorary degrees

Article 2. Fees

Rule	Objective
R4-39-201	To establish fees

Article 3. Operation of Private Non-Accredited Institutions

Rule	Objective
R4-39-301	To establish rules relating to the institution's catalog
R4-39-302	To establish requirements for institutional facilities and equipment
R4-39-303	To establish staff requirements to operate the institution
R4-39-304	To establish advertising requirements
R4-39-305	To establish institutional recruitment requirements
R4-39-306	To establish admissions requirements
R4-39-307	To establish reporting requirements for institutions that offer placement services to students
R4-39-308	To establish tuition, pricing, and refund policies
R4-39-309	Renumbered - Adopted effective May 21, 1985 (Supp. 85-3). Amended effective February 23, 1993 (Supp. 93-1). Section renumbered to R4-39-308 by final rulemaking at 5 A.A.R. 4451, effective November 3, 1999 (Supp. 99-4).
R4-39-310	Repealed - Adopted effective May 21, 1985 (Supp. 85-3). Section repealed by final rulemaking at 5 A.A.R. 4451, effective November 3, 1999 (Supp. 99-4).

Article 4. Operation of All Licensed Institutions

Rule	Objective
R4-39-401	To establish requirements for student records
R4-39-402	To establish requirements for the preservation of records
R4-39-403	To establish complaint procedures
R4-39-404	To establish requirements for a student tuition refund policy
R4-39-405	Repealed
R4-39-406	To establish requirements for institutions that cease to operate or offer a program/teach out plan
R4-39-407	To establish the use of terms
R4-39-408	To establish requirements for transfer of credits

Article 5. Investigations; Hearing Procedures; And Assessing Costs

Rule	Objective
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R4-39-501	To establish procedures to investigate any sworn complaint against a person or entity alleging violation of A.R.S. § 32-3001 et. Seq. or this chapter
R4-39-502	To establish procedures for all hearings conducted before the board or administrative law judge under A.R.S. § 41 chapter 6, article 10
R4-39-503	To establish rehearing or review of board's decision
R4-39-504	To establish the assessment of costs under A.R.S. §32-3052(M)

Article 6. Student Tuition Recovery Fund

Rule	Objective
R4-39-601	To establish the submission of assessments to each licensee as specified by A.R.S. §32-3072(B) from which an assessment, as defined by A.R.S. § 32-3071(1), is due.
R4-39-602	To establish rules relating to claims against the fund
R4-39-603	To establish requirements for student record requests

3. **Are the rules effective in achieving their objectives?** Yes X No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

The rules are effective in achieving their objectives except as stated below.

Rule	Explanation
R4-39-201(A)	Fees: The fees associated with the review of a new application to operate a vocational or degree-granting institution is fixed at \$800 and has not changed since 1996. The \$800 fee does not cover staff costs associated with the review. * Fees mirror A.R.S. §32-3027(A)
R4-39-201(B)	Fees: The annual filing fee for institutions has not increased since 1996 and is not generating revenue above expenses. By FY24, the board will not have sufficient funds to operate at current levels. * Fees mirror A.R.S. §32-3027(A)
R4-39-403(A)(2)	Complaint Procedures: Current rule provides a complainant 2 years to file a complaint “once the individual completed the licensee’s grievance procedure, including all appeals.” The rule does not align with many licensee’s policies regarding internal appeals process.

4. **Are the rules consistent with other rules and statutes?** Yes X No

5. **Are the rules enforced as written?** Yes X No

6. **Are the rules clear, concise, and understandable?** Yes No X

Rule	Explanation
R4-39-101(5)	The definition of “DE” is no longer used in Federal statutes. All reference to “DE” in rule should be changed to “ED” to match federal terminology.
R4-39-101(10)	The current rule refers to A.R.S. §32-3001(5) to define “operate” and includes the concept of “physical presence” as defined by the National Council for State Authorization Reciprocity Agreements (NC-SARA). NC-SARA is not a governmental agency; therefore, this rule should be defined by board rule.
R4-39-103(E)(2)(b)(c)	Combine sections (b)(c) for additional clarity
R4-39-103(E)(4)	Remove “for each program offered by the” for clarity
R4-39-103(E)(5)	Remove section as modality of instruction is not regulated by the board
R4-39-104(D)(15)	Typo – Should read “For each faculty member named under subsection (D)(3)(h)” removing the (iv).
R4-39-105(C)(2)	Remove reference to (D)(14) & (D)(15). Replace with “a list of individuals identified in (D)(14) & (D)(15)”
R4-39-107(C)(2)	Remove reference to (D)(14) & (D)(15). Replace with “a list of individuals identified in (D)(14) & (D)(15)”
R4-39-301(A)(1)(c) & R439-301(A)(2)(b)	Remove “fax numbers”
R4-39-601(A)	Remove “send the notice by certified mail”
R4-39-601(A)(1)	Correction – Remove reference to R4-39-108 and replace with R4-39-105(C)
R4-39-603(B)(1)	Remove reference to the Social Security Number.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No X

8. **Economic, small business, and consumer impact comparison:**

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
(From Economic Impact Statement completed in 2011)**

1. Identification of the rulemaking:

In this rulemaking, which is done in response to a five-year-review report approved by Council on September 13, 2011, the Board amends all of its rules to ensure they are consistent with statute and agency and industry practice and to update the language of the rules. In the rulemaking, the Board clarifies that it is a private postsecondary educational institution that is licensed to operate. A licensed institution is authorized to offer programs. The rulemaking also clarifies the differences among a regular, conditional, and provisional license.

- a. The conduct and its frequency of occurrence that the rule is designed to change:
Until the rulemaking is in effect, the Board’s rules will continue to be inconsistent with statutory and Board and industry practice. They will also not be updated in ways identified in the five-year-review report approved by Council on September 13, 2011.
- b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

It is not good government and is a source of potential confusion for the public for an agency to have rules that are inconsistent with statute and practice. Also, the legislature expects an agency to make timely the changes identified as needed in a five-year-review report.

- c. The estimated change in frequency of the targeted conduct expected from the rule change: When the rulemaking goes into effect, the rules will be consistent with statute and Board and industry practice. Also, the needed changes identified in the 2011 five-year-review report will be made.

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

The Board believes the following changes will produce minimal economic impact for licensees, applicants, and students:

- The overall time frame for the Board to act on an application for license renewal is reduced;
- A provision is added that the Board will close an application file if the application remains administratively incomplete after the applicant responds to a second notice of deficiency;
- Several grounds for denying or not renewing a license are added;
- Some additional actions require that a licensee provide notice to the Board;
- Consequences of allowing a license to expire are clarified;
- Amount of liability insurance is reduced for small institutions;
- Requirements for a year-end financial statement are reduced for small institutions;
- Requirements regarding preservation of student records when an institution ceases to operate are strengthened;
- Clarified that the Board will accept complaints from non-students;
- Section regarding transfer of credit is added; and
- Section regarding assessing costs the Board incurs in the process of determining that a person violated statute or rule is added.

3. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking: Private postsecondary educational institutions licensed by the Board and those that make application for licensure will be directly affected by, bear the costs of, and directly benefit from this rulemaking. Students who attend licensed private postsecondary educational institutions will be indirectly affected by the rulemaking. The Board is also affected by, bears the costs of and will directly benefit from the rulemaking.

4. Impact on private and public employment:
There is no direct impact on private or public employment.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

The current Executive Director was not involved in the prior five-year review. During a review of documentation, it appears the previous five-year review was scheduled for 2016, however, the board was in the process of a rules change during the review period and the review was rescheduled for 2021. During the April 2016 rules package approved by the Council, the Board made all necessary changes identified during the 2011 five-year rule review to meet the standards in A.R.S. §41-1052. The following changes were made and became effective on June 4, 2016.

- The overall time frame for the Board to act upon and application for license renewal was reduced;
- A provision was added that the Board will close an application file if the application remains administratively incomplete after the applicant responds to a second notice of deficiency;
- Several rounds for denying or not renewing a license were added;
- Some additional actions require that a licensee provide notice to the Board;
- Consequences of allowing a license to expire were clarified;
- Amount of liability insurance required was reduced for small institutions;
- Requirements for a year-end financials statement were reduced for small institutions;
- Requirements regarding preservation of student records when an institution ceases to operate were strengthened;
- Clarified that the Board will accept complaints from non-students;
- Section regarding transfer of credit from one institution to another was added; and
- As authorized by A.R.S §32-3052(M), a Section regarding assessing costs the Board incurs in the process of determining that a person violated statute or rule was added.

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 rules, as currently written, align with requirements outlined by the United States Department of Education (ED), accrediting agencies, The National Council for State Authorization Reciprocity Agreement (NC-SARA), and other governmental agencies. The Board believes that the substantive

content of the rules represents the minimum requirements for licensed institutions to participate in State and Federal educational programs. Additionally, the rules provide for basic levels of protection for the 275,000 students currently attending institutions licensed by the Board. The Board is confident that current rules impose the least burden, paperwork, and compliance costs to the institutions served.

12. Are the rules more stringent than corresponding federal laws? Yes No

The current rules align with all federal educational laws and do not represent additional or more stringent regulations. Specific federal law that relates to rule:

Distribution of Student Transcripts (R4-39-402(B) - 34 CFR PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY

The Arizona State Board for Private Postsecondary Education is the custodian of record for approximately 7 million student records/documents/transcripts. We follow the guidelines above (34 CFR Part 99 – FERPA).

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules are in compliance with A.R.S. § 41-1037.

14. **Proposed course of action:**

Board staff is currently seeking legislative support to amend A.R.S. §32-3027(A) “Fees” to align with current and future funding requirements. The impact of the legislative change will require a future change in rule R4-39-201. The board has met with the Governor’s Sr. Policy Advisor to discuss both the change in statute and eventual change in rules. These initial meetings have been positive, and a bill is being crafted with the assistance of the Senate Education Committee. The board staff will seek official approval for a rules change after the 2022 legislative session has concluded but no later than July 1, 2022.



Replacement Check List

For rules filed within the
2nd Quarter
April 1 – June 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.

Title 4. Professions and Occupations

Chapter 39. Board for Private Postsecondary Education

Supplement Release Quarter: 16-2

Sections, Parts, Exhibits, Tables or Appendices modified

R4-39-101 through R4-39-111; R4-39-201; R4-39-301 through R4-39-308; R4-39-401 through R4-39-408; R4-39-501 through R4-39-504; R4-39-601 through R4-39-603

REMOVE Supp. 06-1
Pages: 1 - 16

REPLACE with Supp. 16-2
Pages: 1 - 21

The agency's contact person who can answer questions about rules in Supp. 16-2:

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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.

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
June 30, 2016

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. 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.

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, 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

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit, should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1., R1-1-113.

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

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 39. BOARD FOR PRIVATE POSTSECONDARY EDUCATION

(Authority: A.R.S. § 32-3001 et seq.)

Former Article 1 consisting of Sections R4-39-101 through R4-39-111, former Article 2 consisting of Section R4-39-201, former Article 3 consisting of Sections R4-39-301 through R4-39-310, former Article 4 consisting of Sections R4-39-401 through R4-39-403, and former Article 5 consisting of Sections R4-39-501 and R4-39-502 adopted as an emergency effective January 2, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days. Emergency expired.

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ARTICLE 1. DEFINITIONS, LICENSURE, REPORTING**R4-39-101. Definitions**

In addition to the definitions in A.R.S. §§ 32-3001 and 32-3071, the following definitions apply in this Chapter unless the context otherwise requires:

1. "Accreditation" has the same meaning as "accredited" in A.R.S. § 32-3001.
2. "Applicant" means a private postsecondary education institution on whose behalf an application is submitted to the Board for a license to operate the institution and offer vocational programs or grant degrees.
3. "Conditional license" means a non-renewable one-year license issued by the Board to a private non-accredited vocational or degree-granting institution.
4. "Day" means a calendar day unless specified otherwise.
5. "DE" means the United States Department of Education.
6. "GTR" means gross tuition revenue.
7. "Licensee" means a private postsecondary education institution that is licensed by the Board and offers vocational programs or grants degrees.
8. "Management capability" as used in A.R.S. § 32-3051(10), means continuous coordination of all federal, state, and accreditation requirements, as applicable, in a manner that provides an educationally enriching environment that benefits students.
9. "Misrepresent" means to give a false or misleading representation with the intent to deceive or be unfair.
10. "Operate" has the meaning specified in A.R.S. § 32-3001 and includes the concept of "physical presence" as defined by the National Council for State Authorization Reciprocity Agreements (See <http://nc-sara.org>).
11. "Provisional license" means a renewable one-year license issued by the Board to a private non-accredited degree-granting institution.
12. "Regular license" means a renewable one-year license issued by the Board to a:
 - a. Private accredited vocational institution,
 - b. Private accredited degree-granting institution, or
 - c. Private non-accredited vocational institution.
13. "Signature" means:
 - a. A handwritten or stamped representation of an individual's name or a symbol intended to represent an individual's name, or
 - b. An "electronic signature" as defined in A.R.S. § 44-7002.
14. "Signing" means the act of providing a signature.
15. "Staff" means an individual employed by or representing a private vocational institution or private degree-granting institution.
16. "Student fees" means charges incurred by a student or a funding source on behalf of the student for registration, admission, tuition financing, loans, or charges for books, laboratory fees, or other education-related costs.
17. "Teach-out" means the process by which a private postsecondary education institution fulfills its educational and contractual obligations to currently enrolled students before voluntarily closing a program the institution offers or before closing the institution.
18. "Tuition" means a fee paid for instruction at a college or university or a private school.

Historical Note

Adopted effective June 27, 1985 (Supp. 85-3). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-102. Licenses Issued and Licensing Time Frames

- A. A license from the Board issued to a private degree-granting institution authorizes the institution to operate and grant degrees.
- B. A license from the Board issued to a private vocational institution authorizes the institution to operate and offer a vocational program.
- C. If a private degree-granting or private vocational institution is accredited, the Board shall issue a regular license to the institution if the institution meets the standards in R4-39-103.
- D. If a private degree-granting or private vocational institution is non-accredited, the Board shall issue a conditional license to the institution if the institution meets the standards in R4-39-104 or R4-39-106, as applicable. The institution may operate under a conditional license for only one year.
 1. At the end of one year, the conditional license of a non-accredited, private, vocational institution becomes, upon approval by the Board, a regular license if the institution meets the standards in R4-39-105.
 2. At the end of one year, the conditional license of a non-accredited, private, degree-granting institution becomes, upon approval by the Board, a provisional license if the institution meets the standards in R4-39-107.
- E. A non-accredited, private, degree-granting institution may continue to operate with a provisional license if the institution continues to meet the standards in R4-39-107.
- F. All licenses issued by the Board are effective for 12 months from the date of issuance. To continue to operate a private vocational institution or private degree-granting institution, a licensee shall annually renew the license under R4-39-105 or R4-39-107, as applicable.
- G. For the purpose of A.R.S. § 41-1073, the Board establishes the following licensing time frames:
 1. For a conditional or regular license application to operate a vocational institution or a regular license application to operate a degree-granting institution:
 - a. Administrative completeness review time frame: 135 days;
 - b. Substantive review time frame: 45 days;
 - c. Overall time frame: 180 days.
 2. For a conditional or provisional license application to operate a degree-granting institution:
 - a. Administrative completeness review time frame: 150 days;
 - b. Substantive review time frame: 90 days;
 - c. Overall time frame: 240 days.
 3. For a license renewal application to continue to operate a vocational or degree-granting institution or for a supplemental license application:
 - a. Administrative completeness review time frame: 60 days;
 - b. Substantive review time frame: 45 days;
 - c. Overall time frame: 105 days.
- H. Within the time specified in subsection (G), the Board shall finish an administrative completeness review.
 1. If the application is complete, the Board shall notify the applicant that the application is complete and that the administrative completeness review is finished. The substantive review will begin on the date the notice is served.
 2. If the application is incomplete, the Board shall send the applicant a notice that specifies what information is missing and other deficiencies found in the application. The administrative completeness review time frame is suspended from the date the notice is served until the applicant provides the Board with the missing information and corrects all deficiencies.

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- a. An applicant with an incomplete application shall submit the missing information and correct the deficiencies within 60 days after receiving the notice.
 - b. If the applicant cannot comply with the 60-day deadline in subsection (H)(2)(a), the applicant may request an extension of no more than 30 days by submitting a written request to the Board that documents the reasons the applicant is unable to meet the 60-day deadline and is postmarked or delivered before the deadline specified in subsection (H)(2)(a).
 - c. The Board shall grant the request for an extension of the 60-day deadline if the Board determines that the extension will enable the applicant to submit all missing information and correct all deficiencies. The Board shall grant only one extension of the 60-day deadline specified in subsection (H)(2)(a).
 - d. If the applicant responds to the notice provided under subsection (H)(2) by providing some of the missing information and correcting some of deficiencies but the Board determines the application is still incomplete, the Board shall send the applicant a second notice that specifies what information is missing and other deficiencies found in the application and provide the applicant with 60 days in which to complete the application. The Board shall not grant an extension of the 60-day deadline provided with a second deficiency notice.
 - e. If the applicant fails to submit all missing information or correct all deficiencies within the 60-day deadline provided under subsection (H)(2)(d), the Board shall close the application. An applicant whose application is closed and later wishes to be licensed shall submit a new application and pay the fee required under R4-39-201.
 - f. When the Board receives the missing information and the deficiencies are corrected, the Board shall notify the applicant that the administrative completeness review is finished. The substantive review will begin on the date the notice is served.
- I.** Within the time specified in subsection (G), the Board shall complete a substantive review of the application, which may include onsite verification.
1. If the Board finds deficiencies during the substantive review of the application, the Board shall issue a comprehensive written request for additional information and the deadline for submitting the additional information. The time frame for substantive review of an application is suspended from the date the comprehensive written request for additional information is served until the information is received.
 2. When the applicant and Board agree in writing, the Board may make supplemental requests for information.
 3. When the applicant and Board agree in writing, the Board shall grant extensions of the substantive review time frame consistent with A.R.S. § 41-1075(B).
 4. If the applicant fails to submit the additional information by the deadline, the Board shall close the application. An applicant whose application is closed and who later wishes to be licensed, shall submit a new application.
- J.** At the end of the substantive review, the Board shall decide whether to grant a license to the applicant.
1. If the Board finds that the applicant meets all requirements defined in statute and rule, the Board shall grant a license.
 2. If the Board finds that the applicant fails to meet all requirements defined in statute and rule, the Board shall deny a license.
 3. If the Board denies a license, the Board shall send the applicant a notice of denial that specifies why a license was denied and describes the applicant's right to request a hearing regarding the denial.

Historical Note

Adopted effective June 27, 1985 (Supp. 85-3). Amended effective November 14, 1997 (Supp. 97-4). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-103. Requirements for a Regular License to Operate a Private Accredited Vocational or Degree-granting Institution in Arizona

- A.** A person shall not operate a private accredited vocational or degree-granting institution without a regular license granted by the Board.
- B.** Except as specified in subsection (B)(6), the Board shall not grant or renew a regular license if:
1. Within 10 years before filing the application packet required in subsection (D) or since the start date of the current licensure period, an individual with at least 20 percent ownership in the applicant or an officer or employee who controls, manages, or represents the applicant in this state has been convicted in this state or any jurisdiction of any crime, regardless of whether the crime is a misdemeanor or felony, that a reasonable person would consider relevant to the legal and ethical operation of an educational institution;
 2. Within 10 years before filing the application packet required in subsection (D) or since the start date of the current licensure period, a person with at least 20 percent ownership in the applicant or an officer or employee who controls, manages, or represents the applicant in this state has had a license to operate a vocational or degree-granting institution revoked in this state or any jurisdiction;
 3. The applicant provides false or misleading information on or with the application packet required by this Section;
 4. The applicant was previously licensed by the Board and ceased operation without complying with R4-39-402 and R4-39-406; or
 5. The applicant ceased to operate or offer a program and as a result:
 - a. The Board was obligated to make a payment from the Student Tuition Recovery Fund established under A.R.S. § 32-3072, or
 - b. The DE or a private entity forgave loans, in whole or in part, to affected students; and
 6. If the conviction described in subsection (B)(1) was discharged, expunged, set aside, or vacated, the Board shall consider this fact when exercising its discretionary power under this Section.
- C.** The Board shall grant or renew a regular license only if:
1. The applicant provides the information required in subsection (D); and
 2. The information provided under subsection (D) demonstrates:
 - a. For a regular license to operate a private accredited vocational institution, compliance with A.R.S. § 32-3021(B);
 - b. For a regular license to operate a private accredited degree-granting institution, compliance with A.R.S. § 32-3022(B);

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- c. The ability to provide educational services as represented to the public;
 - d. Institutional accreditation or accreditation of each program to be offered; and
 - e. Compliance with all accreditation standards established by each accrediting agency that accredits the applicant's programs or the institution through which the programs are operated.
- D.** An applicant for an initial regular license shall submit to the Board an application packet that includes:
- 1. The filing fee required under R4-39-201;
 - 2. The information and documentation required in R4-39-104(D)(2), if required, and (D)(3) through (D)(17);
 - 3. The name of each accrediting agency that accredits the applicant or the applicant's programs;
 - 4. For each accrediting agency named in subsection (D)(3), documentation from the accrediting agency that confirms the current accreditation status of the applicant or the applicant's programs;
 - 5. Attestation by the individual signing the application that the applicant complies and will continue to comply with all accreditation standards established by each accrediting agency named in subsection (D)(3);
 - 6. A copy of the applicant's most recent DE program participation agreement and financial aid audit, if applicable;
 - 7. For each federal student financial aid program named in the agreement in subsection (D)(6), documentation from the DE demonstrating participation in the federal student financial aid program and showing the applicant's default rate for the last three years, if applicable;
 - 8. Attestation by the individual signing the application that the applicant complies and will continue to comply with all DE requirements governing federal student financial aid programs named in the agreement in subsection (D)(6);
 - 9. A copy of the applicant's current catalog and enrollment agreement that meets the accreditation standards established by each accrediting agency named in subsection (D)(3); and
 - 10. A surety bond, cash deposit, or equivalent security if required under A.R.S. § 32-3023 and R4-39-108.
- E.** No later than 60 days before a licensee's regular license expires, the licensee shall submit to the Board a license renewal application packet that includes:
- 1. The filing fee required under R4-39-201; and
 - 2. The information and documentation required in:
 - a. R4-39-104(D)(2) if required under A.R.S. § 32-3023 and R4-39-108;
 - b. R4-39-104(D)(3), (D)(4), (D)(5), (D)(8)(a) and (c), (D)(12), and (D)(17); and
 - c. Subsections (D)(3) through (D)(10);
 - 3. A list of all individuals or persons referenced in R4-39-104(D)(14) and (D)(15);
 - 4. A report on the annual enrollment and retention and placement rates for each program offered by the licensee, if the report is required by DE or the accrediting agency that accredits the program or licensee;
 - 5. For each program offered, an indication whether the program is offered by residential or online delivery or both; and
 - 6. A list of all programs that are in teach-out and:
 - a. The names of all students in each program,
 - b. The anticipated completion date of each student, and
 - c. Contact information for each student.
- F.** A licensee shall:
- 1. Notify the Board in writing within 24 hours if the licensee:
 - a. Receives a grant of accreditation issued by an accrediting agency other than an accrediting agency named under subsection (D)(3);
 - b. Becomes eligible to participate in a federal student financial aid program other than a federal student financial aid program named in the agreement under subsection (D)(6);
 - c. Ceases to be accredited or has a program that ceases to be accredited by an accrediting agency named under subsection (D)(3);
 - d. Ceases to be eligible to participate in a federal student financial aid program named in the agreement under subsection (D)(6);
 - e. Decides to cease operations; or
 - f. Knows or should know that the license is under investigation by any state or federal agency or an accrediting agency; and
 - 2. Notify the Board in writing within five business days of:
 - a. A change in any grant of accreditation issued by an accrediting agency named under subsection (D)(3) or (F)(1)(a) including but not limited to the following adverse actions:
 - i. Suspending accreditation,
 - ii. Withdrawing or cancelling accreditation,
 - iii. Placing accredited institution on probation,
 - iv. Requiring accredited institution to show cause, or
 - v. Requiring a specific corrective action, or
 - b. A change in eligibility to participate in a federal student financial aid program named in the agreement under subsection (D)(6) or (F)(1)(b).
- G.** The Board may conduct an inspection, under A.R.S. § 41-1009, of an applicant's or licensee's place of business to determine compliance with the requirements of A.R.S. Title 32, Chapter 30 and this Article.
- H.** As provided in A.R.S. § 32-3051, the Board may discipline a licensee that:
- 1. Violates a requirement in subsection (F); or
 - 2. Intentionally or negligently misrepresents any material information in documents or information presented to the Board.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended effective October 10, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-104. Requirements for a Conditional License to Operate a Private Non-accredited Vocational Institution in Arizona

- A.** A person shall not operate a private non-accredited vocational institution without a conditional license granted by the Board.
- B.** Except as specified in subsection (B)(6), the Board shall not grant a conditional license if:
 - 1. Within 10 years before filing the application packet required in subsection (D), an individual with at least 20 percent ownership in the applicant or an officer or employee who controls, manages, or represents the applicant in this state has been convicted in this state or any jurisdiction of any crime, regardless of whether the crime is a misdemeanor or felony, that a reasonable person would consider relevant to the legal and ethical operation of an educational institution;

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2. Within 10 years before filing the application packet required in subsection (D), a person with at least 20 percent ownership in the applicant or an officer or employee who controls, manages, or represents the applicant in this state has had a license to operate a vocational or degree-granting institution revoked in this state or any jurisdiction;
 3. The applicant provides false or misleading information on or with the application required by this Section;
 4. The applicant was previously licensed by the Board and ceased operations without complying with R4-39-402 and R4-39-406; or
 5. The applicant ceased to operate or offer a program and as a result:
 - a. The Board was obligated to make a payment from the Student Tuition Recovery Fund established under A.R.S. § 32-3072, or
 - b. The DE or a private entity forgave loans, in whole or in part, to affected students; and
 6. If the conviction described in subsection (B)(1) was discharged, expunged, set aside, or vacated, the Board shall consider this fact when exercising its discretionary power under this Section.
- C.** The Board shall grant a conditional license to an applicant if:
1. The applicant provides the information and documentation required in subsection (D); and
 2. The information provided under subsection (D) demonstrates:
 - a. Compliance with A.R.S. § 32-3021(B)(1) through (11); and
 - b. The ability to provide educational services as represented to the public.
- D.** An applicant for a conditional license shall submit to the Board an application packet that includes:
1. The filing fee required under R4-39-201;
 2. A letter of credit, surety bond, cash deposit, or equivalent security, as required under A.R.S. § 32-3023, of \$15,000 or another amount determined by the Board under R4-39-108;
 3. An application form provided by the Board containing:
 - a. The applicant's name, street address, mailing address, telephone number, fax number, e-mail address, and web site address, if applicable;
 - b. If the applicant has a headquarters in another state or jurisdiction, the headquarters' street address, mailing address, telephone number, fax number, and e-mail address;
 - c. Responses to questions regarding the distribution of ownership, business type, and legal structure;
 - d. As applicable, identification of:
 - i. All members of the board of directors or board of trustees,
 - ii. All persons with at least 20 percent ownership in the applicant, and
 - iii. All individuals responsible for controlling, managing, or representing the applicant in this state;
 - e. Responses to questions regarding whether a person identified in subsection (D)(3)(d) has ever applied for or been issued a license to operate a vocational or degree-granting institution in this state or any jurisdiction;
 - f. Responses to questions regarding the finances, federal or state tax liabilities, management capabilities, and criminal history of the persons identified under subsection (D)(3)(d)(ii);
 - g. Responses to questions regarding programs and student recruitment, enrollment, retention, placement, and financing;
 - h. Name of the director required under R4-39-303(B) and evidence that the director is qualified;
 - i. Staffing information including:
 - i. Required minimum qualifications of faculty for each program to be offered;
 - ii. The number of administrative personnel and faculty members projected at the end of the first licensure period; and
 - iii. The names of all current administrative personnel and faculty members;
 - j. Attestation by the individual signing the application that the applicant will comply with all applicable requirements in A.R.S. Title 32, Chapter 30, and this Chapter;
 - k. Attestation by the individual signing the application that all information required as part of the application packet has been submitted and is true and accurate; and
 - l. The notarized signature of an owner of the applicant or an owner's legal representative and date of signature;
 4. Financial statements or financial documentation required under R4-39-108;
 5. Evidence of the insurance required under R4-39-108;
 6. If applicable, a copy of the applicant's articles of incorporation, partnership or joint venture documents, or limited liability documents;
 7. A business plan that includes:
 - a. Executive summary with highlights, objectives, and mission;
 - b. Applicant summary;
 - c. Programs offered and services provided;
 - d. Marketing plan and implementation; and
 - e. Financial plan that includes three-year projections and financial resources available to demonstrate financial stability;
 8. For each program to be offered, a form provided by the Board describing:
 - a. Program content, length, and delivery system information;
 - b. Program prerequisites and completion requirements;
 - c. Student fees as defined at R4-39-101;
 - d. Any required textbooks or program learning materials;
 - e. Any equipment or technology or competency requirements;
 - f. As applicable:
 - i. Library resources;
 - ii. Clinical training, practica, externships, internships, or special features;
 - iii. Graduate employment opportunities; and
 - iv. Licensing requirements for a graduate of the program to practice; and
 - g. Attach to the form, a copy of the certificate or diploma to be awarded when the program is completed.
 9. A copy of the applicant's student enrollment agreement meeting the requirements in R4-39-401;
 10. A copy of the applicant's catalog meeting the requirements in R4-39-301;
 11. A copy of each brochure, promotional document, uniform resource locator, or advertisement intended for students or potential students;

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12. A copy of the applicant's student grievance procedure that:
- Is published in the applicant's catalog required under subsection (D)(10);
 - Provides the steps and time frames involved in the grievance procedure;
 - References the student's right under A.R.S. § 32-3052 to file a complaint with the Board;
 - Lists the Board's address, telephone number, and web site; and
 - If the applicant requires arbitration as part of the student grievance procedure, includes the following statement: Arbitration of a student grievance is required. Arbitration will take place at a location reasonably convenient for both parties giving due consideration to the student's ability to travel and other pertinent circumstances. Both parties will attempt to have proceedings take place within a reasonable time and without undue delay. The arbitration proceedings will follow the spirit if not the letter of the consumer due process protocol of the American Arbitration Association. The protocol includes but is not limited to a fundamentally fair process; an independent and impartial, competent, and qualified arbitrator; independent administration of the arbitration; reasonable cost; right to representation; and possibility of mediation. Arbitration does not preclude other avenues of recourse, including but not limited to possible relief in small claims court, unless and until the arbitration result is made binding. Arbitration of a student grievance does not preclude the student from seeking a remedy from the Arizona Board of Private Postsecondary Education.
13. An institutional organizational chart including staff names and position titles;
14. For each individual identified under subsection (D)(3)(d), a form provided by the Board describing the individual's professional and educational background;
15. For each faculty member named under subsection (D)(3)(h)(iv), a form provided by the Board describing the individual's professional and educational background;
16. For each location within the state from which the applicant will operate:
- A form provided by the Board describing the facility;
 - Line drawings, floor plans, or photographs showing each story of the facility, the room layout, room usage, and each door, window, and exit; and
 - Documentation from the local jurisdiction of compliance with all applicable fire codes, building codes, and zoning ordinances; and
17. Other information the Board or applicant believes is relevant and will assist the Board to determine whether the applicant is in compliance with all licensing requirements under A.R.S. Title 32, Chapter 30 and this Article.
- E.** Before granting a conditional license, the Board shall conduct an inspection, under A.R.S. § 41-1009, of an applicant's place of business to determine compliance with subsection (C).
- F.** If the Board grants a conditional license to an applicant, the conditional licensee:
- Shall not describe or refer to itself using the terms "licensed," "approved," or "accredited;" and
 - May describe or refer to itself using the terms "conditionally licensed" or "conditional license."
- G.** After granting a conditional license, the Board may conduct an inspection, under A.R.S. § 41-1009, of a licensee's place of business to determine continuing compliance with the requirements of A.R.S. Title 32, Chapter 30 and this Article.
- H.** Under the authority provided at A.R.S. § 32-3051, the Board may discipline a licensee that intentionally or negligently misrepresents any material information in documents or testimony presented to the Board.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended effective October 10, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-105. Requirements for a Regular License to Continue to Operate a Private Non-accredited Vocational Institution in Arizona

- A.** Except as specified in subsection (A)(6), the Board shall not grant or renew a regular license to an applicant, if:
- Since the start date of the current licensure period, an individual with at least 20 percent ownership in the applicant or an officer or employee who controls, manages, or represents the applicant in this state has been convicted in this state or any jurisdiction of any crime, regardless of whether the crime is a misdemeanor or felony, that a reasonable person would consider relevant to the legal and ethical operation of an educational institution;
 - Since the start date of the current licensure period, a person with at least 20 percent ownership in the applicant or an officer or employee who controls, manages, or represents the applicant in this state has had a license to operate a vocational or degree-granting institution revoked in this state or any jurisdiction;
 - The applicant provides false or misleading information on or with an application required by this Section;
 - The applicant was previously licensed by the Board and ceased operations without complying with R4-39-402 and R4-39-406; or
 - The applicant ceased to operate or offer a program and as a result:
 - The Board was obligated to make a payment from the Student Tuition Recovery Fund established under A.R.S. § 32-3072, or
 - The DE or a private entity forgave loans, in whole or in part, to affected students; and
 - If the conviction described in subsection (A)(1) was discharged, expunged, set aside, or vacated, the Board shall consider this fact when exercising its discretionary power under this Section.
- B.** The Board shall grant or renew a regular license to a licensee if the licensee submits an application and:
- The application includes the information required in subsection (C); and
 - The information provided demonstrates:
 - Compliance with A.R.S. § 32-3021(B)(1) through (11); and
 - The ability to provide educational services as represented to the public.
- C.** No later than 60 days before expiration of a licensee's conditional or regular license, the licensee shall submit to the Board an application packet that includes:
- The filing fee required under R4-39-201;
 - The information and documentation required in R4-39-104(D)(2) through (D)(5), (D)(8)(a) and (c), (D)(9), (D)(10), (D)(12), (D)(14), (D)(15) and (D)(17); and

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3. Information regarding the annual enrollment and retention and placement rates for each program offered by the licensee;
- D.** A licensee that fails to comply with subsection (C) and allows the licensee's conditional or regular license to expire shall:
1. Comply with subsection (C) within 30 days after the license expires, and
 2. Pay the late renewal fee prescribed under A.R.S. § 32-3027(A)(7); or
 3. Immediately cease operating in this state.
- E.** The Board may conduct an inspection, under A.R.S. § 41-1009, of a licensee's place of business to determine compliance with the requirements in A.R.S. Title 32, Chapter 30 and this Article.
- F.** As provided in A.R.S. § 32-3051, the Board may discipline a licensee that:
1. Intentionally or negligently misrepresents any material information in documents or testimony presented to the Board, or
 2. Fails to comply fully with subsection (C) or (D) but continues to operate in this state.
- Historical Note**
- Adopted effective June 27, 1985 (Supp. 85-3). Amended effective October 10, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).
- R4-39-106. Requirements for a Conditional License to Operate a Private Non-accredited Degree-granting Institution in Arizona**
- A.** A person shall not operate a private non-accredited degree-granting institution without a conditional license granted by the Board.
- B.** Except as specified in subsection (B)(4), the Board shall not grant a conditional license to an applicant, if:
1. Within 10 years before filing the application packet required in subsection (D), an individual with at least 20 percent ownership in the applicant or an officer or employee who controls, manages, or represents the applicant in this state has been convicted in this state or any jurisdiction of any crime, regardless of whether the crime is a misdemeanor or felony, that a reasonable person would consider relevant to the legal and ethical operation of an educational institution;
 2. Within 10 years before filing the application packet required in subsection (D), a person with at least 20 percent ownership in the applicant or an officer or employee who controls, manages, or represents the applicant in this state has had a license to operate a vocational or degree-granting institution revoked in this state or any jurisdiction; or
 3. The applicant provides false or misleading information on or with an application required by this Section; and
 4. If the conviction described in subsection (B)(1) was discharged, expunged, set aside, or vacated, the Board shall consider this fact when exercising its discretionary power under this Section.
- C.** The Board shall grant a conditional license to an applicant if the applicant submits an application and:
1. The application includes the information required in subsection (D); and
 2. The information provided demonstrates:
 - a. Compliance with A.R.S. §§ 32-3021(B)(1) through (11) and 32-3022(C); and
 - b. The ability to provide educational services as represented to the public.
- D.** An applicant for a conditional license shall submit to the Board an application packet that includes:
1. The filing fee required under R4-39-201;
 2. The information and documentation required in R4-39-104(D)(2) through (D)(17);
 3. The name of each accrediting agency to which the applicant will apply for accreditation of the applicant's programs or the institution through which the programs are offered;
 4. For each accrediting agency named under subsection (D)(3), attestation by the individual signing the application that the applicant has read and understands documentation published or provided by the accrediting agency that explains the accrediting agency's accreditation process, including eligibility requirements, application procedures, self-evaluation processes and requirements, accreditation criteria or standards, and accrediting team visits; and
 5. A chronological timeline identifying the applicant's projected progress in gaining accreditation from each accrediting agency named under subsection (D)(3).
- E.** If the Board grants a conditional license to an applicant, the conditional licensee shall:
1. Notify the Board in writing within 24 hours if the licensee:
 - a. Is determined by an accrediting agency named under subsection (D)(3) to be ineligible to apply for accreditation with the accrediting agency;
 - b. Is precluded from initiating or continuing in the accreditation process by an accrediting agency named under subsection (D)(3);
 - c. Is denied accreditation by an accrediting agency named under subsection (D)(3); or
 - d. Knows or should know that an investigation of the licensee is being or was conducted by a state or federal agency or an accrediting agency;
 2. Within five days of:
 - a. Receipt, submit to the Board a copy of any document from an accrediting agency named under subsection (D)(3) that pertains to the licensee's progress in gaining accreditation from the accrediting agency; and
 - b. Mailing or sending, submit to the Board a copy of any document mailed or sent by the licensee to an accrediting agency named under subsection (D)(3) that pertains to the licensee's progress in gaining accreditation from the accrediting agency; and
 3. Within 10 days after determining that the licensee failed to meet the timeline submitted under subsection (D)(5), submit written notice of the failure to the Board.
- F.** Before granting a conditional license, the Board shall conduct an inspection, under A.R.S. § 41-1009, of an applicant's place of business to determine compliance with subsection (C).
- G.** If the Board grants a conditional license to an applicant, while licensed, the conditional licensee:
1. Shall not describe or refer to itself using the terms "licensed," "approved," or "accredited;" and
 2. May describe or refer to itself using the terms "conditionally licensed" or "conditional license."
- H.** The Board may conduct an inspection under A.R.S. § 41-1009 of a licensee's place of business to determine compliance with the requirements of this Article.
- I.** As provided in A.R.S. § 32-3051, the Board may discipline a licensee that:

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1. Violates a requirement in subsection (E), or
2. Intentionally or negligently misrepresents any material information in documents or testimony presented to the Board.

Historical Note

Adopted effective June 27, 1985 (Supp. 85-3). Amended effective October 10, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-107. Requirements for a Provisional License to Continue to Operate a Private Non-accredited Degree-granting Institution in Arizona

- A.** Except as specified in subsection (A)(7), the Board shall not grant or renew a provisional license to an applicant if:
1. Since the start date of the current licensure period, an individual with at least 20 percent ownership in the applicant or an officer or employee who controls, manages, or represents the applicant in this state has been convicted in this state or any jurisdiction of a any crime regardless of whether the crime is a misdemeanor or felony, that a reasonable person would consider relevant to the legal and ethical operation of an educational institution;
 2. Since the start date of the current licensure period, a person with at least 20 percent ownership in the applicant or an officer or employee who controls, manages, or represents the applicant in this state has had a license to operate a vocational or degree-granting institution revoked in this state or any jurisdiction;
 3. The applicant provides false or misleading information on or with an application required by this Section;
 4. The applicant fails to apply for accreditation as required under R4-39-106(D)(3) or fails to make progress consistent with the chronological timeline specified under R4-39-106(D)(5) for three consecutive renewal periods;
 5. The applicant was previously licensed by the Board and ceased to operate without complying with R4-39-402 and R4-39-406; or
 6. The applicant ceased to operate or offer a program and as a result:
 - a. The Board was obligated to make a payment from the Student Tuition Recovery Fund established under A.R.S. § 32-3072, or
 - b. The DE or a private entity forgave loans, in whole or in part, to affected students; and
 7. If the conviction described in subsection (A)(1) was discharged, expunged, set aside, or vacated, the Board shall consider this fact when exercising its discretionary power under this Section.
- B.** The Board shall grant or renew a provisional license to an applicant if the applicant submits an application and:
1. The application includes the information required in subsection (C); and
 2. The information provided demonstrates:
 - a. Compliance with A.R.S. §§ 32-3021(B)(1) through (11) and 32-3022(C);
 - b. The ability to provide educational services as represented to the public; and
 - c. Progress in gaining accreditation from each accrediting agency named under R4-39-106(D)(3).
- C.** No later than 60 days before expiration of a licensee's conditional or provisional license, an applicant for an initial or renewed provisional license shall submit to the Board an application packet that includes:
1. The filing fee required under R4-39-201;

2. The information and documentation required in R4-39-104(D)(2) through (D)(5), (D)(8)(a) and (c), (D)(9), (D)(10), (D)(12), (D)(14), (D)(15), and (D)(17);
 3. A report on the annual enrollment and retention and placement rates for each program offered;
 4. Documents that demonstrate the applicant met the chronological timeline submitted under R4-39-106(D)(5); and
 5. Copies of application documents and all correspondence with all accrediting agencies named under R4-39-106(D)(3), if applicable.
- D.** A licensee that fails to comply with subsection (C) and allows the licensee's conditional or provisional license to expire shall:
1. Comply with subsection (C) within 30 days after the license expires, and
 2. Pay the late renewal fee prescribed under A.R.S. § 32-3027(A)(7); or
 3. Immediately cease operating in this state.
- E.** A licensee shall:
1. Notify the Board in writing by the next business day if the licensee:
 - a. Is determined by an accrediting agency named under R4-39-106(D)(3) to be ineligible to apply for accreditation with the accrediting agency;
 - b. Is precluded from initiating or continuing in the accreditation process by an accrediting agency named under R4-39-106(D)(3);
 - c. Is denied accreditation by an accrediting agency named under R4-39-106(D)(3);
 - d. Knows or should know that the licensee is or was under investigation by a state or federal agency or an accrediting agency; or
 - e. Decides to cease operations;
 2. Within five days of:
 - a. Receipt, submit to the Board a copy of any document from an accrediting agency named under R4-39-106(D)(3) that pertains to the licensee's progress in gaining accreditation from the accrediting agency; and
 - b. Mailing or sending, submit to the Board a copy of any document mailed or sent by the licensee to an accrediting agency named under R4-39-106(D)(3) that pertains to the licensee's progress in gaining accreditation from the accrediting agency; and
 3. Within 10 days after determining that the licensee failed to meet the timeline submitted under subsection R4-39-106(D)(5), submit written notice of the failure to the Board.
- F.** The Board may conduct an inspection, under A.R.S. § 41-1009, of a licensee's place of business to determine compliance with the requirements of this Article.
- G.** As provided in A.R.S. § 32-3051, the Board may discipline a licensee that:
1. Violates a requirement in subsection (E),
 2. Intentionally or negligently misrepresents any material information in documents or testimony presented to the Board, or
 3. Fails to comply fully with subsection (C) or (D) but continues to operate in this state.

Historical Note

Adopted effective June 27, 1985 (Supp. 85-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective October 10, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

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R4-39-108. Surety Bond, Cash Deposit, or Letter of Credit; Insurance; Financial Statement Requirements; and Finance Committee

- A.** An applicant or licensee under R4-39-104, R4-39-105, R4-39-106, or R4-39-107 shall have a surety bond, cash deposit, or letter of credit as required under A.R.S. § 32-3023(A). The Board shall determine the dollar amount of the surety bond, cash deposit, or letter of credit under A.R.S. § 32-3023(C).
- B.** The Board may require an applicant or licensee under R4-39-103 or R4-39-110(D) or (E) have a surety bond, cash deposit, or letter of credit as allowed under A.R.S. § 32-3023(B). The Board shall determine whether a surety bond, cash deposit, or letter of credit is required of an applicant or licensee under R4-39-103 or R4-39-110(D) or (E) and if so, the amount of the surety bond, cash deposit, or letter of credit. In determining whether and the amount of surety bond, cash deposit, or letter of credit to require, the Board shall consider the following factors:
- Whether the institution has sources of funding other than tuition and the percentage of the institution's funding contributed by the other sources;
 - The amount of time programs offered by the institution require for completion; and
 - The criteria regarding financial responsibility specified under subsection (I)(4).
- C.** The Board shall use the following guidelines to determine the amount of surety bond, cash deposit, or letter of credit to require of an applicant or licensee:
- The minimum amount required for applicants and licensees is \$15,000;
 - Additional amounts required of an accredited institution:
 - If the annual GTR is less than \$400,000, 15 percent of annual GTR; and
 - If the annual GTR is \$400,000 or more, 10 percent of annual GTR; and
 - Additional amounts required of a non-accredited institution:
 - If the annual GTR is less than \$400,000, 20 percent of annual GTR; and
 - If the annual GTR is \$400,000 or more, 15 percent of annual GTR.
- D.** An applicant or licensee that meets the requirement under subsection (A) or (B) with a surety bond shall purchase the surety bond from a surety company that has a rating of A or higher from a national rating service.
- E.** An applicant or licensee shall:
- Have and maintain with an insurance company authorized to transact business in this state coverage that is adequate to protect the applicant or licensee's assets in the event of damage or a finding of liability:
 - For an applicant or licensee with annual GTR of \$1,000,000 or more:
 - A minimum single occurrence of \$1,000,000 for educators' errors and omissions or malpractice liability insurance; and
 - A minimum single occurrence of \$1,000,000 for general liability coverage for operation of the institution;
 - For an applicant or licensee with annual GTR more than \$500,000 but less than \$1,000,000:
 - A minimum single occurrence of not less than the previous year's GTR plus 10 percent for educators' errors and omissions or malpractice liability insurance; and
 - A minimum single occurrence not less than the previous year's GTR plus 10 percent of general liability coverage for the operation of institution;
 - For an applicant or licensee with annual GTR equal to or less than \$500,000:
 - A minimum single occurrence of not less than \$500,000 for educators' errors and omissions or malpractice liability insurance; and
 - A minimum single occurrence not less than \$500,000 of general liability coverage for the operation of institution; or
- F.** An applicant or licensee shall submit to the Board a fiscal year-end financial statement that complies with the following requirements:
- If the applicant or licensee has annual GTR greater than \$350,000:
 - Is prepared and compiled, reviewed, or audited by a certified public accountant in accordance with generally accepted accounting principles; and
 - Includes a statement of cash flows and disclosures; or
 - If the applicant or licensee has annual GTR equal to or less than \$350,000:
 - Is compiled, reviewed, or audited in accordance with generally accepted accounting principles; and
 - Includes supporting documentation requested by the Board; and
 - Includes additional financial information if required by the Board under subsections (G) and (H).
- G.** The Board shall require an applicant or licensee to submit additional financial documentation if:
- The fiscal year-end financial statement is for a reporting period that ended more than six months before the date of license application; or
 - The applicant has not previously operated in this state or any other jurisdiction.
- H.** The Board may require an applicant or licensee to submit additional financial documentation if:
- The Board has concerns based on the applicant's or licensee's responses to questions regarding the distribution of ownership, business type, and legal structure; or
 - The financial documentation submitted shows:
 - Current ratio of assets to liabilities less than 1:1,
 - Current negative net worth,
 - Net losses during each of the last two years,
 - Subject to additional DE reporting requirements or has a composite score of less than 1.5,
 - Current cash reserves are insufficient to make required refunds,
 - Current financial obligations are not being met,
 - Applicant or licensee has a history of revocation or negative action in this or another state,
 - Current negative cash flow, or
 - Financial responsibility standards for accreditation are not being met.
- I.** The Board shall appoint a Finance Committee that consists of at least three member of the Board:
- The Finance Committee shall comply with the open meeting requirements at A.R.S. Title 38, Chapter 3, Article 3.1.
 - The Finance Committee shall assess the financial responsibility of an applicant or licensee.
 - If the Finance Committee determines that the information submitted under this Section is not sufficient to demonstrate that an applicant or licensee has financial responsi-

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- bility, the Finance Committee shall work with the applicant or licensee to improve the demonstration.
4. After reviewing the information submitted under this Section, the Finance Committee shall determine that the applicant or licensee:
 - a. Has demonstrated financial responsibility and grant a license;
 - b. Has not demonstrated financial responsibility but grant a license contingent on the licensee doing one or more of the following:
 - i. Submitting quarterly reports,
 - ii. Submitting a financial improvement plan,
 - iii. Submitting two-year financial projections, and
 - iv. Posting a surety bond, cash deposit, or letter of credit that exceeds the amount determined under subsection (C);
 - c. Has not demonstrated financial responsibility and postpone action to allow the applicant or licensee to provide additional information; or
 - d. Has not demonstrated financial responsibility and refer the matter to the whole Board for Board action.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended effective November 6, 1998 (Supp. 98-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-109. Supplemental License Applications

- A. A licensee shall submit to the Board an application for a supplemental license at least 45 days before doing any of the following:
 1. Offering a new or additional vocational or degree-granting program;
 2. Operating from a new or additional location; or
 3. Changing the name of the licensed institution.
- B. The Board shall grant a supplemental license to a private vocational or degree-granting institution if the Board determines that the supplemental license application submitted under subsection (A) complies with A.R.S. §§ 32-3021 through 32-3051 and this Chapter.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Section R4-39-109 repealed; new Section R4-39-109 renumbered from R4-39-110 and amended effective November 6, 1998 (Supp. 98-4). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-110. Change of Ownership or Control

- A. In this Section, "change of ownership or control" is indicated by the following:
 1. For a privately held corporation whose control is vested in those who control the voting stock of the corporation:
 - a. At least 50 percent of the voting stock changes from one owner to another within a five-year period; or
 - b. At least 50 percent of the assets of the corporation are sold regardless of whether the sale is called an asset or securities purchase, a stock or share exchange, or something else;
 2. For a publicly traded corporation whose control is vested in the voting members of the board of directors:
 - a. At least 50 percent of the voting members of the board of directors change within a 12-month period, or

- b. At least 50 percent of the assets of the publicly traded corporation are sold regardless of whether the sale is called an asset or securities purchase, a stock or share exchange, or something else;
3. For a non-profit corporation whose control is vested in the voting members of the board of trustees:
 - a. At least 50 percent of the voting members of the board of trustees change within a 12-month period, or
 - b. The chief executive officer of the non-profit corporation changes;
4. For a limited partnership whose control is vested in a corporate general partner, the corporate general partner:
 - a. Has a change of ownership or control as determined under subsections (A)(1) through (A)(3); or
 - b. At least 50 percent of the assets of the corporate general partner are sold regardless of whether the sale is called an asset or securities purchase, a stock or share exchange, or something else;
5. For a limited liability company whose control is vested in members who control a majority of the interest in the company:
 - a. At least 50 percent interest changes within a 12-month period; or
 - b. At least 50 percent of the assets of the limited liability company are sold regardless of whether the sale is called an asset or securities purchase, a stock or share exchange, or something else;
6. For a sole proprietor or a limited partnership that is not described in subsection (A)(4), if at least 50 percent interest changes within a five-year period; and
7. For any business entity described in subsections (A)(1) through (A)(6), when the entity changes from one business form to another including when a non-profit entity becomes a for-profit entity or when a privately held corporation becomes a publicly traded corporation.
- B. If assets are sold under subsection (A)(1), (A)(2), (A)(4), or (A)(5), regardless of whether the sale is called an asset or securities purchase, a stock or share exchange, or something else, the sale must transfer liabilities for students enrolled at the time of closing.
- C. For the purposes of this Section, assets and liabilities are determined according to generally accepted accounting principles.
- D. A change of ownership or control does not occur under subsection (A) if an interest is transferred by operation of law or inheritance to a parent, grandparent, spouse, or child.
- E. A licensee shall, within seven days, notify the Board in writing and explain the following:
 1. A change of ownership or control as described under subsection (A); or
 2. A change of interest or of the voting members of the board of directors of more than 20 percent but less than 50 percent.
- F. No later than 60 days after the date on the notice provided under subsection (E), a licensed private accredited institution shall submit to the Board a license application packet that includes:
 1. The filing fee required under R4-39-201(E);
 2. Either:
 - a. Information and documentation specified in R4-39-103 (D)(3) through (D)(10), as applicable, R4-39-104(D)(2), if required, and (D)(3) through (D)(6), (D)(8)(a) and (c) through (D)(12), (D)(14), and (D)(17); or
 - b. If required by an accrediting agency that accredits the licensee's programs or the institution through

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- which the programs are offered, a copy of change of ownership documents submitted by the licensee to the accrediting agency;
3. Attestation that the applicant will assume financial responsibility, as required under R4-39-404(C), for all student tuition refunds for which the institution has an obligation; and
 4. Other information determined by the Board to be relevant to determining the applicant's compliance with licensing requirements under A.R.S. Title 32, Chapter 30 and this Article.
- G.** No later than 60 days after the date on the notice provided under subsection (E), a licensed private non-accredited institution shall submit to the Board a license application packet that includes:
1. The filing fee required under R4-39-201(E);
 2. For a private non-accredited vocational institution, information and documentation specified in R4-39-104 (D)(3)through (D)(6), (D)(8)(a) and (c), (D)(12) through(D)(14) and (D)(17);
 3. For a private non-accredited degree-granting institution, information and documentation specified in R4-39-103(D)(3) through (D)(10), as applicable, R4-39-104(D)(2) through (D)(6), (D)(8)(a) and (c), (D)(12) through (D)(14) and (D)(17);
 4. Attestation that the applicant will assume financial responsibility, as required under R4-39-404(C), for all student tuition refunds for which the institution has a financial obligation; and
 5. Other information determined by the Board to be relevant to determining the applicant's compliance with licensing requirements under this Article.
- H.** Except as specified in subsection (H)(6), the Board shall not grant a license as a result of a change of ownership or control to an applicant if:
1. Within 10 years before filing the application packet required in subsection (G) or (H) or since the start date of the current licensure period, an individual with at least 20 percent ownership in the applicant or an officer or employee who controls, manages, or represents the applicant in this state has been convicted in this state or any jurisdiction of any crime, regardless of whether the crime is a misdemeanor or felony, that a reasonable person would consider relevant to the legal and ethical operation of an educational institution;
 2. Within 10 years before filing the application packet required in subsection (G) or (H) or since the start date of the current licensure period, a person with at least 20 percent ownership in the applicant or an officer or employee who controls, manages, or represents the applicant in this state has had a license to operate a vocational degree-granting institution revoked in this state or any jurisdiction;
 3. The applicant provides false or misleading information on or with the application required by this Section;
 4. The applicant was previously licensed by the Board and ceased operation without complying with R4-39-402 and R4-39-406; or
 5. The applicant ceased to operate or offer a program and as a result:
 - a. The Board was obligated to make a payment from the Student Tuition Recovery Fund established under A.R.S. § 32-3072, or
 - b. The DE or a private entity forgave loans, in whole or in part, to affected students; and
 6. If the conviction described in subsection (H)(1) was discharged, expunged, set aside, or vacated, the Board shall consider this fact when exercising its discretionary power under this Section.
- I.** The Board shall grant a license as a result of a change of ownership or control, if the applicant:
1. Demonstrates compliance with A.R.S. §§ 32-3021 through 32-3027, as applicable; and
 2. Meets the application requirements in subsection (F) or (G).
- J.** The Board may conduct an inspection, under A.R.S. § 41-1009, of an applicant's or licensee's place of business to determine compliance with the requirements of A.R.S. Title 32, Chapter 30 and this Article.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended effective February 23, 1993 (Supp. 93-1). R4-39-110 renumbered to R4-39-109; new Section R4-39-110 renumbered from R4-39-111 and amended (Supp. 98-4). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-111. Honorary Degrees

- A.** Only a currently licensed, accredited private degree-granting institution may apply to award an honorary degree. Before offering to grant or granting an honorary degree, a currently licensed, accredited private degree-granting institution shall submit an application for a supplemental license for an honorary degree to the Board for the Board's verification, review, and administrative action.
- B.** The Board shall approve the application for a supplemental license for an honorary degree if the honorary degree is consistent with the institution's currently offered degree-granting programs.
- C.** An accredited private degree-granting institution whose application for a supplemental license for an honorary degree is approved shall ensure that the honorary degree identifies in its title or name and bears on its face that it is an honorary degree.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). R4-39-111 renumbered to R4-39-110; new Section R4-39-111 renumbered from R4-39-112 and amended effective November 6, 1998 (Supp. 98-4). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-112. Repealed**Historical Note**

Adopted effective May 21, 1985 (Supp. 85-3). Repealed effective November 6, 1998 (Supp. 98-4).

ARTICLE 2. FEES**R4-39-201. Fees**

- A.** The filing fee for a license to operate a private vocational or degree-granting institution is \$800.
- B.** The annual filing fee for a license renewal to continue to operate a private vocational or degree-granting institution is the following amount based on the institution's annual GTR:
1. Less than \$50,000 annual GTR, \$600;
 2. \$50,000/\$249,999 annual GTR, \$750;
 3. \$250,000/499,999 annual GTR, \$1,000;
 4. \$500,000/\$999,999 annual GTR, \$1,300;
 5. \$1,000,000/\$2,499,999 annual GTR, \$1,650;
 6. \$2,500,000/\$6,999,999 annual GTR, \$2,000; or

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7. \$7,000,000 or more annual GTR, \$2,300.
- C. The filing fee for each application for a supplemental license to offer a new or additional private vocational or degree-granting program is \$500.
- D. The filing fee for each application for a supplemental license to offer a private vocational or degree-granting program from a new or additional location is \$500.
- E. The filing fee for an application for a supplemental license to continue to operate a private vocational or degree-granting institution following a change of ownership or control is \$500.
- F. The fee for an onsite verification or inspection is the actual cost incurred or \$500, whichever is less.
- h. Licensure requirements for a graduate to practice, if any;
7. Any allowable student tuition reductions, discounts, and scholarships and educational loans that comply with R4-39-308;
8. Any available student payment schedules and financing options that comply with R4-39-308;
9. Student eligibility requirements for tuition reductions, discounts, and scholarships, educational loans, payment schedules, and financing options, if applicable;
10. Refund policies that comply with R4-39-308 and R4-39-404;
11. Any student services provided by the licensee;
12. A description of:

Historical Note

Adopted effective June 27, 1985 (Supp. 85-3). Section R4-39-201 repealed, new Section R4-39-201 adopted effective May 19, 1988 (Supp. 88-2). Emergency amendments adopted effective January 12, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency amendments adopted again effective April 12, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2). Emergency amendments adopted again effective July 12, 1993 (Supp. 93-3). Amendments permanently adopted with changes effective October 12, 1993 (Supp. 93-4). Amended effective November 6, 1998 (Supp. 98-4). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

ARTICLE 3. OPERATION OF PRIVATE NON-ACCREDITED INSTITUTIONS**R4-39-301. Catalog**

- A. A licensee offering a non-accredited program shall ensure that the licensee has a catalog that includes the following information:
1. The licensee's:
 - a. Name;
 - b. Street, mailing, e-mail, and web site addresses, if applicable; and
 - c. Telephone and fax numbers;
 2. If the licensee has a headquarters in another state or jurisdiction, the headquarters':
 - a. Street, mailing, e-mail, and web site addresses, if applicable; and
 - b. Telephone and fax numbers;
 3. The effective date of the catalog;
 4. The names and titles of:
 - a. All members of any board of directors or board of trustees,
 - b. All individuals responsible for managing the licensee in this state, and
 - c. All members of executive management who live outside this state;
 5. A list of all programs offered by the licensee;
 6. For each program to be offered:
 - a. A topical outline, including a statement of purpose, objectives, subjects, units, skills, and jobs to be learned in the program, and the number of clock, credit, or semester hours to be spent by the student in each phase of the program;
 - b. Any program prerequisites and completion requirements;
 - c. Tuition and student fees;
 - d. Any required equipment or technology;
 - e. Any required competencies;
 - f. Any clinical training, practica, externships, internships, or special features of the program;
 - g. Any graduate employment opportunities; and

- a. Educational delivery systems used in the program, including classroom-based instruction, directed study, distance education, and online computer-based learning; and
 - b. Available library resources;
13. For licensees operating on an academic calendar, identification of:
- a. Start and end dates for each semester, quarter, term, or session offered; and
 - b. Vacation periods and holidays; or
 - c. Explanation of the enrollment period;
14. Policies and regulations governing:
- a. Admission requirements or program enrollment;
 - b. Program or course cancellation;
 - c. Grading procedures;
 - d. Change in student status, including:
 - i. Leave of absence;
 - ii. Readmission; and
 - iii. Probation, suspension, or expulsion;
 - e. Standards for satisfactory academic progress;
 - f. Graduation requirements;
 - g. Grade reports and transcripts; and
 - h. As applicable:
 - i. Student attendance; and
 - ii. Credit for previous education, training, work, or life experience; and
15. Student grievance procedure that meets the requirements at R4-39-104(D)(12).

- B. A licensee offering a non-accredited program shall make the catalog required under subsection (A) available to students and prospective students in a written or electronic format.
- C. Within 10 days from the date a licensee offering a non-accredited program revises the catalog required under subsection (A) or publishes a new catalog, the licensee shall submit to the Board a written or electronic copy of the revised or new catalog.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-302. Facilities and Equipment

- A. A licensee offering a non-accredited program shall ensure that the:
1. Building, classrooms, equipment, furniture, grounds, instructional devices, and other physical facilities of the licensee are appropriate to achieve the educational objectives of the institution;
 2. Physical facility and equipment comply with all:

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- a. Safety requirements and health standards of the city, county, state, and any other authority in which the facility is located; and
- b. Local and state planning, building, zoning, and fire codes; and
- 3. Insurance required under R4-39-108 is adequate to protect the assets of the licensee in the event of damage or a finding of liability.
- B.** A licensee offering a non-accredited program shall comply with R4-39-109 before offering the non-accredited program from an unlicensed, new, or additional location.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended by final rulemaking at 5 A.A.R. 4451, effective November 3, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-303. Staff

- A.** A licensee offering a non-accredited program shall ensure that:
 - 1. The licensee has an on-site director who is qualified under subsection (B) and designated to carry out the duties under subsection (C);
 - 2. Each staff member communicates information regarding the licensee, programs, and educational services that is true and as represented in the licensee's catalog, required under R4-39-301, and brochures, promotional materials, or advertisements provided to or intended for students or potential students;
 - 3. The licensee has sufficient staff to provide instruction and educational services as represented in the licensee's catalog, required under R4-39-301, and brochures, promotional materials, or advertisements provided to or intended for students or potential students; and
 - 4. Instruction and services are provided to a student as represented in the licensee's catalog, required under R4-39-301, and brochures, promotional materials, or advertisements provided to the student.
- B.** A licensee offering a non-accredited program shall employ an on-site director who is qualified as follows:
 - 1. Is of good moral character; and
 - 2. Has academic, administrative and supervisory experience the Board determines is consistent with the ability to operate and deliver a non-accredited program.
- C.** The on-site director designated under subsection (A)(1) shall:
 - 1. Supervise the day-to-day operation of the licensee;
 - 2. For each program to be offered by the licensee, implement a curriculum capable of preparing a student enrolled in the program:
 - a. To achieve the program's occupational objective,
 - b. To complete requirements for the program degree or other credential, and
 - c. To obtain a specific entry-level job covered in the program;
 - 3. Ensure that all faculty members meet the requirements in subsection (D) or (E); and
 - 4. Develop and implement a plan, with specific goals, benchmarks, and time frames, for faculty improvement.
- D.** A licensee offering a non-accredited vocational program shall ensure that a faculty member has:
 - 1. At least two years of practical work experience in the subject the faculty member is teaching unless the faculty member is teaching in an emerging discipline in which case the Board shall consider an alternative standard to determine qualification of the faculty member;
 - 2. Postsecondary education in the subject the faculty member is teaching from an accredited institution or an institution licensed to operate as a postsecondary educational institution by the state in which the faculty member received the postsecondary education;
 - 3. Taken teacher-training courses appropriate to the level of qualification required by the program offered; and
 - 4. Maintained professional competence by participating in continuing education.
- E.** A licensee offering a non-accredited degree-granting program shall ensure that a faculty member has:
 - 1. At least two years of practical work experience in the subject the faculty member is teaching;
 - 2. A degree from an accredited institution equal to or exceeding the degree awarded to a graduate of the program in which the faculty member is teaching;
 - 3. Taken teacher-training courses appropriate to the level of qualification required by the program offered; and
 - 4. Maintained professional competence by participating in continuing education.
- F.** A licensee offering a non-accredited program shall ensure that:
 - 1. Within 30 days after the director designated under subsection (A) resigns, is terminated, or is otherwise unable to fulfill all responsibilities established under subsection (C), the Board is notified in writing; and
 - 2. Within 30 days after the licensee designates a new director, a completed form, which is available from the Board, describing the new director's professional and educational background is submitted to the Board.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended by final rulemaking at 5 A.A.R. 4451, effective November 3, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-304. Advertising

- A.** A licensee offering a non-accredited program shall ensure that all advertising is truthful and does not include a false or misleading statement about the institution, personnel, faculty, courses, diploma or certificate awarded, services, or occupational opportunities for a graduate.
- B.** The Board may institute disciplinary proceedings against a licensee offering a non-accredited program or the licensee's representative for false or misleading advertising.
- C.** A licensee offering a non-accredited program shall not solicit students in:
 - 1. The "help wanted" section of a newspaper, magazine, or other publication, regardless of whether the publication is printed or online; or
 - 2. Employment or unemployment lines in which individuals stand while seeking work or benefits.
- D.** A licensee offering a non-accredited program shall not use any form of the word "guarantee" or "free" in solicitations or advertising in:
 - 1. A brochure, catalog, bulletin, leaflet, or other publication of the licensee; or
 - 2. A newspaper, magazine, or similar publication, regardless of whether the publication is printed or online.
- E.** A licensee offering a non-accredited program shall ensure that all printed advertising includes the name, phone number, and address of the licensee.
- F.** The Board shall review the catalog, brochure, promotional document, uniform resource locator, student enrollment agreement, and other materials submitted under R4-39-104 to

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ensure the materials comply with the requirements of this Section.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Former Section R4-39-304 repealed; new Section R4-39-304 renumbered from R4-39-305 and amended by final rulemaking at 5 A.A.R. 4451, effective November 3, 1999 (Supp. 99-4). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-305. Recruitment

- A. A licensee offering a non-accredited program shall ensure that all information contained in the licensee's catalog, required under R4-39-301, and in brochures, promotional materials, and advertisements provided to or intended for students or potential students is true.
- B. During student recruitment or before a student signs an enrollment agreement, a licensee offering a non-accredited program:
 1. May provide a student tuition reduction, discount, or scholarship, or educational loan only as authorized under R4-39-308; and
 2. Shall not guarantee employment to a prospective student.
- C. A licensee offering a non-accredited program shall ensure that a staff member responsible for student recruitment or student admission:
 1. Uses only those titles that accurately reflect the staff member's actual duties and responsibilities;
 2. Is not designated as a counselor or advisor; and
 3. Does not make final decisions regarding tuition, student fees, tuition reduction, discounts, or scholarships, educational loans, payment schedules, financing options, or refunds.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended effective February 23, 1993 (Supp. 93-1). Former Section R4-39-305 renumbered to R4-39-304; new Section R4-39-305 renumbered from R4-39-306 and amended by final rulemaking at 5 A.A.R. 4451, effective November 3, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-306. Admission Requirements

- A. A licensee offering a non-accredited program shall establish, publish, and administer admission requirements.
- B. If an entrance exam is required for admission, a licensee offering a non-accredited program shall:
 1. Set a minimum passing score for admission that is consistent with the standard established by the exam developer,
 2. Admit only an individual who obtains the minimum passing score on the entrance exam,
 3. Maintain a copy of the completed entrance exam in the student's permanent record, and
 4. Not allow an individual who fails the entrance exam to take the exam again within 30 days.
- C. If an entrance exam is not required for admission, a licensee offering a non-accredited program shall admit only an individual who demonstrates the ability to satisfactorily complete the prescribed training through:
 1. Initial interview,
 2. Letter of recommendation,
 3. High school diploma, certificate of high school equivalency, or completion of a secondary education in a home school setting that complies with all state law;
 4. Official educational transcripts; or

5. Other requirements established by the licensee.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Former Section R4-39-306 renumbered to R4-39-305; new Section R4-39-306 renumbered from R4-39-307 and amended by final rulemaking at 5 A.A.R. 4451, effective November 3, 1999 (Supp. 99-4). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-307. Placement

If a licensee offering a non-accredited program offers placement services to a student, the licensee shall:

1. Maintain evidence of a student referral for job placement that includes the following information:
 - a. The name of the student referred,
 - b. The name of the prospective employer,
 - c. Result of referral, and
 - d. Final placement or other disposition;
2. Prepare a student for placement by instructing the student in:
 - a. Resume preparation and interviewing procedures,
 - b. Appropriate dress and personal grooming, and
 - c. Conduct on the job;
3. Ensure that a student or graduate understands that a list of potential employers given to the student or graduate by the licensee is not a referral or offer of placement; and
4. Ensure that each student application clearly indicates that job placement is not guaranteed to a graduate or student.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended effective February 23, 1993 (Supp. 93-1). Former Section R4-39-307 renumbered to R4-39-306; new Section R4-39-307 renumbered from R4-39-308 and amended by final rulemaking at 5 A.A.R. 4451, effective November 3, 1999 (Supp. 99-4). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-308. Tuition, Pricing, and Refund Policies

- A. A licensee offering a non-accredited program may charge students enrolled in the same program different tuition and student fees, only:
 1. After publishing notice of a program price change to be effective for all students enrolling in the program or starting classes on or after a specified date;
 2. For students who have chosen to modify programs or services so that a tuition reduction is warranted;
 3. For students requiring additional services or otherwise incurring additional charges;
 4. For students who are eligible for tuition reductions associated with payment schedules, financing options, or educational loans;
 5. For students meeting tuition discount eligibility requirements in subsection (B); or
 6. For students receiving tuition scholarships under subsection (C).
- B. A licensee offering a non-accredited program that offers a tuition discount shall:
 1. Publish in the licensee's catalog, required under R4-39-301, allowable tuition discounts and student eligibility requirements for each tuition discount, including tuition discounts for students:
 - a. Enrolling as part of a group,
 - b. Who are similarly situated, or
 - c. Enrolling under the same program or course schedule; and

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2. Make tuition discounts available to all students who meet eligibility requirements.
- C. A licensee offering a non-accredited program that offers a full or partial tuition scholarship shall:
1. Publish in the institution's catalog, required under R4-39-301, available tuition scholarships and student eligibility requirements for each tuition scholarship, including terms, conditions, application procedures, deadline dates, basis for selection, range of award amounts, and aggregate award amounts; and
 2. Objectively evaluate all applicants for tuition scholarships, and award tuition scholarships only to students who meet eligibility requirements.
- D. A licensee offering a non-accredited program that offers a full or partial educational loan shall:
1. Publish in the licensee's catalog, required under R4-39-301, available full or partial educational loans and student eligibility requirements for each full or partial educational loan, including terms, conditions, application procedures, deadline dates, range of loan amounts, aggregate loan amounts, interest rates, and loan repayment requirements;
 2. Make the full or partial educational loans available to all students who meet eligibility requirements; and
 3. Offer and administer the full or partial educational loans as required under R4-39-406.
- E. A licensee offering a non-accredited program that offers payment schedules or financing options shall:
1. Publish in the licensee's catalog, required under R4-39-301, payment schedules and financing options and student eligibility requirements for each payment schedule and financing option, including terms and conditions, application procedures, interest rates, and monthly payments; and
 2. Make the payment schedules and financing options available to all students who meet eligibility requirements.
- F. A licensee offering a non-accredited program:
1. Shall not require a prospective student to make a non-refundable payment until the prospective student signs an enrollment agreement and is accepted for enrollment, and
 2. Shall ensure that a prospective student understands the prospective student's rights under R4-39-404.
- G. A licensee offering a non-accredited program shall have a refund policy that:
1. Applies to all students,
 2. Meets the requirements in R4-39-404, and
 3. Is described using identical language in both the catalog that is required under R4-39-301 and the student enrollment agreement that is required under R4-39-104 and meets the standards at R4-39-401.
- H. A licensee offering a non-accredited program shall ensure that all student tuition, student fees, tuition reductions, discounts, and scholarships, educational loans, payment schedules, financing options, and refund policies applicable to a student are:
1. Fully disclosed in writing on a student's enrollment agreement or applicable financial documents;
 2. Consistent with information in the licensee's catalog, required under R4-39-301, and any brochures, promotional materials, or advertisements provided to or intended for students or potential students; and
 3. Authorized under this Section.
- I. A licensee offering a non-accredited program shall:
1. Charge a student tuition and student fees as identified in writing on a student's enrollment agreement or applicable financial documents;
 2. Collect tuition and student fees from a student according to a payment schedule or financing option identified in writing on a student's enrollment agreement or applicable financial documents; and
 3. Refund tuition and student fees charged to a student according to the refund policy identified in writing on a student's enrollment agreement or applicable financial documents.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended effective February 23, 1993 (Supp. 93-1). Former Section R4-39-308 renumbered to R4-39-307; new Section R4-39-308 renumbered from R4-39-309 and amended by final rulemaking at 5 A.A.R. 4451, effective November 3, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-309. Renumbered**Historical Note**

Adopted effective May 21, 1985 (Supp. 85-3). Amended effective February 23, 1993 (Supp. 93-1). Section renumbered to R4-39-308 by final rulemaking at 5 A.A.R. 4451, effective November 3, 1999 (Supp. 99-4).

R4-39-310. Repealed**Historical Note**

Adopted effective May 21, 1985 (Supp. 85-3). Section repealed by final rulemaking at 5 A.A.R. 4451, effective November 3, 1999 (Supp. 99-4).

ARTICLE 4. OPERATION OF ALL LICENSED INSTITUTIONS**R4-39-401. Student Records**

- A. For students enrolled after the effective date of this Section, a licensee shall maintain records required under this Section in electronic form. The licensee shall ensure that the electronic records are not in a proprietary format and are easily searchable by student.
- B. A licensee shall maintain a complete, accurate, and permanent record for each student ever enrolled. The licensee shall ensure that the student record includes the following:
1. An enrollment agreement containing, but not limited to, the following information:
 - a. Name and address of student;
 - b. Date the program begins;
 - c. Total clock or credit hours of the program;
 - d. Payment schedule and total cost to the student;
 - e. Refund policy of the licensee;
 - f. A statement indicating that the individual signing the agreement has read and understands all aspects of the agreement;
 - g. The notice required under 16 CFR 433;
 - h. A clear statement by the licensee that the licensee does not guarantee:
 - i. Job placement to graduates when the program is complete; or
 - ii. Credits or coursework will transfer to another school, college, or university;
 - i. If the licensee requires arbitration as part of the student grievance procedure, the following statement: Arbitration of a student grievance is required. Arbitration will take place at a location reasonably convenient for both parties giving due consideration to the student's ability to travel and other pertinent cir-

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circumstances. Both parties will attempt to have proceedings take place within a reasonable time and without undue delay. The arbitration proceedings will follow the spirit if not the letter of the consumer due process protocol of the American Arbitration Association. The protocol includes but is not limited to a fundamentally fair process; an independent and impartial, competent, and qualified arbitrator; independent administration of the arbitration; reasonable cost; right to representation; and possibility of mediation. Arbitration does not preclude other avenues of recourse, including but not limited to possible relief in small claims courts, unless and until the arbitration result is made binding. Arbitration of a student grievance does not preclude the student from seeking a remedy from the Arizona Board of Private Postsecondary Education;

- j. A notice of the right to cancel the enrollment agreement within three days by complying with R4-39-404(A); and
 - k. Signature of the student and an official of the licensee;
2. Copy of the entrance exam, if applicable;
 3. A transcript;
 4. Grades received, where applicable;
 5. Student attendance information;
 6. Counseling records; and
 7. A record of all obligations incurred and all funds paid by or on behalf of the student to the licensee.
- C.** A licensee shall maintain financial aid records for each student for the length of time required by the DE.
- D.** A licensee shall make student records available and readily accessible for use and review by an authorized official of the licensee or authorized representative of the Board.
- E.** A licensee that gives credit toward a course based on job experience, training, or life experience shall record that credit in the student's official transcript, which is part of the student record required under subsection (B). The licensee shall ensure the student's official transcript shows the portion of the course for which the student is given credit based on job experience, training, or life experience.
- F.** In addition to the information required under subsections (B), and (E), a licensee shall include the following information, as applicable, in the record of a student who graduates:
1. Job placement provided, and
 2. Place of employment and beginning salary after graduation.
- G.** A licensee shall ensure that records required under this Section:
1. Whether in paper or electronic form, are maintained securely and protected against damage or loss from fire, water, theft, tampering, or other harm;
 2. Are maintained in perpetuity or submitted to the Board under R4-39-402; and
 3. Are made available and readily accessible for use and review by an authorized representative of the Board.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended by final rulemaking at 6 A.A.R. 1129, effective March 7, 2000 (Supp. 00-1). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-402. Preservation of Records

- A.** No more than 15 days after a licensee ceases operation, the licensee shall submit to the Board a legible copy of all student records required in R4-39-401. The licensee shall submit the

student records in electronic form if the records exist in electronic form. The licensee shall ensure that records in electronic form are in a non-proprietary format.

- B.** After a licensee submits records to the Board as required under subsection (A), the Board shall retain for each student the enrollment agreement, transcript, account ledger card, and a copy of the diploma or degree conferred. The Board shall retain these records according to the retention schedule approved by the Arizona State Library, Archives, and Public Records.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended effective February 23, 1993 (Supp. 93-1). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-403. Complaint Procedures

- A.** If a student has a complaint against a licensee and exhausts all available grievance procedures, including all appeals, established by the licensee, the student may file a written complaint with the Board. The student shall ensure that the complaint is filed within two years after the latest of the following. The date on which the student:
1. Last attended the licensee;
 2. Completed the licensee's grievance procedure, including all appeals; or
 3. Is able to demonstrate that the licensee failed to follow the licensee's grievance procedure.
- B.** A student who files a complaint under subsection (A) shall:
1. Use a form that is available from the Board,
 2. Sign the form and attest that all information provided is true and correct, and
 3. Attach to the form documentation that supports the allegations on which the complaint is based.
- C.** The Board shall not accept an anonymous complaint. An individual, whether a student or non-student, who files a complaint may request to remain anonymous to the licensee if the individual believes the complaint may result in adverse action towards the individual. The Board cannot, however, guarantee that disclosure of the individual's identity will not occur in the process of honoring the licensee's due process rights.
- D.** The Board shall not accept a complaint regarding a grade dispute or the licensee's employment practices or compliance with the Americans with Disabilities Act.
- E.** After a complaint committee authorized under A.R.S. § 32-3052(D) reviews the complaint and the results of the staff investigation of the complaint, the complaint committee shall take one of the actions defined under A.R.S. § 32-3052(E).
- F.** If a non-student has a complaint against a licensee, the non-student may file a written complaint with the Board. The non-student complainant shall ensure that the complaint is filed within one year from the date on which the event prompting the complaint occurred.
- G.** Subsections (B) through (E) apply to non-student complaints.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended by final rulemaking at 6 A.A.R. 1129, effective March 7, 2000 (Supp. 00-1). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-404. Tuition Refund Policy

- A.** A licensee shall allow a student or prospective student to cancel an enrollment agreement with the licensee if the student or prospective student submits a written notice of cancellation to the licensee within three days, excluding Saturday, Sunday,

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and state and federal holidays, of signing the enrollment agreement.

- B.** No later than 30 calendar days after a licensee receives a written notice of cancellation described in subsection (A), the licensee shall provide to the student or the person that paid the student's tuition and student fees a refund of 100 percent of all student fees and tuition paid.
- C.** A licensee offering an accredited program shall develop and implement policies and procedures for cancellations and tuition refunds that:
1. Are published in the catalog that meets the accreditation standards established by each accrediting agency named in R4-39-103(D)(3) and the enrollment agreement required under R4-39-401;
 2. Are applicable to all students; and
 3. Comply with:
 - a. Accreditation standards established by each accrediting agency named under R4-39-103(D)(3) or (F)(1)(a); and
 - b. DE requirements governing each federal student financial aid program in the agreement under R4-39-103(D)(6) or (F)(1)(b).
- D.** A licensee offering a non-accredited program shall develop and implement policies and procedures for cancellations and tuition refunds that:
1. Are published in the catalog required under R4-39-301 and enrollment agreement required under R4-39-401;
 2. Are applicable to all students;
 3. Are based on an established time period for each program that:
 - a. Has a prescribed student tuition obligation and tuition refund calculation; and
 - b. Does not exceed the full length of the program or one calendar year, whichever is less;
 4. Allow the licensee to retain an administrative fee or registration fee not to exceed \$200.00 if the fee is published in the catalog required under R4-39-301 and enrollment agreement required under R4-39-401;
 5. Provide the following refunds for a student who withdraws from or is terminated by the licensee:
 - a. Before beginning classes in a time period, a refund of 100 percent of the tuition charges for the time period;
 - b. If 10 percent or less of the time period used under subsection (D)(3) has expired, a refund of at least 90 percent of the tuition charges for the time period;
 - c. If more than 10 percent but less than or equal to 20 percent of the time period used under subsection (D)(3) has expired, a refund of at least 80 percent of the tuition charges for the time period;
 - d. If more than 20 percent but less than or equal to 30 percent of the time period used under subsection (D)(3) has expired, a refund of at least 70 percent of the tuition charges for the time period;
 - e. If more than 30 percent but less than or equal to 40 percent of the time period used under subsection (D)(3) has expired, a refund of at least 60 percent of the tuition charges for the time period;
 - f. If more than 40 percent but less than or equal to 50 percent of the time period used under subsection (D)(3) has expired, a refund of at least 50 percent of the tuition charges for the time period; and
 - g. If more than 50 percent of the time period used under subsection (D)(3) has expired, no refund or a refund in an amount determined by the licensee.

- E.** When calculating a refund under subsection (D)(5), a licensee offering a non-accredited program shall:
1. Use the last date of attendance as the date of withdrawal or termination to determine the percentage of time in the program that expired;
 2. Determine that a student has withdrawn from an institution if the student has not attended any class for 30 consecutive scheduled class days; and
 3. Using the date established under subsection (E)(1), base the percentage of the time expired on either clock hours elapsed for a program measured in clock hours or the number of days elapsed since the start of the period established under subsection (D)(3).
- F.** A licensee offering a non-accredited program is exempt from the requirement in subsection (D)(5), regarding refunding tuition and fees, for a program that:
1. Is less than 50 clock hours,
 2. Has a total cost of less than \$1000, and
 3. Is provided by a private non-accredited vocational institution or a private non-accredited degree-granting institution.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-405. Repealed**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2). Repealed by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-406. Ceasing to Operate or to Offer a Program; Teach-out Plan

- A.** At least 60 days before a licensee ceases to operate or to offer a program in which a student is enrolled, the licensee shall determine whether there is another institution able and willing to offer a teach-out program to students enrolled with the licensee. If another institution is able and willing to offer a teach-out program, the licensee and teach-out institution shall enter a contract with the following terms:
1. The teach-out institution shall offer each student affected by the licensee ceasing to operate or to offer a program, an opportunity to resume and complete the program in which the student is enrolled, or a substantially similar program, within a reasonable time and same geographic area as the licensee;
 2. The teach-out institution shall provide each affected student with timely notice of the availability of the teach-out program including information about differences between the teach-out program and the program in which the student is enrolled with the licensee;
 3. The teach-out institution shall advertise the availability of the teach-out program;
 4. The teach-out institution shall provide equitable treatment to the students in the teach-out program;
 5. The teach-out institution shall not alter the mission or operations of the teach-out institution for currently enrolled students; and
 6. The teach-out institution shall affirm the institution has the capacity to provide teach-out students with all instruction and services the teach-out students contracted for but did not receive from the licensee.

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- B.** At least 60 days before a licensee ceases to operate or to offer a program in which a student is enrolled, the licensee shall submit for review by the Board a teach-out plan that includes the following:
1. A list of all students who will be affected by the licensee ceasing to operate or to offer a program,
 2. For each student identified under subsection (B)(1):
 - a. Name of program in which the student is participating, and
 - b. Estimated graduation date; and
 3. Whether the teach out will occur at the licensee, a teach-out institution with which the licensee has a contract under subsection (A), or a combination of the licensee and teach-out institution. If the teach out will occur, in whole or in part, at a teach-out institution:
 - a. Whether the teach-out institution will use faculty of the licensee to complete the teach out;
 - b. Whether the degree, diploma, or certificate awarded on completion of the teach-out program will be awarded by the licensee or the teach-out institution;
 - c. Whether students who are enrolled but not attending the licensee or those on a leave of absence from the licensee are entitled to participate in the teach-out program; and
 - d. A copy of the contracts, if any, entered under subsection (A).
- C.** At least 30 days before a licensee ceases to operate or to offer a program in which a student is enrolled, or makes a teach-out program available to a student enrolled in a program that the licensee will cease to offer, the licensee shall provide written notice of ceasing to operate or to offer the program, or availability of the teach-out program to:
1. Each enrolled student affected by the licensee's decision to cease to operate or to offer a program, and
 2. The Board.
- D.** Except as provided in subsections (E) and (F), no later than 30 days after a licensee ceases to operate or to offer a program in which a student is enrolled, the licensee shall provide a refund of 100 percent of student fees and tuition paid by the student or other funding source on behalf of the student.
- E.** The refund requirement in subsection (D) does not apply if a student enrolled in a licensee that ceases to operate or in a program that the licensee ceases to offer transfers to another institution and receives training or academic credit comparable to the training or academic credit that the student would have received if the licensee had not ceased to operate or to offer the program.
- F.** The refund requirement in subsection (D) does not apply if a licensee that ceases to offer a program in which a student is enrolled provides the student an alternative program that is equivalent to the program no longer offered, as determined by the Board, in:
1. Program content;
 2. Program length and schedule;
 3. Tuition, student fees, payment schedules, and financing options;
 4. Accreditation status, if applicable;
 5. Award of credentials;
 6. Instruction and equipment;
 7. Placement assistance and student services, if applicable; and
 8. Facilities.
- G.** This Section applies to a licensee regardless of whether the licensee is at fault in the closure of the licensee or cessation of a program.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-407. Use of Terms

- A.** Except as provided in subsection (B), only an accredited, degree-granting licensee may use the term "university" or any other name or title in literature, catalogs, pamphlets, or other materials made available to the public that implies or would lead a reasonable person to believe the licensee is an institution of higher education or grants educational credentials, academic credit, or professional degrees.
- B.** A licensee may use the term "university" in its name if the licensee:
1. Offers at least one program leading to a post-baccalaureate or higher degree and is regionally or nationally accredited by a DE-recognized accrediting agency;
 2. Was licensed in this state and used the term "university" in its name before the effective date of this Section; and
 3. Is chartered or licensed in another state using the term "university" in its name.
- C.** A licensee may use terms such as "certified," "master," and "professional" in a program title, advertising, and student materials if a student is designated as "certified," "master," or "professional" only:
1. After the student completes the program and passes an examination that requires a showing of proficiency or ability;
 2. If the designation is:
 - a. Conferred by a nationally recognized industry-related organization;
 - b. Conferred by an industry-related board or commission that is statutorily created; or
 - c. A commonly accepted industry practice; and
 3. If the diploma to be issued from a program is submitted to the Board for review before the program is offered.
- D.** A licensee shall not use the term "master's" in the title of a vocational program.

Historical Note

New Section made by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-408. Transfer of Credit

- A.** A licensee may accept credit that a student earned for a course completed at another postsecondary education institution if the licensee determines that the course is comparable in scope and content to a course offered by the licensee.
- B.** A licensee that intends to allow a student to transfer credit from another postsecondary education institution to the licensee shall establish a transfer policy that:
1. Is based on appropriate criteria such as:
 - a. Comparability in scope and content,
 - b. Applicability to the program into which transfer is requested,
 - c. Competencies achieved in the course for which credit is to be transferred and whether the competencies align with the program into which transfer is requested,
 - d. Preparedness of the student at the time of transfer,
 - e. Age of the credit to be transferred, and
 - f. Grade earned in the course to be transferred;
 2. Is not based solely on whether the postsecondary education institution or program from which credit is to be transferred is accredited and if accredited, the accrediting agency;

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3. Requires that at least 25 percent of the credit required to complete a non-degree or undergraduate program be obtained from the licensee;
 4. Requires that more than 50 percent of the credit required to complete a graduate degree program be obtained from the licensee;
 5. Is applied in a systematic and consistent manner; and
 6. Is published in the catalog required under R4-39-103(D)(9) or R4-39-301, as applicable.
- C. A licensee that has a transfer policy as described under subsection (B) shall place in a student's record a copy of the transcript from the postsecondary education institution from which a transfer of credit is sought.

Historical Note

New Section made by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

ARTICLE 5. INVESTIGATIONS; HEARING PROCEDURES; AND ASSESSING COSTS**R4-39-501. Investigations**

- A. The Board shall investigate any sworn complaint against a person or entity alleging violation of A.R.S. § 32-3001 et seq. or this Chapter. For purposes of this Section, "investigated party" means an entity or person that is the subject of a Board investigation.
- B. Board staff may request production of records or information from an investigated party or complainant, and request an interview with an employee or agent of the investigated party. The investigated party may file written objections with the Board regarding the Board's request for production of records or information or an interview within 15 days after receipt of the request. Unless the investigated party timely files an objection to the Board's request, the investigated party shall produce the requested documents or information and make an employee or agent of the investigated party available for interview by the Board. Board staff shall attempt to resolve informally an objection to a request for documents, information, or an interview. If no resolution is reached, the Board shall hear and decide the matter.
- C. The Board shall not disclose documents and materials relating to an investigated matter except to the investigated party, until the matter is closed, settled by stipulation, or set for hearing under Title 41, Chapter 6, Article 10.
- D. When an investigation is complete, the matter shall be referred to the Board's Complaint Committee for consideration.
- E. After consideration of the matter investigated, the Complaint Committee may take any of the actions specified in A.R.S. § 32-3052(E).
- F. If the Complaint Committee refers the matter to the Board, the Board shall assess the information provided and take any of the actions authorized under A.R.S. § 32-3052(F) through (J).

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended effective February 23, 1993 (Supp. 93-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 1947, effective April 2, 2002 (Supp. 02-2). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-502. Hearings

- A. The Board shall ensure that all hearings are conducted before the Board or an administrative law judge under A.R.S. Title 41, Chapter 6, Article 10.
1. Parties may stipulate to any facts that are not in dispute. A stipulation may be made in writing or orally by reading the stipulation into the record of the hearing. A stipula-

tion is binding on the parties unless the Board grants a party permission to withdraw from the stipulation. The Board may, on its own motion, set aside a stipulation and proceed to ascertain the facts.

2. The Board may, on its own motion or at the request of a party, call a conference of the parties at any time to clarify procedures for the hearing or legal or factual issues involved.
 3. By order of the Board, proceedings involving a common question of law or fact may be consolidated for hearing of any or all of the matters at issue.
- B. If, after proper notice, a licensee fails to appear at any proceeding before the Board, the Board may render a decision based on the evidence and information available to the Board.
- C. The decision of the Board is a final administrative decision under A.R.S. § 41-1092.08(F).

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended effective February 23, 1993 (Supp. 93-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 1947, effective April 2, 2002 (Supp. 02-2). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-503. Rehearing or Review of Board's Decision

- A. The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.
- B. Except as provided in subsection (J), a party is required to file a motion for rehearing or review of a Board decision to exhaust the party's administrative remedies.
- C. Any party aggrieved by a final administrative decision of the Board may file with the Board no later than 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds for the rehearing or review as provided in subsection (E).
- D. A motion for rehearing or review may be amended at any time before the Board rules on the motion. A response may be filed by any other party within 15 days after a motion or amended motion is filed. The Board may require that written briefs be filed on the issues raised in the motion and may provide for oral argument.
- E. The Board shall grant a rehearing or review of a decision for any of the following reasons that materially affect the moving party's rights:
1. Irregularity in the administrative proceedings or any order or abuse of discretion that deprived the moving party of a fair hearing;
 2. Misconduct of the Board, the administrative law judge, or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original hearing;
 5. An excessive or insufficient penalty;
 6. Error in the admission or rejection of evidence or other error of law occurring at the administrative hearing;
 7. The Board's decision is the result of passion or prejudice; or
 8. The findings of fact or decision are not justified by the evidence or is contrary to law.
- F. The Board may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (E). The Board shall specify

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- the particular grounds for any order modifying a decision or granting a rehearing.
- G.** No later than 10 days after the date of a decision and after giving the parties or their counsel notice and an opportunity to be heard, the Board may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. A rehearing or review shall cover only those matters specified in the Board's order.
- H.** When a motion for rehearing or review is based on affidavits, the affidavits shall be filed and served with the motion. An opposing party may, within 15 days after service, file and serve opposing affidavits.
- I.** If a rehearing is granted, the Board shall hold the rehearing within 60 days after the date on the order granting the rehearing.
- J.** If the Board makes a specific finding that a particular decision needs to be effective immediately to preserve the public peace, health, or safety and that a review or rehearing of the decision is impracticable, unnecessary, or contrary to the public interest, the Board shall issue the decision as a final decision without an opportunity for rehearing or review.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1947, effective April 2, 2002 (Supp. 02-2). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-504. Assessing Costs

As authorized under A.R.S. § 32-3052(M), the Board may assess a person that is determined to have violated any provision of A.R.S. Title 32, Chapter 30 and this Chapter the Board's reasonable costs and expenses, including attorney fees, incurred in conducting an investigation, informal interview, committee or Board meetings, or administrative hearing.

Historical Note

New Section made by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

ARTICLE 6. STUDENT TUITION RECOVERY FUND**R4-39-601. Submission of Assessments**

- A.** Before September 30 of each year, the Board shall provide written notice to each licensee specified in A.R.S. § 32-3072(B) from which an assessment, as defined in A.R.S. § 32-3071(1), is due. The Board shall send the notice by certified mail and ensure that the notice specifies the amount of the assessment, date the assessment is due, and penalty for failing to pay the assessment timely. As authorized by A.R.S. § 32-3072(B), the Board shall determine the amount of the assessment as follows:
1. The assessment for a licensee seeking renewal of a regular or provisional license shall be based on the number of newly enrolled students for the 12-month period identified on the license renewal application required under R4-39-108 or R4-39-107(D).
 2. The assessment for a new licensee shall be based on the number of newly enrolled students during the fiscal year ending June 30.
- B.** Using data available on June 30, the Board shall determine annually the amount of funds in the Student Tuition Recovery Fund ("Fund"). If the Fund balance exceeds \$500,000, the Board shall require an assessment only from a licensee that was newly or provisionally licensed during the fiscal year that ended on June 30.

- C.** If a licensee disputes the amount of an assessment, the Board shall place the matter on the agenda for a public meeting. The licensee disputing an assessment shall be prepared to:
1. Submit information or documents showing why the assessment is believed to be incorrect; and
 2. Have a representative present to address the Board.

Historical Note

Adopted effective August 14, 1990 (Supp. 90-3). Amended by final rulemaking at 7 A.A.R. 4256, effective September 12, 2001 (Supp. 01-3). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-602. Claims

- A.** The Board shall investigate a claim against the Fund and find:
1. The claim is valid if:
 - a. Student educational records confirm that the claim is filed by a person injured as defined in A.R.S. § 32-3071 (6); and
 - b. The claim is filed within one year after the licensee ceased operations;
 2. The claim is invalid because:
 - a. It is filed more than one year after the licensee ceased operations;
 - b. The claimant is participating in a teach-out; or
 - c. The claimant voluntarily transferred to another institution and received different training for the same or greater cost than was paid to the licensee that ceased operations.
- B.** If the Board finds a claim is valid, the Board shall determine the amount and the party to be paid as follows:
1. The claim payment shall include only the actual amount of tuition and student fees paid in cash or with a student loan. The Board shall not make a claim payment for a grant, scholarship, or debt owed to another state, local, or federal governmental agency.
 2. A claim payment shall be made first to a student-loan holder for the amount owed on the loan, and then to the student or other person for the amount already paid on the student loan or cash payments.
- C.** The Board shall pay a valid claim within 120 days after the public meeting at which the claim is considered.
- D.** A claimant who is not satisfied with the Board's decision on a claim may file a motion for hearing as allowed under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Adopted effective August 14, 1990 (Supp. 90-3). Amended by final rulemaking at 7 A.A.R. 4256, effective September 12, 2001 (Supp. 01-3). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

R4-39-603. Student Record Requests

- A.** The Board shall maintain the student records of a licensee that ceases operations as specified in R4-39-402(B). For purposes of this Section, "student records" has the meaning in R4-39-401.
- B.** The Board shall provide the student records of a student who attended a licensee that ceased operations, if the following are submitted:
1. Name and social security number of the student;
 2. Name of the licensee that ceased operations;
 3. Student name used while attending the licensee that ceased operations;
 4. Identification of the student record requested;

Board for Private Postsecondary Education

5. Name and address of the party to whom the student record is to be mailed;
6. Signature of the student whose record is requested or a student record release form signed by the student whose record is requested and authorizing a third party to obtain the student record, if applicable; and
7. \$10 for processing the request and 25 cents per page for copying.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 4256, effective September 12, 2001 (Supp. 01-3). Amended by final rulemaking at 22 A.A.R. 921, effective June 4, 2016 (Supp. 16-2).

32-3001. Definitions

In this chapter, unless the context otherwise requires:

1. "Accredited" means accredited by an accrediting agency recognized by the United States department of education.
2. "Board" means the state board for private postsecondary education.
3. "Degree" means an academic degree or honorary degree or the title of any designation, mark, appellation, series of letters or words including associate, bachelor, master, doctor or fellow which signifies, purports to signify or is generally taken to signify satisfactory completion of the requirements of an educational program of study beyond the secondary school level or which is an honorary title conferred for recognition of some meritorious achievement.
4. "Grant" means award, bestow, confer, convey or sell.
5. "Operate" means to establish, keep, maintain or utilize a physical facility, location or mailing address in this state where, from which or through which students are procured for private vocational or private degree programs, private vocational or private degree programs are offered or private vocational credentials or private degrees are offered or granted and includes contracting for the performance of any of these acts.
6. "Private vocational program" means an instructional program which includes a course or group of courses as defined in section 15-101 for which a student does not earn a degree and which is designed to provide or is advertised as providing a student with sufficient skills for entry into a paid occupation, and which is not conducted solely by a public school, public community college or public university.

32-3003. Powers and duties

A. The board shall:

1. Annually select a chairman from among its members.
2. Meet at least four times a year.
3. Adopt rules which are necessary or proper for the administration of this chapter.
4. Administer and enforce this chapter and rules adopted pursuant to this chapter.
5. Establish minimum standards for private vocational program licensure requirements.
6. Adopt an official seal for attestation of licenses or other official papers and documents.
7. Consider and pass upon applications for private vocational program licenses and licenses to grant degrees.
8. Hear and pass upon complaints or charges.
9. Compel attendance of witnesses, administer oaths and take testimony concerning all matters coming within its jurisdiction.
10. Keep a record of its proceedings.
11. Keep a register which shows the date of each application for a private vocational program license, qualifications and place of business of the applicant and disposition of the application.
12. Keep a register which shows the date of each application for a license to grant degrees, qualifications and place of business of the applicant and disposition of the application.
13. Maintain a list of institutions licensed pursuant to this chapter which is open to public inspection at all reasonable times. The board shall give a copy of the list to any person who requests it.
14. Engage in a full exchange of information with other regulatory boards, governmental agencies, accrediting agencies and the United States department of education.
15. Do other things necessary to carry out the purposes of this chapter.

B. The board may:

1. Subject to title 41, chapter 4, article 4, employ personnel it deems necessary to carry out the purposes of this chapter and designate their duties. These duties may include considering and passing on license applications, considering and passing on complaints or charges, making investigations, compelling attendance of witnesses and issuing official papers and documents.
2. Make investigations, hold hearings and make decisions to enforce this chapter.
3. Issue subpoenas to compel the attendance of witnesses and the production of documents and administer oaths, take testimony, hear proof and receive exhibits in evidence.
4. Accept and spend federal monies and private grants, gifts, contributions and devises to assist in carrying out the purposes of this chapter. These monies do not revert to the state general fund at the end of a fiscal year.
5. Enter into an intergovernmental agreement pursuant to section 15-1747 to manage private postsecondary institutions in this state subject to the terms of the reciprocity agreement.

**BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND
ASSISTED LIVING FACILITY MANAGERS**

Title 4, Chapter 33, Board of Examiners of Nursing Care Institution Administrators and Assisted Living
Facility Managers



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 7, 2021

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

FROM: Council Staff

DATE: November 10, 2021

SUBJECT: Board of Examiners of Nursing Care Institution Administrators
Title 4, Chapter 33

This Five-Year-Review Report (5YRR) from the Board of Examiners of Nursing Care Institution Administrators relates to rules in Title 4, Chapter 33.

The Board did not propose any changes to the rules in the last 5YRR of these rules, and indicated they would correct minor issues when it became necessary to amend the rules for a substantive reason. The Board indicates that they have completed three separate Rulemakings since the last 5YRR of these rules.

Proposed Action

_____ The Board is not proposing any changes to the rules.

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

Yes, the Board cites to both general and specific statutory authority.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

In 2017, the Board amended rules to increase the number of individuals qualified for licensure and to make it easier for licensed administrators in other states to obtain licensure in Arizona. The Board believed that the rulemaking would have a positive economic benefit for: individuals getting certified for licensure as well as assisted living facilities looking to employ licensed assistants. The Board incurred the cost to complete the rulemaking and the cost of implementing and enforcing the new rules.

The Board states that of the 25 rules reviewed, 12 have been amended since the rules were last reviewed and approved in 2017. The Board has received no information that causes it to believe the Economic Impact Statement comparison of the remaining 13 rules conducted for previous review is currently inaccurate.

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

The Board believes the benefits of the rules, protecting public health and safety and complying with legislative directives, outweigh the minimal costs and burdens of complying with the rules. Much of the cost of regulating nursing care institution administrators and assisted living facility managers results from statute rather than rule.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Board indicates they have not received any written criticisms to the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Board indicates the rules are overall clear, concise, and understandable.

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

Yes, the Board indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Board indicates the rules are effective in achieving their objectives.

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

Yes, the Board indicates the rules are enforced as written.

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

Not applicable. The Board indicates Nursing Care Institutions and Assisted living facilities are required to comply with Title XIX of the Social Security Act. However, no provision of the Act or other federal laws directly apply to the subject matter of the rules.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The Board does not issue general permits.

11. **Conclusion**

As mentioned above, the Board is not proposing any changes to the rules. The Board has completed three separate rulemaking in the past 3 years. The rules are overall, clear, concise, and understandable.

Council staff recommends approval of this report.



**BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND
ASSISTED LIVING FACILITY MANAGERS**

Douglas A. Ducey
Governor

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Jack Confer
Executive Director

October 13, 2021

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

**RE: Board of Examiners of Nursing Care Institution
Administrators and Assisted Living Facility Managers
Five-year-review Report
4 A.A.C. 33, Articles 1, 2, 3, and 5**

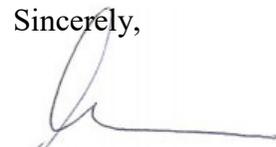
Dear Ms Sornsin:

The Board submits the referenced report for the Council's review and approval. The report was originally due by October 29, 2021, and is due under an extension before the end of February 2022.

The Board certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Jack Confer at 602-542-8156 or john.confer@aznciboard.us.

Sincerely,



Jack Confer
Executive Director

Five-year-review Report
A.A.C. Title 4. Professions and Occupations
Chapter 33. Board of Examiners of Nursing Care Institution Administrators
and Assisted Living Facility Managers
Submitted for December 7, 2021

INTRODUCTION

In 1966, Congress passed the Medicaid Amendments to the Social Security Act.¹ The Medicaid Amendments required that states participating in any Medicaid funding establish a board to license nursing home administrators. In 1967, Congress passed Section 1908 of the Social Security Amendments which set up the National Advisory Council on Nursing Home Administration (Council). In 1969, the Council recommended a model code to the federal government and the establishment of state licensing boards. In 1970, final regulations that govern state nursing home administrator boards were published in the Federal Register.

The Board of Examiners for Nursing Care Institution Administrators and Assisted Living Facility Managers (Board) was created by the Arizona legislature in 1975. In 1991, the Arizona legislature also granted the Board authority to certify and regulate assisted living facility managers. In addition to licensing and certifying applicants, the Board approves AIT, continuing education, and assisted living facility training programs. Nursing care institutions and assisted living facilities are licensed by the Arizona Department of Health Services. There are currently 180 nursing care institutions in Arizona with 18,293 beds. There are 352 licensed nursing care institution administrators and one approved AIT programs.

Under Laws 2019, Chapter 280, the legislature enacted A.R.S. § 36-446.15 indicating an individual who complies with the AHCCCS training and competency requirements for an in-home direct care worker satisfies the Board's training requirements for an assisted living facility caregiver except for training regarding medication management. The legislation instructed the Board to make rules for assisted living facility caregivers consistent with the training, competency, and test methodology standards developed by

¹ Title XIX § 1900, et al., codified under 42 U.S.C. § 1396 et seq., of the Social Security Act.

the AHCCCS for in-home direct care workers. Under Laws 2020, Chapter 73, the legislature added A.R.S. § 36-446.16 authorizing individuals to obtain training for employment as an assisted living facility caregiver through on-the-job training. The legislation required the Board to prescribe standards for the on-the-job training. The Board made the rules required by the legislative changes. However, those rules are not among the ones being reviewed.

Statute that generally authorizes the agency to make rules: A.R.S. § 36-446.03(A)

1. Specific statute authorizing the rule:

- R4-33-101: A.R.S. § 36-446.03(A)
- R4-33-102: A.R.S. § 36-446.03(C)
- R4-33-103: A.R.S. § 41-1073
- Table 1: A.R.S. § 41-1073
- R4-33-104: A.R.S. §§ 36-446.03 (B) and (N) and 36-446.12
- R4-33-106: A.R.S. § 41-1092.09
- R4-33-107: A.R.S. §§ 36-446.03(A) and 36-446.07(K)
- R4-33-108: A.R.S. § 36-446.01
- R4-33-109: A.R.S. § 36-446.04(A)(4), (B), (C)(5), and (D)
- R4-33-201: A.R.S. § 36-446.04(A) and (B)
- R4-33-202: A.R.S. § 36-446.05
- R4-33-203: A.R.S. § 36-446.06
- R4-33-204: A.R.S. § 36-446.04
- R4-33-205: A.R.S. § 36-446.04(A)(3)
- R4-33-206: A.R.S. §§ 36-446.04(F), 36-446.07(E), and 36-446.12(A)(4)
- R4-33-207: A.R.S. §§ 36-446.07(H) and 36-446.12(A)(5)
- R4-33-208: A.R.S. §§ 36-446.04(A)(1) and 36-446.07
- R4-33-210: A.R.S. §§ 36-446.04(A)(1) and 36-446.07
- R4-33-211: A.R.S. § 36-446.01
- R4-33-212: A.R.S. § 36-446.03
- R4-33-301: A.R.S. § 36-446.04(A)(2)
- R4-33-302: A.R.S. § 36-446.04(A)(2)
- R4-33-501: A.R.S. § 36-446.07(E), (F), and (G)

R4-33-502: A.R.S. §§ 36-446.03(B)(8) and (10) and 36-446.12

R4-33-503: A.R.S. § 36-446.07(E) and (F)

2. Objective of the rules:

R4-33-101: Definitions. The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition.

R4-33-102: Board Officers. The objective of this rule is to specify when Board officers are elected and their duties.

R4-33-103: Time Frames for Licenses, Certifications, and Approvals. The objective of this rule is to specify the time frames within which the Board will act on a license, certificate, or approval application.

Table 1: Time Frames (in days). The objective of this rule is to specify in table form the time frames within which the Board will act on a license, certificate, or approval application.

R4-33-104: Fees. The objective of the rule is to specify the fees that the Board charges for its licensing activities.

R4-33-106: Rehearing or Review of Decision. The objective of the rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision.

R4-33-107: Change of Name or Address. The objective of the rule is to provide notice that the Board communicates with a licensee using the information the licensee has provided.

R4-33-108: Display of License or Certificate. The objective of the rule is to provide notice to an administrator or manager of the requirement that a license or certificate be publicly displayed.

R4-33-109: Fingerprint Clearance Card Requirement. The objective of the rule is to provide notice to an administrator or manager of the requirement to maintain a valid fingerprint clearance card.

R4-33-201: Requirements for Initial License by Examination. The objective of the rule is to provide notice of the requirements for obtaining a license by examination as an administrator.

R4-33-202: Requirements for Initial License by Reciprocity. The objective of the rule is to provide notice of the requirements for obtaining a license by reciprocity as an administrator.

R4-33-203: Requirements for Temporary License. The objective of the rule is to provide notice of the requirements for obtaining a temporary license as an administrator.

R4-33-204: Initial Application. The objective of this rule is to specify the content of an application for a license.

R4-33-205: Administration of Examinations; License Issuance. The objective of the rule is to provide information to applicants regarding the examinations that must be passed to obtain licensure.

R4-33-206: Renewal Application. The objective of this rule is to specify the requirements for renewal of a license, the manner in which renewal application is made, and consequences of failing to renew.

R4-33-207: Inactive Status. The objective of the rule is to provide information regarding how to place a license on inactive status and how to resume active status.

R4-33-208: Standards of Conduct; Disciplinary Action. The objective of the rule is to protect the public by establishing ethical standards with which an administrator must conform and specifying the consequences of failing to comply.

R4-33-210: Licensure Following Revocation. The objective of the rule is to provide notice to administrators whose license is revoked of the procedure for obtaining a new license.

R4-33-211: Notice of Appointment. The objective of the rule is to provide notice of the requirement for an administrator to keep the Board apprised of the nursing care institution at which the administrator is appointed.

R4-33-212: Appointment as Administrator of Multiple Nursing Care Institutions. The objective of the rule is to provide notice of the limitations on being appointed as administrator at multiple nursing care institutions.

R4-33-301: Approval of an AIT Program. The objective of the rule is to provide notice of the standards and procedures for Board approval of an administrator-in-training program.

R4-33-302: Standards for an AIT Program. The objective of the rule is to specify the standards for an AIT program.

R4-33-501: Continuing Education Requirement; Extension of Time. The objective of the rule is to specify the continuing education requirement, credit hours for different kinds of activities, limitations on credit hours received, and required evidence of compliance. The rule also specifies the manner in which a licensee may apply for an extension of time to complete the required continuing education and the Board standards for approving a request.

R4-33-502: Approval of Continuing Education. The objective of the rule is to identify continuing education the Board approves without application and the manner in which a continuing education provider may apply for Board approval.

R4-33-503: Audit of Compliance and Sanction for Noncompliance with Continuing Education Requirement. The objective of the rule is to provide notice to licensees that the Board will audit compliance with the continuing education requirement and the manner in which an audited licensee is required to submit evidence of compliance.

3. Are the rules effective in achieving their objectives? Yes

4. Are the rules consistent with other rules and statutes? Yes
5. Are the rules enforced as written? Yes
6. Are the rules clear, concise, and understandable? Yes
7. Has the agency received written criticisms of the rules within the last five years? No

8. Economic, small business, and consumer impact comparison:

Of the 25 rules reviewed, 12 have been amended since the rules were last reviewed in a report approved by the Council on March 7, 2017. The Board has received no information that causes it to believe the EIS comparison of the remaining 13 rules conducted for the previous review is currently inaccurate.

2018 rulemaking (24 A.A.R. 2734)

The following rules were last amended in this rulemaking: R4-33-101, R4-33-103, Table 1, R4-33-104, R4-33-201, and R4-33-301. The amendments to these rules were not the primary focus of the rulemaking. The amendments were made to address minor issues identified in the previous 5YRR. The most significant amendments included adding a fee for initial and renewal approval of an assisted living facility caregiver medication management training program and clarifying requirements for initial license by reciprocity in a manner that increased the number of individuals qualified for licensure. During the last year, 29 individuals were initially licensed by reciprocity. There are currently no approved assisted living facility caregiver medication management training programs.

2020 rulemaking (25 A.A.R. 3709)

The following rules were last amended in this rulemaking: R4-33-202 through R4-33-204 and R4-33-206. The only substantive change made in these Sections was to require an applicant for initial license by reciprocity to have a current license as a nursing care institution administrator issued at least two years ago and removing the requirement to have

two years of full-time employment as a nursing care institution administrator of record. The requirement that applications be notarized was deleted

2021 rulemaking (27 A.A.R. 233)

The following rules were last amended in this rulemaking: R4-33-501 and R4-33-503. The amendments to these rules were not the primary focus of the rulemaking. These rules were amended to comply with the provision in Executive Order 2020-02 requiring rules be repealed if a new rule was made. The most important change to these Sections was adding a provision that an audit of compliance with the continuing education requirement could be done at any time rather than only at the time of license renewal. During the last year, the Board did not conduct audits of continuing education at a time that did not coincide with license renewal.

9. Has the agency received any business competitiveness analyses of the rules? No

10. How the agency completed the course of action indicated in the agency's previous 5YRR:

Yes. In a 5YRR approved by the Council on March 7, 2017, the Board indicated it had no plan to amend any of the rules and would correct minor issues when it became necessary to amend the rules for a substantive reason.

11. A determination after analysis 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 Board believes the benefits of the rules, protecting public health and safety and complying with legislative directives, outweigh the minimal costs and burdens of complying with the rules. Much of the cost of regulating nursing care institution administrators and assisted living facility managers results from statute rather than rule. For example, it is statute that:

- Requires a nursing care institution to operate only under the supervision of a licensed administrator;

- Requires an assisted living facility to operate only under the supervision of a certified manager;
- Specifies the education, examination, character, and criminal background check requirements for licensees;
- Specifies the education, examination, character, work experience, and criminal background check requirements for certificate holders;
- Specifies nine grounds for suspending, revoking, or denying a license or certificate or censuring a licensee or certificate holder;
- Requires biennial license and certificate renewal;
- Requires completion of continuing education;

The following are rule provisions that impose minimal costs and burdens:

- Specifying fees that must be paid for the Board's licensing activities;
- Establishing the grounds for an appeal of a Board decision and procedures for making an appeal;
- Prescribing how a licensee is to keep the Board informed of current contact information;
- Prescribing how a licensee is required to display a current license;
- Prescribing how a licensee is to submit a copy of a current fingerprint clearance card;
- Prescribing requirements for licensure;
- Requiring an applicant to submit an application and other documents;
- Requiring an applicant to pass an examination;
- Requiring a licensee to renew the license biennially;
- Prescribing procedures for a licensee to move onto or off inactive status;
- Prescribing standards of conduct for a licensee;
- Requiring an individual with a revoked license to wait before applying for a new license;
- Requiring a licensee to keep the Board informed of where the licensee is appointed;
- Prescribing conditions under which an administrator may be appointed by multiple nursing care institutions;
- Prescribing procedures for obtaining approval of an AIT program;
- Prescribing continuing education requirements;

- Prescribing how to obtain approval of a continuing education course; and
- Prescribing how to respond to an audit of continuing education.

12. Are the rules more stringent than corresponding federal laws? No

Nursing care institutions and assisted living facilities are required to comply with Title XIX of the Social Security Act. There are numerous other federal laws with which they must also comply. However, no provision of the Act or other federal law is directly applicable to the subject matter of these rules.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

Sixteen of the reviewed rules, including Table 1, were made after July 29, 2010. Table 1 lists all the licenses, certificates, and approvals issued by the Board. The Board does not issue general permits. Rather, the Board issues individual licenses, certificates, and approvals as required by the Board's statutes to each person that is qualified by statute (See A.R.S. §§ 36-446.01, and 36-446.04) and rule.

14. Proposed course of action:

The Board has no plan to amend or repeal any of the reviewed rules.

TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 33. BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS
Supp. 21-1

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of January 1, 2021 through March 31, 2021.

Questions about these rules? Contact:

Board: Board of Examiners of Nursing Care Administrators and Assisted Living Facility Managers
Name: Allen Imig, Executive Director
Address: 1740 W. Adams St., Suite 2490
Phoenix, AZ 85007
Telephone: (602) 364-2273
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E-mail: allen.imig@aznciaboard.us

CHAPTER 33. BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 33. BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

Supp. 21-1

Authority: A.R.S. § 36-446.03(A)

Chapter heading amended from “Board of Examiners for Nursing Care Institution Administrators and Assisted Living Facility Managers” to “Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers” to be consistent with A.R.S. § 36-446.02 (Supp. 11-4).

ARTICLE 1. GENERAL

Section

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R4-33-102.	Board Officers	3
R4-33-103.	Time Frames for Licenses, Certifications, and Approvals	3
Table 1.	Time Frames (in days)	
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R4-33-106.	Rehearing or Review of Decision	6
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R4-33-108.	Display of License or Certificate	6
R4-33-109.	Fingerprint Clearance Card Requirement	6

ARTICLE 2. NURSING CARE INSTITUTION ADMINISTRATOR LICENSING

Article 2, consisting of Sections R4-33-201 through R4-33-216, renumbered from R4-33-115 through R4-33-130 effective November 25, 1992 (Supp. 92-4).

Article 2, consisting of Sections R4-33-201 through R4-33-216, renumbered by emergency action from R4-33-115 through R4-33-130 effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3).

Article 2, consisting of Sections R4-33-201 through R4-33-216, renumbered by emergency action from R4-33-115 through R4-33-130 effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2).

Article 2, consisting of Sections R4-33-201 through R4-33-216, renumbered by emergency action from R4-33-114 through R4-33-124 and R4-33-126 through R4-33-130 effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1).

Article 2, consisting of Sections R4-33-201 through R4-33-216, renumbered by emergency action from R4-33-114 through R4-33-124 and R4-33-126 through R4-33-130 effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4).

Article 2, consisting of Sections R4-33-201 through R4-33-215, renumbered by emergency action from R4-33-114 through R4-33-124 and R4-33-127 through R4-33-130 effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2).

Section

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CHAPTER 33. BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

ARTICLE 3. ADMINISTRATOR-IN-TRAINING PROGRAM

Article 3, consisting of Sections R4-33-301 through R4-33-312 renumbered to Article 4, Sections R4-33-401 through R4-33-412; new Article 3, consisting of Sections R4-33-301 through R4-33-303, adopted effective January 15, 1999 (Supp. 99-1).

Article 3, consisting of Sections R4-33-301 through R4-33-312, adopted permanently effective November 25, 1992 (Supp. 92-4).

Article 3, consisting of Sections R4-33-301 through R4-33-311, adopted by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3).

Article 3, consisting of Sections R4-33-301 through R4-33-311, adopted by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2).

Article 3, consisting of Sections R4-33-301 through R4-33-311, adopted by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1).

Article 3, consisting of Sections R4-33-301 through R4-33-311, adopted by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4).

Article 3, consisting of Sections R4-33-301 through R4-33-312, adopted by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2).

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CHAPTER 33. BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

ARTICLE 1. GENERAL

R4-33-101. Definitions

The definitions in A.R.S. § 36-446 apply to this Chapter. Additionally, in this Chapter, unless otherwise specified:

“Accredited” means approved by the North Central Association of Colleges and Secondary Schools, New England Association of Schools and Colleges, Middle States Association of Colleges and Secondary Schools, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, or Western Association of Schools and Colleges.

“ACHCA” means the American College of Health Care Administrators.

“Administrator” has the meaning prescribed at A.R.S. § 36-446 and means an individual licensed under this Chapter.

“Administrator in training” or “AIT” means an individual who is taking an AIT program to be licensed as an administrator for a nursing care institution.

“AIT program” means a training that the Board approves after determining that the training meets the standards at R4-33-302.

“Applicant” means an individual who applies to the Board to be licensed as an administrator of a nursing care institution, to be certified as a manager of an assisted living facility, or for approval of a continuing education.

“Application package” means the forms, documents, and fees that the Board requires an applicant to submit or have submitted on the applicant’s behalf.

“Arizona examination” means a measure of an applicant’s knowledge of Arizona statutes and rules regarding nursing care institution administration or assisted living facility management.

“Biennial period” means July 1 of an even-numbered year through June 30 of the next even-numbered year for an administrator and July 1 of an odd-numbered year through June 30 of the next odd-numbered year for a manager.

“Contact hour” means an hour during which an administrator or manager is physically present at a continuing education or a manager is physically present at a required initial training.

“Continuing education” means a planned educational course or program that the Board approves under R4-33-502.

“Good standing” means an individual licensed by the state is not subject to any disciplinary action or consent order, and not currently under investigation for alleged unprofessional conduct.

“Health care institution” means every place, institution, building or agency, whether organized for profit or not, which provides facilities with medical services, nursing services, health screening services, other health-related services, supervisory care services, personal care services or directed care services and includes home health agencies as defined in A.R.S. § 36-151 and hospice services agencies. A.R.S. § 36-401.

“Manager” means an assisted living facility manager, as defined at A.R.S. § 36-446, who is certified under this Chapter.

“NAB” means the National Association of Long Term Care Administrator Boards.

“Party” has the same meaning as prescribed in A.R.S. § 41-1001.

“Preceptor” means a practicing nursing care institution administrator who helps to develop a new professional in the field of long-term care administration by tutoring the new professional.

“Qualified instructor” means a person who meets one or more of the following criteria:

A registered nurse, licensed under A.R.S. Title 32, Chapter 15;

An instructor employed by an accredited college or university, or health care institution to teach a health-care related course;
or

A person or entity that has sufficient education and training to be qualified to teach a health-care related course.

“Work experience in a health-related field” means employment in a health care institution or in the professional fields of medicine, nursing, social work, gerontology, or other closely related field.

Historical Note

Section R4-33-101 renumbered from R4-33-112 and amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2). Amended by final rulemaking at 24 A.A.R. 2734, effective November 10, 2018 (Supp. 18-3).

R4-33-102. Board Officers

A. At its first annual meeting, the Board shall elect a president and vice-president.

B. The functions, duties, and limitations of these officers are as follows:

1. President. The president shall call and preside at all Board meetings. The president shall act as chief officer of the Board, appoint committees, and delegate authority to other members of the Board as needed.

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2. Vice-president. The vice-president shall preside at Board meetings in the absence of the president and may exercise all the powers and duties of the president in the absence of the president.
- C. Board officers serve for one year. A Board officer shall not serve more than two consecutive years in the same position.

Historical Note

Section R4-33-102 renumbered from R4-33-113 and amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1).

R4-33-103. Time Frames for Licenses, Certifications, and Approvals

- A. For each type of license, certification, or approval issued by the Board, the overall time frame described in A.R.S. § 41-1072(2) is listed in Table 1.
- B. For each type of license, certification, or approval issued by the Board, the administrative completeness review time frame described in A.R.S. § 41-1072(1) is listed in Table 1 and begins on the date the Board receives an application package.
1. If an application package is not administratively complete, the Board shall send a deficiency notice to the applicant that specifies each piece of information or document needed to complete the application package. Within the time provided in Table 1 for response to a deficiency notice, beginning on the mailing date of the deficiency notice, the applicant shall submit to the Board the missing information or document specified in the deficiency notice. The time frame for the Board to finish the administrative completeness review is suspended from the date the Board mails the deficiency notice to the applicant until the date the Board receives the missing information or document.
 2. If an application package is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
 3. If an application package is not completed within the time provided to respond to the deficiency notice, the Board shall send a written notice to the applicant informing the applicant that the application is deemed withdrawn.
- C. For each type of license, certification, or approval issued by the Board, the substantive review time frame described in A.R.S. § 41-1072(3) is listed in Table 1 and begins on the date the Board sends written notice of administrative completeness to the applicant.
1. During the substantive review time frame, the Board may make one comprehensive written request for additional information. Within the time provided in Table 1 for response to a comprehensive written request for additional information, beginning on the mailing date of the comprehensive written request for additional information, the applicant shall submit to the Board the requested additional information. The time frame for the Board to finish the substantive review is suspended from the date the Board mails the comprehensive written request for additional information to the applicant until the Board receives the requested additional information.
 2. The Board shall issue a written notice informing the applicant that the application is deemed withdrawn if the applicant does not submit the requested additional information within the time provided in Table 1.
- D. Within the overall time frame listed in Table 1, the Board shall:
1. Deny a license, certificate, or approval to an applicant if the Board determines the applicant does not meet all of the substantive criteria required by statute and this Chapter; or
 2. Grant a license, certificate, or approval to an applicant if the Board determines the applicant meets all of the substantive criteria required by statute and this Chapter.
- E. If the Board denies a license, certificate, or approval under subsection (D)(1), the Board shall provide a written notice of denial to the applicant that explains:
1. The reason for the denial, with citations to supporting statutes or rules;
 2. The applicant's right to seek a fair hearing to challenge the denial; and
 3. The time for appealing the denial.
- F. In computing any period of time prescribed in this Section, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period is included unless it is Saturday, Sunday, or a state holiday, in which event the period runs until the end of the next day that is not Saturday, Sunday, or a state holiday. The computation includes intermediate Saturdays, Sundays, and state holidays. The time begins on the date of personal service, date shown as received on a certified mail receipt, or postmark date.

Historical Note

Section R4-33-103 adopted by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 24 A.A.R. 2734, effective November 10, 2018 (Supp. 18-3).

Table 1. Time Frames (in days)

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Type of License	Overall Time Frame	Administrative Review Time Frame	Time to Respond to Deficiency Notice	Substantive Review Time Frame	Time to Respond to Request for Additional Information
Initial License R4-33-201 and R4-33-202 A.R.S. §§ 36-446.04(A) and 36-446.05	135	30	90	105	60
Renewal of License R4-33-206 A.R.S. § 36-446.07(E)	75	30	15	45	15
Temporary License R4-33-203 A.R.S. § 36-446.06	135	30	90	105	60
Continuing Education Program Approval R4-33-502 A.R.S. § 36-446.07(E) and (F)	60	15	30	45	15
Administrator-in-Training Program Approval R4-33-301 A.R.S. § 36-446.04	60	15	30	45	15
Initial Certification R4-33-401 A.R.S. § 36-446.04(B)	135	30	90	105	60
Renewal of Certification R4-33-405 A.R.S. § 36-446.07(F)	75	30	15	45	15
Temporary Certification R4-33-402 A.R.S. § 36-446.06	135	30	90	105	60
Initial Approval of an Assisted Living Facility Manager or Caregiver Training Program R4-33-604, R4-33-704, R4-33-704.1, A.R.S. § 36-446.03(O)	120	60	60	60	60
Renewal Approval of an Assisted Living Facility Manager or Caregiver Training Program R4-33-605, R4-33-705, R4-33-705.1, A.R.S. § 36-446.03(O)	120	60	30	60	30

Historical Note

Table 1 adopted by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1619, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 24 A.A.R. 2734, effective November 10, 2018 (Supp. 18-3).

R4-33-104. Fees

A. Under the authority provided at A.R.S. § 36-446.12(A), the Board establishes and shall collect the following fees related to nursing care institution administrators. The fees are nonrefundable unless A.R.S. § 41-1077 applies:

1. Initial application, \$150
;
2. Arizona examination, \$500
;

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3. Re-administer Arizona examination, \$150
 - ;
 4. Issuance of a license, \$400 or \$17 for each month remaining in the biennial period, whichever is less
 - ;
 5. Duplicate license, \$75
 - ;
 6. Biennial active license renewal, \$400
 - ;
 7. Biennial inactive license renewal, \$200
 - ;
 8. Late renewal, \$100
 - ;
 9. Temporary license, \$300
 - ;
 10. Certify licensure status, \$15
 - ;
 11. Review sponsorship of a continuing education, \$10 per credit hour;
 12. Review a licensed administrator's request for continuing education credit, \$5 per credit hour.
- B.** Under the authority provided at A.R.S. § 36-446.03(B), the Board establishes and shall collect the following fees related to assisted living facility managers. The fees are nonrefundable unless A.R.S. § 41-1077 applies:
1. Initial application, \$150
 - ;
 2. Arizona examination, \$150
 - ;
 3. Re-administer Arizona examination, \$150
 - ;
 4. Issuance of a certificate, \$150 or \$7 for each month remaining in the biennial period, whichever is less
 - ;
 5. Duplicate certificate, \$75
 - ;
 6. Biennial active certificate renewal, \$150
 - ;
 7. Biennial inactive certificate renewal, \$100
 - ;
 8. Late renewal, \$75
 - ;
 9. Temporary certificate, \$100
 - ;
 10. Review sponsorship of a continuing education, \$10 per credit hour;
 11. Review a certified manager's request for continuing education credit, \$5 per credit hour.
- C.** Under the authority provided at A.R.S. § 36-446.03(B), the Board establishes and shall collect the following fees related to approval of an assisted living facility manager training program. The fees are nonrefundable unless A.R.S. § 41-1077 applies:
1. Initial approval, \$1,000; and
 2. Renewal approval, \$600.
- D.** Under the authority provided at A.R.S. § 36-446.03(B), the Board establishes and shall collect the following fees related to approval of an assisted living facility caregiver training program. The fees are nonrefundable unless A.R.S. § 41-1077 applies:
1. Initial approval, \$1,500; and
 2. Renewal approval, \$1,300.
- E.** Under the authority provided at A.R.S. § 36-446.03(B), the Board establishes and shall collect the following fees related to approval of an assisted living facility caregiver medication management training program. The fees are nonrefundable unless A.R.S. § 41-1077 applies:
1. Initial approval, \$300; and
 2. Renewal approval, \$250.
- F.** The Board shall ensure that fees established under this subsection are not increased by more than 25 percent above the amounts previously prescribed by the Board.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 805, effective April 13, 2004 (Supp. 04-1). Amended by final rulemaking at 12

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A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 15 A.A.R. 1975, effective November 3, 2009 (Supp. 09-4). Amended by final rulemaking at 19 A.A.R. 1619, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 24 A.A.R. 2734, effective November 10, 2018 (Supp. 18-3).

R4-33-106. Rehearing or Review of Decision

- A. The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.
- B. Except as provided in subsection (I), a party is required to file a motion for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.
- C. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.
- D. The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
 - 1. Irregularity in the proceedings of the Board or any order or abuse of discretion that deprived the moving party of a fair hearing;
 - 2. Misconduct of the Board, its staff, or an administrative law judge;
 - 3. Accident or surprise that could not have been prevented by ordinary prudence;
 - 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 - 5. Excessive or insufficient penalty;
 - 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings; and
 - 7. The findings of fact or decision is not justified by the evidence or is contrary to law.
- E. The Board may affirm or modify a decision or grant a rehearing or review to all or some of the parties on all or some of the issues for any of the reasons listed in subsection (D). An order modifying a decision or granting a rehearing or review shall specify with particularity the grounds for the order. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.
- F. Not later than 30 days after the date of a decision and after giving the parties notice and an opportunity to be heard, the Board may, on its own initiative, order a rehearing or review of its decision for any reason it might have granted a rehearing or review on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. An order granting a rehearing or review shall specify with particularity the grounds on which the rehearing or review is granted.
- G. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. This period may be extended by the Board for a maximum of 20 days for good cause as described in subsection (H) or by written stipulation of the parties. Reply affidavits may be permitted.
- H. The Board may extend all time limits listed in this Section upon a showing of good cause. A party demonstrates good cause by showing that the grounds for the party's motion or other action could not have been known in time, using reasonable diligence, and a ruling on the motion will:
 - 1. Further administrative convenience, expedition, or economy; or
 - 2. Avoid undue prejudice to any party.
- I. If, in a particular decision, the Board makes a specific finding that the immediate effectiveness of the decision is necessary for immediate preservation of the public health, safety, or welfare and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If an application for judicial review of the decision is made, it shall be made under A.R.S. § 12-901 et seq.

Historical Note

Section R4-33-106 renumbered from R4-33-209 and amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

R4-33-107. Change of Name or Address

- A. The Board shall communicate with an administrator or manager using the name and address in the Board's records. To ensure timely communication from the Board, an administrator or manager shall inform the Board in writing of any change in name or address.
- B. An administrator or manager shall include in a notice of change in name or address either the new and former name or new and former address.
- C. An administrator or manager shall attach to a notice of change in name a copy of the legal document changing the name.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

R4-33-108. Display of License or Certificate

- A. An administrator shall display the administrator's original license and current renewal receipt in a conspicuous place in the nursing care institution at which the administrator is appointed.
- B. A manager shall display the manager's original certificate and current renewal receipt in a conspicuous place in the assisted care facility at which the manager is appointed.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2).

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R4-33-109. Fingerprint Clearance Card Requirement

Under A.R.S. § 36-446.04, an administrator or manager is required to maintain a valid fingerprint clearance card during the biennial period. Within 10 days after the referenced action, an administrator or manager shall:

1. Submit to the Board a photocopy of the front and back of a new fingerprint clearance card issued to the administrator or manager during the biennial period, or
2. Provide written notice to the Board if:
 - a. The fingerprint clearance card of the administrator or manager is suspended or revoked, or
 - b. The administrator or manager is denied a new fingerprint clearance card.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1).

ARTICLE 2. NURSING CARE INSTITUTION ADMINISTRATOR LICENSING

Article 2, consisting of Sections R4-33-201 through R4-33-207 and R4-33-209 through R4-33-215, renumbered from R4-33-115 through R4-33-124 and R4-33-127 through R4-33-130 effective November 25, 1992 (Supp. 92-3).

Article 2, consisting of Sections R4-33-201 through R4-33-207 and R4-33-209 through R4-33-215, renumbered by emergency action from R4-33-115 through R4-33-124 and R4-33-127 through R4-33-130 effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2).

Article 2, consisting of Sections R4-33-201 through R4-33-215, renumbered by emergency action from R4-33-114 through R4-33-124 and R4-33-127 through R4-33-130 effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2).

R4-33-201. Requirements for Initial License by Examination

To be eligible to receive an initial license by examination as a nursing care institution administrator, an individual shall:

1. Education and training.
 - a. Hold a minimum of a baccalaureate degree from an accredited college or university and successfully complete an AIT program;
 - b. Hold a minimum of a master's degree in either a health-related field or business administration from an accredited college or university; or
 - c. Hold a minimum of an associate of arts degree in nursing from an accredited college or university and:
 - i. Be currently licensed as a registered nurse under A.R.S. § 32-1632,
 - ii. Have worked as a registered nurse for five of the last seven years, and
 - iii. Successfully complete an AIT program.
2. Examination.
 - a. Obtain the scaled passing scores on both the NAB core of knowledge and line of service examinations or qualify with NAB as a Health Services Executive, and
 - b. Obtain a score of at least 80 percent on the Arizona examination;
3. Fingerprint clearance card. Have a valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1; and
4. Application. Submit all applicable information required under R4-33-204.

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Former Section R4-33-15 renumbered and amended as Section R4-33-115 (Supp. 82-1). Section R4-33-202 renumbered from R4-33-115 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Amended effective August 6, 1991 (Supp. 91-3). Emergency expired. New Section R4-33-201 renumbered from R4-33-115 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). New Section R4-33-201 renumbered from R4-33-115 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). New Section R4-33-201 renumbered from R4-33-115 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. New Section R4-33-201 renumbered from R4-33-115 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-201 renumbered from R4-33-115 effective November 25, 1992 (Supp. 92-4). Text corrected to include amendments adopted effective August 6, 1991, which were inadvertently omitted (Supp. 95-2). Amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Former R4-33-201 renumbered to R4-33-204; new R4-33-201 renumbered from R4-33-204 and amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 2734, effective November 10, 2018 (Supp. 18-3).

R4-33-202. Requirements for Initial License by Reciprocity

To be eligible for an initial license by reciprocity as a nursing care institution administrator, an individual shall:

1. Substantially equivalent educational requirement.
 - a. Hold a minimum of a baccalaureate degree from an accredited college or university, or
 - b. Hold ACHCA certification;

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2. Substantially equivalent examination requirement.
 - a. Hold a valid and current license as a nursing care institution administrator:
 - i. Issued at least two years ago,
 - ii. Issued by a state or territory, and
 - iii. Obtained by passing the NAB examination; or
 - b. Have evidence of qualification by NAB as a Health Services Executive; and
 - c. Obtain a score of at least 80 percent on the Arizona examination;
3. Never have had a nursing care administrator license suspended, revoked, or otherwise restricted by any state or territory;
4. Fingerprint clearance card. Have a valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1; and
5. Application.
 - a. Submit all applicable information required under R4-33-204,
 - b. Have submitted directly to the Board a certified copy of the valid and current license issued by a state or territory, and
 - c. Have submitted directly to the Board by NAB:
 - i. The examination score referenced under subsection (2)(a), or
 - ii. Evidence of qualification as a Health Services Executive.

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Former Section R4-33-16 renumbered as Section R4-33-116 (Supp. 82-1). Section R4-33-203 renumbered from R4-33-116 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Amended as Section R4-33-116 effective August 6, 1991 (Supp. 91-3). Section R4-33-202 renumbered from R4-33-116 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-202 renumbered from R4-33-116 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-202 renumbered from R4-33-116 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-202 renumbered from R4-33-116 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-202 renumbered from R4-33-116 effective November 25, 1992 (Supp. 92-4). Text corrected to include amendments adopted effective August 6, 1991, which were inadvertently omitted (Supp. 95-2). Amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Former R4-33-202 renumbered to R4-33-205; new R4-33-202 renumbered from R4-33-203 and amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 2734, effective November 10, 2018 (Supp. 18-3). Amended by final rulemaking at 25 A.A.R. 3709, effective February 1, 2020 (Supp. 19-4).

R4-33-203. Requirements for Temporary License

- A. To be eligible for a temporary license as a nursing care institution administrator, an individual shall:
 1. Meet the requirements specified in R4-33-201 or R4-33-202 except for the requirement at R4-33-201(2) or R4-33-202(2)(c);
 2. Have the owner of a nursing care institution that intends to appoint the applicant as administrator if the applicant is successful in obtaining a temporary license submit to the Board a Letter of Intent to Appoint on a form that is available from the Board. The owner of the nursing care institution shall include the following in the Letter of Intent to Appoint:
 - a. Name of the owner of the nursing care institution,
 - b. Name and address of the nursing care institution,
 - c. Name of the applicant,
 - d. An affirmation of intent to appoint the applicant,
 - e. Reason for requesting a temporary license for the applicant,
 - f. License number of the nursing care institution, and
 - g. Signature of the owner of the nursing care institution affirming the information provided is true and complete;
 3. Not have held an Arizona temporary license as a nursing care institution administrator within the past three years; and
 4. Not have failed the Arizona or NAB examination before applying for a temporary license.
- B. At the Board's request, an applicant for a temporary license shall appear or be available by telephone for an interview with the Board.
- C. A temporary license is valid for 150 days and is not renewable. Before expiration of the temporary license, the temporary licensee shall become licensed under A.R.S. § 36-446.04 and this Article or discontinue as administrator of the nursing care institution.
- D. If a temporary licensee fails the Arizona or NAB examination during the term of the temporary license, the temporary license is automatically revoked and the former licensee shall discontinue as administrator of the nursing care institution.

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Former Section R4-33-17 renumbered and amended as Section R4-33-117 (Supp. 82-1). Section R4-33-204 renumbered from R4-33-117 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Amended as Section R4-33-117 effective August 6, 1991 (Supp. 91-3). Section R4-33-203 renumbered from R4-33-117 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-203 renumbered from R4-33-117 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-203 renumbered

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from R4-33-117 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-203 renumbered from R4-33-117 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-203 renumbered from R4-33-117 effective November 25, 1992 (Supp. 92-4). Text corrected to include amendments adopted effective August 6, 1991, which were inadvertently omitted (Supp. 95-2). Amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Former R4-33-203 renumbered to R4-33-202; new R4-33-203 renumbered from R4-33-212 and amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2). Amended by final rulemaking at 25 A.A.R. 3709, effective February 1, 2020 (Supp. 19-4).

R4-33-204. Initial Application

- A.** An individual who desires to be licensed as a nursing care institution administrator shall submit the following information to the Board on an application form, which is available from the Board:
1. Full name of the applicant;
 2. Other names that the applicant has used;
 3. Mailing address of the applicant;
 4. E-mail address of the applicant;
 5. Home, work, and mobile telephone numbers of the applicant;
 6. Applicant's date and place of birth;
 7. Applicant's Social Security number;
 8. Address of every residence at which the applicant has lived in the last five years;
 9. Name and address of every accredited college or university attended, dates of attendance, date of graduation, and degree or certificate received;
 10. Information regarding professional licenses or certifications currently or previously held by the applicant, including:
 - a. Name of issuing agency;
 - b. License or certificate number;
 - c. Issuing jurisdiction;
 - d. Date on which the license or certificate was first issued;
 - e. Whether the license or certificate is current; and
 - f. Whether the license or certificate is in good standing and if not, an explanation;
 11. Information regarding the applicant's employment record for the last five years, including:
 - a. Name, address, and telephone number of each employer;
 - b. Title of position held by the applicant;
 - c. Name of applicant's supervisor;
 - d. Dates of employment; and
 - e. Reason for employment termination;
 12. Whether the applicant was ever denied a professional license or certificate and if so, the kind of license or certificate denied, licensing authority making the denial, and date;
 13. Whether the applicant ever voluntarily surrendered a professional license or certificate and if so, the kind of license or certificate surrendered, licensing authority, date, and reason for the surrender;
 14. Whether the applicant ever allowed a professional license or certificate to lapse and if so, the kind of license or certificate that lapsed, licensing authority, date, reason for lapse, and whether the license or certificate was reinstated;
 15. Whether the applicant ever had a limitation imposed on a professional license or certificate and if so, the kind of license or certificate limited, licensing authority, date, nature of limitation, reason for limitation, and whether the limitation was removed;
 16. Whether the applicant ever had a professional license or certificate suspended or revoked and if so, the kind of license or certificate suspended or revoked, licensing authority, date, and reason for the suspension or revocation;
 17. Whether the applicant ever was subject to disciplinary action with regard to a professional license or certificate and if so, the kind of license or certificate involved, licensing authority, date, and reason for and nature of the disciplinary action;
 18. Whether any unresolved complaint against the applicant is pending with a licensing authority, professional association, health care facility, or nursing care institution and if so, the nature of and where the complaint is pending;
 19. Whether the applicant ever was charged with or convicted of a felony or a misdemeanor, other than a minor traffic violation, in any court and if so, the nature of the offense, jurisdiction, and date of discharge; and
 20. Whether the applicant ever was pardoned from or had expunged the record of a felony conviction and if so, the nature of the offense, jurisdiction, and date of pardon or expunging.
- B.** In addition to the application form required under subsection (A), an applicant shall have the following submitted directly to the Board on the applicant's behalf:
1. Official transcript submitted by each accredited college or university attended by the applicant;
 2. Verification of license that is signed, authenticated by seal or notarization, and submitted by each agency that ever issued a professional license to the applicant;

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3. "Character Certification" form submitted by two individuals who have known the applicant for at least three years and are not related to, employed by, or employing the applicant;
 - and
 4. If the applicant is certified by ACHCA, verification of certification submitted by ACHCA;
- C. In addition to complying with subsections (A) and (B), an applicant shall submit:
1. If the applicant completed an AIT program, a photocopy of the certificate issued upon completion;
 2. For every felony or misdemeanor charge listed under subsection (A)(19), a copy of documents from the appropriate court showing the disposition of each charge;
 3. For every felony or misdemeanor conviction listed under subsection (A)(19), a copy of documents from the appropriate court showing whether the applicant met all judicially imposed sentencing terms;
 4. Full-face photograph of the applicant taken within the last six months;
 5. Fingerprint clearance card.
 - a. Photocopy of the front and back of the applicant's fingerprint clearance card,
 - b. Proof of submission of an application for a fingerprint clearance card, or
 - c. If denied a fingerprint clearance card, proof the applicant qualifies for a good-cause exception hearing under A.R.S. § 41-619.55;
 6. Documentation, as described in A.R.S. § 41-1080(A), of U.S. citizenship or alien status indicating presence in the U.S. is authorized under federal law;
 7. Affirm the information provided in the application is true and complete and authorize others to release information regarding the applicant to the Board; and
 8. Fees required under R4-33-104(A)(1) and (A)(2).
- D. If required by the Board under A.R.S. § 36-446.03(D), an applicant shall appear before the Board.
- E. When the information required under subsections (A) through (C) is received and following an appearance before the Board required under subsection (D), the Board shall provide notice regarding whether the applicant may take the licensing examinations required under R4-33-201 or R4-33-202.
- F. Because of the time required for the Board to perform an administrative completeness review under R4-33-103, an applicant shall ensure the information required under subsections (A) through (C) is submitted at least 30 days before the applicant expects to take the Arizona examination.

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Former Section R4-33-18 renumbered as Section R4-33-118 and repealed effective February 10, 1982 (Supp. 82-1). Section R4-33-205 renumbered from R4-33-118 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Section R4-33-204 renumbered from R4-33-118 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-204 renumbered from R4-33-118 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-204 renumbered from R4-33-118 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-204 renumbered from R4-33-118 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-204 renumbered from R4-33-118 effective November 25, 1992 (Supp. 92-4). Final amendment at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Former R4-33-204 renumbered to R4-33-201; new R4-33-204 renumbered from R4-33-201 and amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 2734, effective November 10, 2018 (Supp. 18-3). Amended by final rulemaking at 25 A.A.R. 3709, effective February 1, 2020 (Supp. 19-4).

R4-33-205. Administration of Examinations; License Issuance

- A. The Board shall administer the Arizona examination at least twice each year at times and places specified by the Board.
- B. An applicant shall make arrangements directly with NAB to take the NAB examination.
- C. The Board shall provide written notice to an applicant regarding whether the applicant passed a required examination.
- D. An applicant for licensure under R4-33-201 is not required to take or pass both examinations at the same time. An applicant who passes one of the examinations listed in R4-33-201(2) but fails the other is required to retake only the examination failed.
- E. When an applicant passes the examinations required under R4-33-201 or R4-33-202, the Board shall send the applicant a written notice that the Board will issue a license to the applicant when the applicant submits to the Board the fee required under R4-33-104(A)(4). If the applicant fails to submit the fee within six months of the Board's notice, the Board shall administratively close the applicant's file. An individual whose file is administratively closed may receive further consideration only by submitting a new application under R4-33-201 or R4-33-202.

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Amended effective July 24, 1978 (Supp. 78-4). Former Section R4-33-19 renumbered as Section R4-33-119 and repealed, new Section R4-33-119 adopted effective February 10, 1982 (Supp. 82-1). Amended

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effective May 2, 1984 (Supp. 84-3). Amended as an emergency effective October 2, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency expired. Emergency amendments readopted without change effective January 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency amendments adopted again without change effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days; amended effective June 14, 1990 (Supp. 90-2). Section R4-33-206 renumbered from R4-33-119 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Amended as R4-33-119 effective August 6, 1991 (Supp. 91-3). Emergency expired. Section R4-33-206 renumbered from R4-33-119 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-205 renumbered from R4-33-119 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-205 renumbered from R4-33-119 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-205 renumbered from R4-33-119 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-205 renumbered from R4-33-119 effective November 25, 1992 (Supp. 92-4). Text corrected to include amendments adopted effective August 6, 1991, which were inadvertently omitted (Supp. 95-2). Amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section repealed by final rulemaking at 10 A.A.R. 805, effective April 13, 2004 (Supp. 04-1). Section R4-33-205 renumbered from R4-33-202 and amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

R4-33-206. Renewal Application

- A. The Board shall provide a licensee with notice of the need for license renewal. Failure to receive notice of the need for license renewal does not excuse a licensee's failure to renew timely.
- B. An administrator license expires at midnight on June 30 of each even-numbered year.
- C. To renew an administrator license, the licensee shall submit the following information to the Board, on or before June 30, on a renewal application, which is available from the Board:
 1. Current address;
 2. Current e-mail address;
 3. Current home and business telephone numbers;
 4. Whether within the last 24 months the licensee was convicted of or pled guilty or no contest to a criminal offense, other than a minor traffic violation, in any court and if so, attach a copy of the original arrest record and final court judgment;
 5. Whether within the last 24 months the licensee was denied a professional license or had a professional license revoked, suspended, placed on probation, limited, or restricted in any way by a state or federal regulatory authority and if so, the kind of license, license number, issuing authority, nature of the regulatory action, and date;
 6. An affirmation that the number of hours of continuing education required under R4-33-501 has been completed; and
 7. The licensee's dated signature affirming the information provided is true and complete.
- D. In addition to the renewal application required under subsection (C), a licensee shall submit:
 1. A photocopy of the front and back of the licensee's fingerprint clearance card;
 2. Documentation described in A.R.S. § 41-1080(A) unless the documentation previously submitted under R4-33-204(C)(6) established U.S. citizenship or was a non-expiring work authorization issued by the federal government; and
 3. The license renewal fee required under R4-33-104.
- E. An individual whose license expires because of failure to renew timely may apply for renewal by complying with subsections (C) and (D) if:
 1. The individual complies with subsections (C) and (D) on or before July 31,
 2. The individual pays the late renewal fee prescribed under R4-33-104, and
 3. The individual affirms the individual has not acted as a nursing care institution administrator since the license expired.
- F. An individual whose license expires because of failure to renew timely and who does not comply with subsection (E) may become licensed as a nursing care institution administrator only by complying with R4-33-201 or R4-33-202.

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Amended effective July 24, 1978 (Supp. 78-4). Former Section R4-33-20 renumbered and amended as Section R4-33-120 (Supp. 82-1). Section R4-33-207 renumbered from R4-33-120 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Amended as R4-33-120 effective August 6, 1991 (Supp. 91-3). Section R4-33-207 renumbered from R4-33-120 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-207 renumbered from R4-33-120 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-207 renumbered from R4-33-120 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-207 renumbered from R4-33-120 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-206 renumbered from R4-33-120 effective November 25, 1992 (Supp. 92-4). Text corrected to include amendments adopted effective August 6, 1991, which were inadvertently omitted (Supp. 95-2). Amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1). Amended by final rulemaking at 15 A.A.R. 1975, effective November 3, 2009 (Supp. 09-4). Amended by final rulemaking at 24 A.A.R. 2734, effective November 10, 2018 (Supp. 18-3).

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Amended by final rulemaking at 25 A.A.R. 3709, effective February 1, 2020 (Supp. 19-4).

R4-33-207. Inactive Status

- A. The Board shall place an administrator's license on inactive status if the administrator:
1. Is in good standing in Arizona,
 2. Submits a written request to the Board to be placed on inactive status, and
 3. Submits evidence that complies with R4-33-501(D) showing that the administrator completed two hours of continuing education for each month in the current biennial period before the request to be placed on inactive status.
- B. Within seven days after receiving a request to be placed on inactive status, the Board shall provide the administrator written confirmation of inactive status.
- C. An administrator whose license is on inactive status is not required to comply with R4-33-501.
- D. An inactive license expires under R4-33-206 unless the administrator timely submits a renewal application and the fee required under R4-33-104(A)(7).
- E. To resume active licensure status, an administrator shall:
1. Submit evidence that complies with R4-33-501(D) showing that the administrator completed 25 hours of continuing education within the six months before requesting to resume active licensure status, and
 2. Submit a written request to the Board to resume active licensure status.
- F. The Board shall grant a request to resume active licensure status if the requirements of subsection (E) are met. Within seven days after receiving the written request to resume active licensure status, the Board shall send written notice to the administrator granting or denying active status.

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Former Section R4-33-21 renumbered and amended as Section R4-33-121 (Supp. 82-1). Section R4-33-208 renumbered from R4-33-121 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Section R4-33-208 renumbered from R4-33-121 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-208 renumbered from R4-33-121 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-208 renumbered from R4-33-121 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-208 renumbered from R4-33-121 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-207 renumbered from R4-33-121 effective November 25, 1992 (Supp. 92-4). Section R4-33-207 renumbered to R4-33-208, new Section adopted by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

R4-33-208. Standards of Conduct; Disciplinary Action

- A. An administrator shall know and comply with all federal and state laws applicable to operation of a nursing care institution.
- B. An administrator shall not:
1. Engage in unprofessional conduct as defined at A.R.S. § 36-446;
 2. Be addicted to or dependent on the use of narcotics or other drugs, including alcohol;
 3. Directly or indirectly permit an owner, officer, or employee of a nursing care institution to solicit, offer, or receive any premium, rebate, or other valuable consideration in connection with furnishing goods or services to patients of the institution unless the resulting economic benefit is directly passed to the patients;
 4. Directly or indirectly permit an owner, officer, or employee of a nursing care institution to solicit, offer, or receive any premium, rebate, or other valuable consideration for referring a patient to another person or place unless the resulting economic benefit is directly passed to the patient;
 5. Willfully permit the unauthorized disclosure of information relating to a patient or a patient's records;
 6. Discriminate against a patient or employee on the basis of race, sex, age, religion, disability, or national origin;
 7. Misrepresent the administrator's qualifications, education, or experience;
 8. Aid or abet another person to misrepresent that person's qualifications, education, or experience;
 9. Defend, support, or ignore unethical conduct of an employee, owner, or other administrator;
 10. Engage in any conduct or practice contrary to recognized community standards or ethics of a nursing care institution administrator;
 11. Engage in any conduct or practice that is or might constitute incompetence, gross negligence, repeated negligence, or negligence that might constitute a danger to the health, welfare, or safety of a patient or the public;
 12. Procure or attempt to procure by fraud or misrepresentation a license or renewal of a license as a nursing care institution administrator;
 13. Violate a formal order, condition of probation, or stipulation issued by the Board;
 14. Commit an act of sexual abuse, misconduct, harassment, or exploitation;
 15. Retaliate against any person who reports in good faith to the Board alleged incompetence or illegal or unethical conduct of any administrator; or
 16. Accept an appointment as administrator of a nursing care institution in violation of R4-33-212.

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- C. The Board shall consider a final judgment or conviction for a felony, an offense involving moral turpitude, or direct or indirect elder abuse as grounds for disciplinary action under A.R.S. § 36-446.07 including denial of a license or license renewal.
- D. An administrator who violates any provision of A.R.S. Title 36, Chapter 4, Article 6 or this Chapter is subject to discipline under A.R.S. § 36-446.07.

Historical Note

Adopted effective July 24, 1978 (Supp. 78-4). Former Section R4-33-22 renumbered as Section R4-33-122 (Supp. 82-1). Section R4-33-209 renumbered from R4-33-122 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Section R4-33-209 renumbered from R4-33-122 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-209 renumbered from R4-33-122 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-209 renumbered from R4-33-122 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-209 renumbered from R4-33-122 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-208 renumbered from R4-33-122 effective November 25, 1992 (Supp. 92-4). Section R4-33-208 renumbered to R4-33-209, new Section R4-33-208 renumbered from R4-33-207 and amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2).

R4-33-210. Licensure Following Revocation

An individual who wishes to be licensed after the individual's license as a nursing care institution administrator is revoked shall:

1. Not apply for licensure until at least 12 months have passed since the revocation; and
2. Apply for licensure under R4-33-201 or R4-33-202.

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Former Section R4-33-24 renumbered as Section R4-33-124 (Supp. 82-1). Section R4-33-211 renumbered from R4-33-124 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Section R4-33-212 renumbered from R4-33-124 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-210 renumbered from R4-33-124 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-210 renumbered from R4-33-124 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-210 renumbered from R4-33-124 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-210 renumbered from R4-33-124 effective November 25, 1992 (Supp. 92-4). Section R4-33-210 renumbered to R4-33-211, new Section R4-33-210 renumbered from R4-33-209 and amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

R4-33-211. Notice of Appointment

- A. An administrator shall provide written notice to the Board, within 30 days, of being appointed administrator of a nursing care institution or terminating an appointment.
- B. An administrator shall include the following, as applicable, in a notice regarding the administrator's appointment:
 1. Administrator's name,
 2. Administrator's license number,
 3. Name and address of the nursing care institution to which the administrator is appointed,
 4. Date of appointment,
 5. Name and address of the nursing care institution at which the administrator's appointment is terminated, and
 6. Date of termination.

Historical Note

Section R4-33-211 renumbered from R4-33-125 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-211 renumbered from R4-33-125 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-211 renumbered from R4-33-125 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-211 renumbered from R4-33-125 effective November 25, 1992 (Supp. 92-4). New Section R4-33-211 renumbered from R4-33-210 and amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

R4-33-212. Appointment as Administrator of Multiple Nursing Care Institutions

- A. Except as provided in subsection (B), an individual licensed under R4-33-201 or R4-33-202 shall not be appointed as administrator of more than one nursing care institution.
- B. An individual licensed under R4-33-201 or R4-33-202 may be appointed as administrator of a second nursing care institution if:
 1. Neither nursing care institution is operating under a provisional license;
 2. The two nursing care institutions are no more than 25 miles apart; and

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3. The appointment at the second institution is for no more than 90 days.
- C. A licensed administrator who is appointed as administrator of a second nursing care institution under subsection (B) shall:
 1. For both nursing care institutions, designate in writing an individual who is on the nursing care institution premises and accountable for the services provided at the nursing care institution when the licensed administrator is not on the nursing care institution premises. The designated individual shall:
 - a. Be at least 21 years old;
 - b. Be qualified through education and experience to fulfill the responsibilities of a nursing care institution administrator; and
 - c. Never have had licensure or certification suspended or revoked by the Board;
 2. Ensure that the name of the designated individual is conspicuously displayed at all times in a manner that informs those seeking assistance who is accountable for the services provided;
 3. Place the written notice of designation required under subsection (C)(1) in the personnel file of the individual designated; and
 4. Be available to the individual designated under subsection (C)(1) by telephone or electronically within 60 minutes.

Historical Note

Adopted effective August 6, 1991 (Supp. 91-3). Section R4-33-211 renumbered from R4-33-126 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-212 renumbered from R4-33-126 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-212 renumbered from R4-33-126 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-212 renumbered from R4-33-126 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-212 renumbered from R4-33-126 effective November 25, 1992 (Supp. 92-4). Section R4-33-212 amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section R4-33-212 renumbered to R4-33-203 by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). New Section made by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2).

ARTICLE 3. ADMINISTRATOR-IN-TRAINING PROGRAM**R4-33-301. Approval of an AIT Program**

- A. The Board approves an AIT internship provided at an educational institution with a NAB-accredited program.
- B. The provider of an AIT program that does not meet the standard in subsection (A) may apply to the Board for approval of the AIT program. To apply for approval of an AIT program, the provider of the program shall submit to the Board:
 1. A letter on official letterhead providing the following information:
 - a. Name, address, e-mail address, and telephone and fax numbers of the provider; and
 - b. Name, telephone number, and e-mail address of an individual who can be contacted regarding the information provided;
 2. A description of the procedure required under R4-33-302(2)(d) to measure the success of an AIT and a copy of any materials used to measure the success of an AIT,
 3. A copy of the AIT program monitoring procedure required under R4-33-302(3) and any forms that are used in the monitoring,
 4. A copy of the certificate of completion required under R4-33-302(2)(e),
 5. A detailed outline of the training course required under R4-33-302(4)(d),
 6. A copy of the policy and procedures manual required under R4-33-302(5), and
 7. The signature of an authorized representative of the provider:
 - a. Affirming that the information provided is true and complete, and
 - b. Authorizing the Board to monitor the program's compliance with the standards in R4-33-302.
- C. The Board shall approve an AIT program that the Board determines meets the standards in R4-33-302. The Board's approval of an AIT program is valid for one year if the program remains in compliance with the standards in R4-33-302.
- D. To maintain approval of an AIT program, the provider of the AIT program shall, before the approval expires, submit:
 1. The information required under subsection (B), or
 2. The letter required under subsection (B)(1) and the signature of an authorized representative of the provider affirming the materials previously submitted under subsections (B)(2) through (B)(6) continue to be true and complete and authorizing the Board to monitor the program's compliance with the standards in R4-33-302.

Historical Note

Emergency adoption effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Emergency rule adopted again with changes effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again with changes effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Emergency rule adopted again effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Emergency rule R4-33-301 renumbered as a permanent rule to R4-33-302; new rule R4-33-301 adopted effective November 25, 1992 (Supp. 92-4). Former Section R4-33-301 renumbered to R4-33-401, new Section R4-33-301 adopted by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 2734, effective

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November 10, 2018 (Supp. 18-3).

R4-33-302. Standards for an AIT Program

For an AIT program to be approved by the Board, the provider of the AIT program:

1. Shall be:
 - a. An accredited college or university,
 - b. An institution licensed by the Board of Private Postsecondary Education under A.R.S. § 32-3001 et seq.,
 - c. ACHCA or the Arizona chapter of ACHCA, or
 - d. Another nationally recognized organization of long-term care administrators;
2. Shall ensure that the AIT program:
 - a. Provides at least 1,000 hours of full-time educational experience to the AIT in not less than six months and not more than 12 months in the following subject areas:
 - i. Federal and state law regarding nursing care institutions,
 - ii. Nursing care institution administration and policy,
 - iii. Health care quality assurance,
 - iv. Communications skills,
 - v. Health economics,
 - vi. Financial management of a nursing care institution,
 - vii. Personnel management,
 - viii. Resident care,
 - ix. Facility operation and management,
 - x. Safety and environmental management, and
 - xi. Community resources;
 - b. Allows the AIT to work only with a preceptor who meets the standards in subsection (4) and is responsible for supervising the AIT while the AIT participates in the program,
 - c. Is implemented at the nursing care institution of which the preceptor is administrator,
 - d. Measures the AIT's success in acquiring the knowledge and skills necessary to be a competent nursing care institution administrator, and
 - e. Provides the AIT with a certificate of completion that indicates:
 - i. The AIT's name,
 - ii. The preceptor's name and license number,
 - iii. The name and address of the facility at which the AIT program was implemented,
 - iv. The beginning and ending dates of the AIT program, and
 - v. The preceptor's signature affirming that the AIT successfully completed the AIT program;
3. Shall develop a procedure to monitor the AIT program, assess the AIT's progress through the AIT program, and make adjustments necessary to ensure that the AIT acquires the knowledge and skills necessary to be a competent nursing care institution administrator;
4. Shall ensure that an individual who serves as an AIT preceptor:
 - a. Has been licensed by the Board for at least two years,
 - b. Is appointed full-time as a nursing care institution administrator at a facility that the Department determines is in compliance with applicable standards,
 - c. Is in good standing and has no disciplinary actions against the individual's license in the last three years, and
 - d. Completes a training course regarding the role and responsibilities of a preceptor; and
5. Shall develop a written policy and procedures manual that includes at least the following:
 - a. Procedure and forms required to apply to be an AIT;
 - b. Procedure and forms required to apply to be a preceptor;
 - c. Procedure for matching an AIT applicant with a preceptor;
 - d. Goals of the AIT program related to each of the subject areas listed in subsection (2)(a);
 - e. Learning experiences to achieve each goal;
 - f. Estimated time to accomplish each goal;
 - g. Responsibilities of a preceptor;
 - h. Responsibilities of an AIT;
 - i. Procedures for deviating from the goals of the AIT program, changing the facility at which the AIT program is implemented, changing preceptor, and extending the AIT program; and
 - j. Procedure for evaluating the preceptor.

Historical Note

R4-33-302 adopted by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Emergency rule adopted again with changes effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again with changes effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. §

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41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Emergency rule adopted again effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Emergency rule R4-33-302 renumbered as a permanent rule to R4-33-303; new R4-33-302 renumbered from emergency rule R4-33-301 and adopted with changes effective November 25, 1992 (Supp. 92-4). Former Section R4-33-302 renumbered to R4-33-402, new Section R4-33-302 adopted by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2).

ARTICLE 5. CONTINUING EDUCATION**R4-33-501. Continuing Education Requirement****; Extension of Time**

- A.** Continuing education is a prerequisite of license or certificate renewal.
1. A licensed administrator shall obtain 50 credit hours of Board-approved continuing education during each biennial period. During the biennial period in which an administrator is initially licensed, the administrator shall obtain two credit hours of Board-approved continuing education for each month or part of a month remaining in the biennial period.
 2. A certified manager shall obtain 24 credit hours of Board-approved continuing education during each biennial period. During the biennial period in which a manager is initially certified, the manager shall obtain one credit hour of Board-approved continuing education for each month or part of a month remaining in the biennial period.
- B.** The Board shall award credit hours in an approved continuing education as follows:
1. Seminar or workshop. One credit hour of continuing education for each contact hour;
 2. Course at an accredited educational institution. Fifteen credit hours of continuing education for each course hour;
 3. Attendance at a business meeting of a national health care organization or of a state association affiliated with a national health care organization. One-half credit hour of continuing education for each business meeting attended;
 4. Self-study, online, or correspondence course. Approved credit hours of continuing education requested by the course provider;
 5. Serving as a preceptor. Two credit hours of continuing education for each month that an administrator serves as an AIT preceptor; and
 6. Teaching a Board-approved continuing education. One credit hour of continuing education for each hour taught.
- C.** The Board shall limit the number of credit hours of Board-approved continuing education awarded as follows:
1. No more than 40 percent of the required credit hours may be obtained using self-study, online, or correspondence courses;
 2. No more than 50 percent of the required credit hours may be obtained from serving as an AIT preceptor;
 3. Hours may be obtained for teaching a particular continuing education only once during each biennial period; and
 4. Hours that exceed the minimum required for a biennial period may not be carried over to a subsequent biennial period.
- D.** An administrator or manager shall obtain a certificate or other evidence of attendance from the provider of each continuing education attended that includes the following:
1. Name of the administrator or manager;
 2. License or certificate number of the administrator or manager;
 3. Name of the continuing education;
 4. Name of the continuing education provider;
 5. Date, time, and location of the continuing education; and
 6. Number of credit hours in the continuing education.
- E.** An administrator or manager shall maintain the evidence of attendance described in subsection (D) for three years and make the evidence available to the Board under R4-33-503 and as otherwise required under this Chapter.
- F.** To obtain an extension of time under A.R.S. § 36-446.07(G) to complete the continuing education requirement, an administrator or manager shall submit to the Board a written request that includes the following:
1. Ending date of the requested extension,
 2. Continuing education completed during the current biennial period and the documentation required under subsection (D),
 3. Proof of registration for additional continuing education that is sufficient to enable the administrator or manager to fulfill the continuing education requirement before the end of the requested extension, and
 4. Administrator's or manager's attestation that the continuing education obtained under the extension will be reported only to fulfill the current renewal requirement and will not be reported on a subsequent renewal application.
- G.** The Board shall grant an extension of time within seven days after receiving a request for an extension of time if the request:
1. Specifies an ending date no later than October 31,
 2. Includes the required documentation and attestation,
 3. Is submitted no sooner than April 30, and
 4. Will facilitate the safe and professional regulation of nursing care institutions or assisted living facilities in this state.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 15 A.A.R. 1975, effective November 3, 2009 (Supp. 09-4). Amended by final rulemaking at 27 A.A.R. 233, effective April 4,

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2021 (Supp. 21-1).

R4-33-502. Approval of Continuing Education

- A.** The Board shall approve any continuing education approved by NAB or the ACHCA.
- B.** The Board shall approve a continuing education only if it is taught by a qualified instructor and addresses at least one of the following subject areas:
1. Laws regarding environmental health and safety,
 2. Principles of management,
 3. Psychology and principles of patient or resident care,
 4. Personal and social care,
 5. Therapeutic and supportive care and services in long-term or assisted care,
 6. Community health and social resources,
 7. Quality assurance,
 8. Ethics, and
 9. Recordkeeping.
- C.** To obtain the Board's approval of a continuing education, an administrator, manager, or continuing education provider shall:
1. Submit a form, which is available from the Board, containing the following information:
 - a. Title of the continuing education;
 - b. Name and address of the continuing education provider;
 - c. Name, telephone and fax numbers, and e-mail address of a contact person for the continuing education provider;
 - d. Date, time, and place at which the continuing education will be taught;
 - e. Whether the continuing education is intended for administrators or managers;
 - f. Subject matter of the continuing education;
 - g. Teaching methods and learning activities that will be used;
 - h. Learning objectives;
 - i. Description of how learning objectives will be evaluated;
 - j. Whether an examination will be given;
 - k. Number of continuing education hours requested; and
 - l. Signature of the person requesting approval of the continuing education.
 2. Submit the following documents:
 - a. Copy of any examination that will be given to those who attend the continuing education;
 - b. Curriculum vitae of each instructor;
 - c. Agenda of the continuing education showing the hours of instruction;
 - d. Certificate of attendance that meets the requirements in R4-33-501(D);
 - e. Copy of any brochure prepared regarding the continuing education; and
 - f. Fee required under R4-33-104.
- D.** The Board's approval of a continuing education is valid for one year unless there is a change in subject matter, instructor, or hours of instruction. At the end of one year or when there is a change in subject matter, instructor, or hours of instruction, the continuing education provider shall apply again for approval.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

R4-33-503. Audit of Compliance and Sanction for Noncompliance with Continuing Education Requirement

- A.** The Board may audit a licensee or certificate holder for compliance with the continuing education requirement at any time.
- B.** When notice of the need to renew a license or certificate is provided, the Board shall also provide notice of an audit of continuing education records to a random sample of administrators or managers. An administrator or manager subject to a continuing education audit shall submit the documentation required under R4-33-501(D) at the same time that the administrator or manager submits the renewal application required under R4-33-206 or R4-33-405. If an administrator or manager fails to submit the required documentation with the renewal application on or before June 30, the license or certificate expires unless the administrator or manager obtains an extension of time in which to complete the continuing education requirement.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 27 A.A.R. 233, effective April 4, 2021 (Supp. 21-1).

As of September 2, 2021

36-446. Definitions

In this article, unless the context otherwise requires:

1. "Administrator" or "nursing care institution administrator" means a person who is charged with the general administration of a nursing care institution, whether or not that person has an ownership interest in the institution and whether or not the person's functions and duties are shared with others.
2. "Assisted living facility" has the same meaning prescribed in section 36-401.
3. "Assisted living facility manager" means a person who has responsibility for administering or managing an assisted living facility, whether or not that person has an ownership interest in the institution and whether or not the person's functions and duties are shared with others.
4. "Assisted living facility training program" includes:
 - (a) Training that is required for assisted living facility manager certification.
 - (b) Training that is required for assisted living facility caregivers and that is either:
 - (i) Consistent with the training, competency and test methodology standards developed by the Arizona health care cost containment system administration for in-home direct care workers.
 - (ii) As prescribed in section 36-446.16.
5. "Board" means the board of examiners of nursing care institution administrators and assisted living facility managers.
6. "Department" means the department of health services.
7. "Directed care services" has the same meaning prescribed in section 36-401.
8. "Director" means the director of the department of health services.
9. "Nursing care institution":
 - (a) Means an institution or other place, however named, whether for profit or not, including facilities operated by this state or a subdivision of this state, that is advertised, offered, maintained or operated for the express or implied purpose of providing care to persons who need nursing services on a continuing basis but who do not require hospital care or care under the daily direction of a physician.
 - (b) Does not include:
 - (i) An institution for the care and treatment of the sick that is operated only for those who rely solely on treatment by prayer or spiritual means in accordance with the tenets of a recognized religious denomination.

(ii) Nursing care services that are an integral part of a hospital licensed pursuant to this chapter.

10. "Unprofessional conduct" includes:

- (a) Dishonesty, fraud, incompetency or gross negligence in performing administrative duties.
- (b) Gross immorality or proselytizing religious views on patients without their consent.
- (c) Other abuses of official responsibilities, which may include intimidating or neglecting patients.

36-446.01. Licensure or certification requirements

A. A nursing care institution shall not operate in this state except under the supervision of an administrator licensed pursuant to this article.

B. An assisted living facility shall not operate in this state except under the supervision of a manager certified pursuant to this article.

C. It is unlawful for any person who does not have a license or certificate, or whose license or certificate has lapsed or has been suspended or revoked, to practice or offer to practice skilled nursing facility administration or assisted living facility management or use any title, sign, card or device indicating that such person is an administrator or manager.

36-446.02. Board of examiners; terms; meetings; quorum; effect of vacancies; compensation

A. The board of examiners of nursing care institution administrators and assisted living facility managers is established consisting of nine members appointed by the governor.

B. The board shall include:

- 1. One administrator who holds an active license issued pursuant to this article.
- 2. One manager who holds an active license issued pursuant to this article.
- 3. One administrator of a nonprofit or faith-based skilled nursing facility.
- 4. One administrator of a proprietary skilled nursing facility.
- 5. Two managers of an assisted living center as defined in section 36-401.
- 6. One manager of an assisted living home as defined in section 36-401.
- 7. Two public members who are not affiliated with a nursing care institution or an assisted living facility.

C. Board members who are not affiliated with a nursing care institution or an assisted living facility shall not have a direct financial interest in nursing care institutions or assisted living facilities.

D. A board member shall not serve on any other board relating to long-term care during the member's term with the board.

E. The term of a board member automatically ends when that member no longer meets the qualifications for appointment to the board. The board shall notify the governor of the board vacancy.

F. Board members who are not affiliated with a nursing care institution or an assisted living facility shall be appointed for two year terms. Board members who are the administrator of a nursing care institution or the manager of an assisted living facility shall be appointed for three year terms.

G. A board member shall not serve for more than two consecutive terms.

H. The board shall meet at least twice a year.

I. A majority of the board members constitutes a quorum.

J. Board members are eligible to receive compensation as determined pursuant to section 38-611 for each day actually spent performing their duties under this chapter.

K. A board member who is absent from three consecutive regular meetings or who fails to attend more than fifty per cent of board meetings over the course of one calendar year vacates the board member's position. The board shall notify the governor of the vacancy.

36-446.03. Powers and duties of the board; rules; fees

A. The board may adopt, amend or repeal reasonable and necessary rules and standards for the administration of this article in compliance with title XIX of the social security act, as amended.

B. The board by rule may adopt nonrefundable fees for the following:

1. Initial application for certification as an assisted living facility manager.
2. Examination for certification as an assisted living facility manager.
3. Issuance of a certificate as an assisted living facility manager, prorated monthly.
4. Biennial renewal of a certificate as an assisted living facility manager.
5. Issuance of a temporary certificate as an assisted living facility manager.
6. Readministering an examination for certification as an assisted living facility manager.
7. Issuance of a duplicate certificate as an assisted living facility manager.
8. Reviewing the sponsorship of continuing education programs, for each credit hour.
9. Late renewal of an assisted living facility manager certificate.
10. Reviewing an individual's request for continuing education credit hours, for each credit hour.
11. Reviewing initial applications for assisted living facility training programs.

12. Annual renewal of approved assisted living facility training programs.

C. The board may elect officers it deems necessary.

D. The board shall apply appropriate techniques, including examinations and investigations, to determine whether a person meets the qualifications prescribed in section 36-446.04.

E. On its own motion or in response to any complaint against or report of a violation by an administrator of a nursing care institution, or a manager of an assisted living facility, the board may conduct investigations, hearings and other proceedings concerning any violation of this article or of rules adopted by the board or by the department.

F. In connection with an investigation or administrative hearing, the board may administer oaths and affirmations, subpoena witnesses, take evidence and require by subpoena the production of documents, records or other information in any form concerning matters the board deems relevant to the investigation or hearing. If any subpoena issued by the board is disobeyed, the board may invoke the aid of any court in this state in requiring the attendance and testimony of witnesses and the production of evidence.

G. Subject to title 41, chapter 4, article 4, the board may employ persons to provide investigative, professional and clerical assistance as required to perform its powers and duties under this article. Compensation for board employees shall be as determined pursuant to section 38-611. The board may contract with other state or federal agencies as required to carry out this article.

H. The board may appoint review committees to make recommendations concerning enforcement matters and the administration of this article.

I. The board by rule may establish a program to monitor licensees and certificate holders who are chemically dependent and who enroll in rehabilitation programs that meet board requirements. The board may take disciplinary action if a licensee or a certificate holder refuses to enter into an agreement to enroll in and complete a board-approved rehabilitation program or fails to abide by that agreement.

J. The board shall adopt and use an official seal.

K. The board shall adopt rules for the examination and licensure of nursing care institution administrators and the examination and certification of assisted living facility managers.

L. The board shall adopt rules governing payment to a person for the direct or indirect solicitation or procurement of assisted living facility patronage.

M. The board must provide the senate and the house of representatives health committee chairmen with copies of all board minutes and executive decisions.

N. The board by rule shall limit by percentage the amount it may increase a fee above the amount of a fee previously prescribed by the board pursuant to this section.

O. The board by rule shall prescribe standards for assisted living facility training programs. On or before June 1, 2020, the board shall prescribe rules for assisted living facility caregivers that are consistent with the training, competency and test methodology standards developed by the Arizona health care cost containment system administration for in-home direct care workers.

P. The board may:

1. Grant, deny, suspend or revoke approval of, or place on probation, an assisted living facility training program.
2. Impose a civil penalty on an assisted living facility training program that violates this chapter or rules adopted pursuant to this chapter.

36-446.04. Qualifications; period of validity; exemption

A. The board shall issue a license as a nursing care institution administrator pursuant to its rules to any person who meets the following qualifications:

1. Is of good character.
2. Has satisfactorily completed a course of instruction and training approved by the board that:
 - (a) Is designed and sufficiently administered to give the applicant knowledge of the proper needs to be served by nursing care institutions.
 - (b) Includes a thorough background in the laws and rules governing the operation of nursing care institutions and the protection of the interests of the patients in nursing care institutions.
 - (c) Includes thorough training in elements of good health care facilities administration.
3. Has passed an examination administered by the board designed to test for competency in the subject matter referred to in this subsection.
4. Has met one of the following fingerprinting requirements:
 - (a) Has a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.
 - (b) Has provided proof of the submission of an application for a fingerprint clearance card. An applicant who has been denied a fingerprint clearance card must also provide proof that the applicant qualifies for a good cause exception hearing pursuant to section 41-619.55.

B. A person who is licensed pursuant to this section must maintain a valid fingerprint clearance card during the valid period of the person's license.

C. The board shall issue a certificate as an assisted living facility manager pursuant to its rules to a person who meets the following qualifications:

1. Is of good character.
2. Has satisfactorily completed a course of instruction and training approved by the board that:
 - (a) Is designed and sufficiently administered to give the applicant knowledge of the proper needs to be served by an assisted living facility.

(b) Includes a thorough background in the laws governing the operation of assisted living facilities and the protection of the interests of the patients in assisted living facilities.

(c) Includes thorough training in elements of assisted living facility administration.

3. Has passed an examination administered by the board that is designed to test for competency in the subject matter prescribed in this subsection.

4. Provides documentation satisfactory to the board that the applicant has completed two thousand eighty hours of paid work experience in a health related field within the preceding five years as prescribed by board rule.

5. Has met one of the following fingerprinting requirements:

(a) Has a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.

(b) Has provided proof of the submission of an application for a fingerprint clearance card. An applicant who has been denied a fingerprint clearance card must also provide proof that the applicant qualifies for a good cause exception hearing pursuant to section 41-619.55.

D. A person who is certified pursuant to this section must maintain a valid fingerprint clearance card during the valid period of the person's certificate.

E. In lieu of the requirements contained in subsection A, paragraph 2 or subsection C, paragraph 2, an applicant may present satisfactory evidence to the board of sufficient education and training in the areas listed in that paragraph.

F. A license is nontransferable and remains in effect until the following June 30 of an even numbered year, at which time the license may be renewed if the licensee otherwise complies with this article and unless the license has been surrendered, suspended or revoked.

G. A certificate is nontransferable and remains in effect until the following June 30 of an odd numbered year, at which time the certificate may be renewed if the certificate holder otherwise complies with this article and the certificate has not been surrendered, suspended or revoked.

H. This section does not apply to managers of adult foster care homes as defined in section 36-401.

36-446.05. Reciprocity; present administrators

The board may issue a nursing care institution administrator's license, without examination or with partial examination, to any person who holds a current license from another state or territory of the United States provided the standards for licensure in such other state or territory of the United States are at least substantially equivalent to those prevailing in this state, and provided that the applicant is otherwise qualified.

36-446.06. Temporary licenses and certificates

A. The board may issue a temporary nursing care institution administrator's license or assisted living facility manager's certificate to individuals determined to meet standards established by the board and

revoke or suspend temporary licenses or certificates previously issued by the board in any case where the individual holding a license or certificate is determined to have substantially failed to conform to the requirements of such standards during the term of the temporary license or certificate.

B. A temporary license or certificate is automatically revoked if the licensee or certificate holder fails either the state or national examination during the term of the license.

C. Temporary licenses or certificates may be issued without examination, for a single nonrenewable period of one hundred fifty days, to a qualified individual for the purpose of enabling the individual to fill a nursing care administrator or assisted living facility manager position. Qualifications for a temporary license or certificate shall include good character and the ability to meet such other standards as are established by the board.

D. An applicant for a temporary license or certificate shall not have failed a state or national examination either before or after applying for the temporary license or certificate.

36-446.07. Disciplinary actions; grounds for disciplinary action; renewal; continuing education; inactive status; hearings; settlement; judicial review; admission by default; military members

A. The board may suspend or revoke the license of any nursing care institution administrator, censure or place on probation any licensed nursing care institution administrator or deny a license as a nursing care institution administrator to any person for any of the following reasons:

1. Conviction of a felony or conviction of any misdemeanor involving moral turpitude.
2. Obtaining or renewing a license by fraud or deceit.
3. Unprofessional conduct.
4. Practicing without biennial licensure.
5. Addiction to or dependency on drugs or alcohol.
6. Wrongful transfer of a license or falsely impersonating another licensee.
7. Unauthorized disclosure of information relating to a patient or a patient's records.
8. Payment to any person for solicitation or procurement, either directly or indirectly, of nursing home patronage.
9. Violation of this article or a rule adopted pursuant to this article.

B. The board may suspend or revoke the certificate of an assisted living facility manager, censure or place on probation an assisted living facility manager or deny a certificate as an assisted living facility manager to a person for any of the following reasons:

1. Conviction of a felony or conviction of a misdemeanor involving moral turpitude.
2. Obtaining or renewing a certificate by fraud or deceit.

3. Unprofessional conduct.
4. Practicing without biennial certification.
5. Addiction to or dependency on drugs or alcohol.
6. Wrongful transfer of a certificate or falsely impersonating another certificate holder.
7. Unauthorized disclosure of information relating to a resident or a resident's records.
8. Violation of this article or a rule adopted pursuant to this article.

C. The board may impose a civil penalty in an amount of not to exceed five hundred dollars on any nursing care institution administrator or assisted living facility manager who violates this article or any rule adopted pursuant to this article. Actions to enforce the collection of these penalties shall be brought in the name of this state by the attorney general or the county attorney in the justice court or the superior court in the county in which the violation occurred. Penalties imposed under this section are in addition to and not in limitation of other penalties imposed pursuant to this article.

D. The board may file a letter of concern if, in the opinion of the board, while there is insufficient evidence to support direct action against the license of the administrator or the certificate of the manager, there is sufficient evidence for the board to notify the administrator or manager of its concern.

E. Every holder of a nursing care institution administrator's license shall renew it biennially by making application to the board. The renewals shall be granted as a matter of course if the holder has successfully completed at least fifty hours of continuing education every two years as established by the board in its rules, unless the applicant has acted or failed to act in such a manner or under such circumstances as would constitute grounds for taking any of the disciplinary actions permitted by this section. The board shall maintain a log of each complaint substantiated by the board or deficiency report concerning an administrator and shall retain in the administrator's file a copy of each such complaint or report and the action taken on it, if any. The board shall review and consider the administrator's file in determining whether to renew the administrator's license.

F. Except as provided in subsection R of this section, every holder of an assisted living facility manager's certificate shall renew it biennially by making application to the board. The renewals shall be granted as a matter of course if the holder has successfully completed continuing education every two years as established by the board in its rules, unless the applicant has acted or failed to act in a manner or under circumstances that constitute grounds for taking disciplinary action permitted by this section. The board shall maintain a log of each complaint substantiated by the board or deficiency report concerning a manager and shall retain in the manager's file a copy of each complaint or report and the action taken on it, if any. The board shall review and consider the manager's file in determining whether to renew the manager's certificate.

G. Except as provided in subsection R of this section, failure on the part of any licensed nursing care institution administrator or certified assisted living facility manager to furnish evidence of having attended the required continuing education hours during the preceding two years shall preclude renewal of the license or certificate unless the continuing education requirement is fulfilled within one hundred twenty days.

H. On written request to the board, a nursing care institution administrator in good standing may cause the administrator's name and license to be transferred to an inactive list. Any nursing care institution administrator on inactive license status shall pay a license renewal fee. On written request to the board, and subsequent approval by the board, a nursing care institution administrator on inactive license status may resume active license status on meeting twenty-five hours of continuing education requirements within six months and payment of the current fee.

I. On written request to the board, the board shall transfer an assisted living facility manager in good standing to an inactive list. An assisted living facility manager on inactive certificate status shall pay a certificate renewal fee prescribed by the board of not more than one hundred dollars every two years. On written request to the board, and subsequent approval by the board, an assisted living facility manager on inactive certificate status may resume active certificate status on meeting requirements for six hours of continuing education within six months and payment of the current fee.

J. Suspension, revocation or denial of renewal of a license or certificate or censure or probation of a licensee or certificate holder by the board becomes effective only on the board's first giving the licensee or certificate holder prior written notice and affording the licensee or certificate holder the right to request a hearing within thirty-five days of the receipt of notice. A hearing is not required before the denial of an original application for a license or a certificate. All hearings shall be conducted pursuant to title 41, chapter 6, article 10.

K. Any person wishing to make a complaint against a licensee or certificate holder under this article shall file a written complaint with the board within one year from the date of the action causing the complaint. If the board determines that the charges made in the complaint are sufficient, if true, to warrant suspension or revocation of a license or certificate issued under this article or censure or probation of a licensee or certificate holder under this article, it shall issue an order fixing the time and place for a hearing and requiring the licensee or certificate holder complained against to appear and answer the complaint. The order shall have affixed to it a copy of the complaint, and both shall be served on the licensee or certificate holder either personally or by certified mail sent to the licensee's or the certificate holder's last known address at least thirty-five days before the date set for the hearing. All hearings shall be conducted pursuant to title 41, chapter 6, article 10.

L. The board and an administrator or manager may enter into a settlement of any matter under investigation either before or after a notice of the hearing has been issued if the board determines that the proposed settlement adequately protects the public safety, health and welfare. The board shall record the terms of each settlement entered into and shall make the record available for public inspection.

M. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

N. If the board has initiated an investigation pursuant to this section, the board may continue the investigation and discipline the person under investigation even if that person resigns from practice after the board has initiated the investigation.

O. A licensee or certificate holder shall respond in writing to the board within thirty-five days after the board serves the complaint and notice of a formal hearing by certified mail. Service is complete on the date the board places the notice in the mail. The board shall consider a licensee's or certificate holder's failure to respond to the notice within thirty-five days as an admission by default to the allegations stated in the complaint. The board may then take disciplinary action against the licensee or certificate holder without conducting a formal hearing.

P. The board may set aside an admission by default if a licensee or certificate holder shows good cause. A licensee or certificate holder who applies to the board to set aside an admission by default shall demonstrate the following to the satisfaction of the board:

1. The failure to respond to the notice of the board was due to excusable neglect.
2. The licensee or certificate holder has a meritorious defense.
3. The licensee or certificate holder made prompt application to the board for relief.

Q. The board shall not consider an application to set aside an admission by default filed later than one hundred eighty days after the board's entry of the admission by default.

R. A license or certificate issued pursuant to this chapter to any member of the Arizona national guard or the United States armed forces reserves shall not expire while the member is serving on federal active duty and shall be extended one hundred eighty days after the member returns from federal active duty, provided that the member, or the legal representative of the member, notifies the board of the federal active duty status of the member. A license or certificate issued pursuant to this chapter to any member serving in the regular component of the United States armed forces shall be extended one hundred eighty days from the date of expiration, provided that the member, or the legal representative of the member, notifies the board of the federal active duty status of the member. If the license or certificate is renewed during the applicable extended time period, the member is responsible only for normal fees and activities relating to renewal of the license and shall not be charged any additional costs such as late fees or delinquency fees. The member, or the legal representative of the member, shall present to the board a copy of the member's official military orders, a redacted military identification card or a written verification from the member's commanding officer before the end of the applicable extended time period in order to qualify for the extension.

S. A license or certificate issued pursuant to this chapter to any member of the Arizona national guard, the United States armed forces reserves or the regular component of the United States armed forces shall not expire and shall be extended one hundred eighty days from the date the military member is able to perform activities necessary under the license or certificate if the member both:

1. Is released from active duty service.
2. Suffers an injury as a result of active duty service that temporarily prevents the member from being able to perform activities necessary under the license, certificate or registration.

36-446.08. Nursing care institution administrators' licensing and assisted living facility managers' certification fund; investment of fund monies

A. The nursing care institution administrators' licensing and assisted living facility managers' certification fund is established.

B. Pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies collected pursuant to this article in the state general fund and deposit the remaining ninety per cent in the nursing care institution administrators' licensing and assisted living facility managers' certification fund. All monies derived from civil penalties collected pursuant to section 36-446.07, subsection C shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

C. Monies deposited in the nursing care institution administrators' licensing and assisted living facility managers' certification fund are subject to the provisions of section 35-143.01.

D. On notice from the board, 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.

36-446.09. Violations; classification

A. Any person who manages, directs and controls the operation of a nursing care institution or an assisted living facility without a current and valid license or certificate as required by this article or who otherwise violates any provisions of this article is guilty of a class 2 misdemeanor. Each day of violation shall constitute a separate offense.

B. Action taken under subsection A shall not be a bar to enforcement of this article and the standards and rules issued and adopted pursuant to this article, by injunction or other appropriate remedy, and the board may institute and maintain in the name of this state any such enforcement proceeding.

36-446.10. Confidentiality of records; release of complainant's name and nature of complaint

A. Except as provided in subsection B, all records concerning a pending investigation, examination materials, records of examination grading and applicants' performance and transcripts of educational institutions concerning applicants are confidential and are not public records. "Records of applicants' performance" does not include records of whether an applicant passed or failed an examination.

B. During a pending investigation, the board shall inform the administrator or manager who is the subject of the complaint of the name of the complainant and the nature of the complaint if so requested.

36-446.11. Relief from civil liability

Members, employees and agents of the board and members of review committees shall not be held civilly liable for acts done or actions taken by any of these persons if such persons act in good faith following the requirements of this article. A person who in good faith reports or provides information to the board shall not be held civilly liable as a result of doing so.

36-446.12. Fees

A. The board by rule shall establish nonrefundable fees and penalties for the following for nursing care institution administrators:

1. Initial application.
2. Examination for licensure as a nursing care institution administrator.
3. A license as a nursing care institution administrator.
4. Renewing an active biennial license.
5. Renewing an inactive biennial license.

6. A temporary license as a nursing care institution administrator.
 7. Readministering the state examination.
 8. Readministering the national examination.
 9. A duplicate license.
 10. Late renewal of a license.
 11. Certifying licensure status.
 12. Reviewing the sponsorship of continuing education programs, for each credit hour.
 13. Reviewing an individual's request for continuing education credit hours, for each credit hour.
- B. The board shall prorate on a monthly basis fees paid for an initial license as a nursing care institution administrator.
- C. The board by rule shall limit by percentage the amount it may increase a fee above the amount of a fee previously prescribed by the board pursuant to this section.

36-446.13. Unlawful act; unlicensed operation; injunction

- A. On application by the board, the superior court may issue an injunction to enjoin the activities of a person who purports to be licensed pursuant to this article or who is engaging in the activities of a nursing care institution administrator without a license.
- B. In a petition for injunction filed pursuant to this section, it is sufficient to charge that the respondent on a certain day in a named county engaged in the activities of a nursing care institution administrator without a license and without being exempt from the licensing requirements of this article.
- C. For the purposes of this section, damage or injury is presumed.
- D. A petition for an injunction to enjoin unlicensed activities shall be filed in the name of this state in the superior court in the county where the respondent resides or may be found or in Maricopa county. On request of the board, the attorney general shall file the injunction.
- E. Issuance of an injunction does not relieve the respondent from being subject to other proceedings as provided in this article.

36-446.13. Unlawful act; unlicensed operation; injunction

- A. On application by the board, the superior court may issue an injunction to enjoin the activities of a person who purports to be licensed pursuant to this article or who is engaging in the activities of a nursing care institution administrator without a license.

B. In a petition for injunction filed pursuant to this section, it is sufficient to charge that the respondent on a certain day in a named county engaged in the activities of a nursing care institution administrator without a license and without being exempt from the licensing requirements of this article.

C. For the purposes of this section, damage or injury is presumed.

D. A petition for an injunction to enjoin unlicensed activities shall be filed in the name of this state in the superior court in the county where the respondent resides or may be found or in Maricopa county. On request of the board, the attorney general shall file the injunction.

E. Issuance of an injunction does not relieve the respondent from being subject to other proceedings as provided in this article.

36-446.14. Referral agencies; assisted living facilities; requirements; civil penalty; definitions

A. A referral agency shall disclose to any prospective resident or representative of a prospective resident at the time or before any referral is made for care at an assisted living facility both of the following:

1. The existence of any current business relationship between the referral agency and the assisted living facility, including any common ownership or control and any other financial, business, management or familial relationship that exists between the referral agency and the assisted living facility.

2. That the assisted living facility pays a fee to the referral agency in connection with the referral.

B. The referral agency shall disclose to a new resident or the resident's representative either before or at the time of the resident's admission date the amount of the fee or a good faith estimate of the fee to be paid by the assisted living facility to the referral agency.

C. Both the referral agency and the prospective resident or the prospective resident's representative shall sign and date or electronically acknowledge and date the disclosures required by subsections A and B of this section. The referral agency shall provide the prospective resident or the prospective resident's representative a copy of the disclosures either electronically or in a hard copy. The referral agency shall provide the assisted living facility a copy of the signed and dated or electronically acknowledged and dated disclosures at the same time the resident receives the disclosures, and the assisted living facility shall maintain a copy of the disclosures on file at the facility.

D. The assisted living facility may not pay any referral fee associated with a resident until the assisted living facility receives the disclosures required by subsections A and B of this section.

E. A referral agency that violates this section is subject to a civil penalty of up to one thousand dollars for each violation. The attorney general or a county attorney may institute a proceeding in superior court to recover the civil penalty under this subsection and to restrain and enjoin a violation of this section. Any civil penalty recovered pursuant to this subsection shall be deposited in the general fund of the jurisdiction that prosecuted the violation.

F. For the purposes of this section:

1. "Electronically" includes an audio recording that conforms with the Arizona rules of evidence, that is maintained by the referral agency and that is transmitted to the assisted living facility and the resident or the resident's representative in a format that can be downloaded.

2. "Referral agency":

(a) Means a person or entity that provides referrals for a fee that is collected from either the patient or the assisted living facility.

(b) Does not include either:

(i) An assisted living facility or its employees.

(ii) A resident, a resident's family member or a patron of an assisted living facility who refers a prospective resident to an assisted living facility and receives a discount or other remuneration from the assisted living facility.

36-446.15. Assisted living facility caregivers; training and competency requirements; medication administration; testing

A. Notwithstanding any other law, a person who successfully completes the training and competency requirements developed by the Arizona health care cost containment system administration for in-home direct care workers satisfies the training requirements for assisted living facility caregivers, except for medication administration training required by the assisted living facility caregiver's scope of practice.

B. An individual who meets the requirements specified in subsection A of this section and who registers for a medication administration examination is required to take and successfully complete only the part of the assisted living facility caregiver examination that covers the subject of medication administration.

C. The testing of an individual for medication administration competency:

1. Shall be conducted in accordance with the testing standards adopted by the board.

2. May be conducted by a training school approved by the board or by the assisted living facility that provided the training for the individual.

36-446.16. Assisted living facility caregivers; training requirements; board standards; definition

A. Except as provided in section 36-446.15, an individual shall successfully complete either of the following requirements for certification as an assisted living facility caregiver:

1. Both of the following:

(a) Sixty-two hours of on-the-job training under the direct supervision of any of the following health professionals:

(i) A physician who is licensed pursuant to title 32, chapter 13 or 17.

(ii) A registered nurse practitioner, registered nurse or licensed practical nurse who is licensed pursuant to title 32, chapter 15.

(iii) A pharmacist who is licensed pursuant to title 32, chapter 18.

(iv) A physician assistant who is licensed pursuant to title 32, chapter 25.

(v) A certified assisted living facility manager with at least five years of experience. Only thirty-one of the sixty-two hours of on-the-job training may be under the direct supervision of a certified assisted living facility manager.

(b) Pass the board-required examination with a score of at least seventy-five percent.

2. The board's required curriculum and examination for assisted living facility caregiver certification.

B. The board shall prescribe standards by rule for the on-the-job training prescribed in subsection A, paragraph 1, subdivision (a) of this section.

C. For the purposes of this section, "direct supervision" means the on-site, in-view observation and guidance of a caregiver who is in training by the supervising health professional.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)

Title 9, Chapter 22, Article 4, Penalty for Obtaining Eligibility by Fraud



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 7, 2021

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

FROM: Council Staff

DATE: November 12, 2021

SUBJECT: ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
Title 9, Chapter 22, Article 4, Penalty for Obtaining Eligibility by Fraud

Summary

This Five-Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS) relates to all rules in Title 9, Chapter 22, Article 4 related to the processes of determining and issuing penalties for those individuals obtaining eligibility by fraud.

These rules were enacted by final regular rulemaking which became effective on October 19, 2016. As such, this is the first 5YRR for these rules and there was no prior proposed course of action.

Proposed Action

At this time, AHCCCS finds that the rules are clear, concise and understandable, achieving their intended purpose, enforced as written, and consistent with state and federal statute and regulation. Also, AHCCCS indicates it has not received any public comments about these rules. Therefore, AHCCCS does not propose to take any action regarding these rules.

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

AHCCCS cites both general and specific authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

AHCCCS states that in SFY 2015, the year prior to enacting these rules, the AHCCCS Member Compliance section, through prosecutions and repayment agreements, recovered \$812,124.14 in money from persons who obtained eligibility through fraudulent means. They go on to say that the unit saved \$840,008.24 by discontinuing the eligibility of persons who were deemed ineligible due to non-residency in Arizona, unreported income, impermissible transference of resources and other misrepresentation. AHCCCS states that since this rulemaking was enacted, it has seen an increase of the existing recovery amounts allowing for a benefit to the State and taxpayers as more money has been recovered by preventing or curbing fraudulent activity. Stakeholders include AHCCCS, individuals applying for eligibility and taxpayers.

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

AHCCCS states that specific implementing statutes dictate the majority of the substance of the rule and the appeal options available after AHCCCS makes a finding of fraud in eligibility. They further indicate that the entirety of the rule language is pulled from the implementing statutes; therefore, this is the least burdensome option on regulated persons. Further, there are no paperwork or compliance costs beyond those already associated with applying for eligibility, and the benefits of preventing fraud within AHCCCS's system outweighs the very minor costs that might be associated with following the steps in these regulations after finding of fraud by AHCCCS.

4. **Has the agency received any written criticisms of the rules over the last five years?**

AHCCCS indicates it has not received written criticisms of the rules in the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

AHCCCS indicates the rules are clear, concise, and understandable.

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

AHCCCS indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

AHCCCS indicates the rules are effective in achieving their regulatory objectives.

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

AHCCCS indicates the rules are currently enforced as written.

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

AHCCCS indicates that the rules are not more stringent than corresponding federal law, specifically, federal regulations 42 CFR Part 455.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. AHCCCS indicates that the rules do not require issuance of a license, permit, or agency authorization.

11. Conclusion

_____AHCCCS indicates that the rules are clear, concise and understandable, achieving their intended purpose, enforced as written, and consistent with state and federal statute and regulation. Also, AHCCCS indicates it has not received any public comments about these rules. Therefore, AHCCCS does not propose to take any action regarding these rules.

Council staff recommends approval of this report.

September 30, 2021

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 22, Article 4, Five Year Review Report

Dear Ms. Sornsins:

Please find enclosed the Five-Year Review Report of AHCCCS for Title 9, Chapter 22, Article 4 which is due on September 30, 2021.

AHCCCS reviewed the following rules on this date because the Council rescheduled the initial review of an article under A.R.S. 41-1056(H).

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Nicole Fries at 602-417-4232 or nicole.fries@azahcccs.gov.

Sincerely,



Kasey Rogg
Assistant Director

Attachments

Arizona Health Care Cost Containment System (AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 22, Article 4

September 2021

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-2903.01(D)

Specific Statutory Authority: A.R.S. §§ 36-2905.04; 36-2991

2. The objective of each rule:

Rule	Objective
R9-22-401	The rule provides definitions for the penalty of obtaining eligibility by fraud.
R9-22-402	The rule describes how the Administration determines the amount of the penalty.
R9-22-403	The rule provides mitigating and aggravating circumstances the Administration shall consider when determining the amount of a penalty.
R9-22-404	The rule provides Notice of Intent format that the Administration is required to issue when imposing a penalty.
R9-22-405	The rule describes the process if a person fails to respond to the Notice of Intent within required timeframe.
R9-22-406	The rule describes request for state fair hearing process.
R9-22-407	The rule provides explanation as to who bears the burden of proof in a state fair hearing.
R9-22-408	The rule provides that the Administration may rescind the Notice of Intent at any time prior to the state fair hearing.

3. Are the rules effective in achieving their objectives? Yes No

4. Are the rules consistent with other rules and statutes? Yes No

5. Are the rules enforced as written? Yes No

6. Are the rules clear, concise, and understandable? Yes No

7. Has the agency received written criticisms of the rules within the last five years? Yes No

8. Economic, small business, and consumer impact comparison:

In SFY 2015, the year prior to enacting these rules, the AHCCCS Member Compliance section, through prosecutions and repayment agreements, recovered \$812,124.14 in money from persons who obtained eligibility through fraudulent means. In

addition, the unit saved \$840,008.24 by discontinuing the eligibility of persons who were deemed ineligible due to non-residency in Arizona, unreported income, impermissible transference of resources and other misrepresentations. Since this rulemaking was enacted the Administration has seen an increase of the existing recovery amounts allowing for a benefit to the State and taxpayers as more money has been recovered by preventing or curbing fraudulent eligibility activity.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Five years ago the Administration enacted these rules so there have been no courses of action proposed.

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 specific implementing statutes dictate the majority of the substance of the rule and the appeal options available after the Administration makes a finding of fraud in eligibility. Almost the entirety of the rule language is pulled from the implementing statutes, therefore this is the least burdensome option to regulated persons. There are not paperwork or compliance costs beyond those already associated with applying for eligibility and the benefits of preventing fraud within the Administration's system outweighs the very minor cost that might be associated with following the steps in these regulations after a finding of fraud by the Administration.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No

Chapter 22, Article 4 rules are consistent with statutes and federal regulations 42 CFR Part 455.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Not applicable.

14. **Proposed course of action:**

At this time, the Administration finds that the rules are clear, concise and understandable, achieving their intended purpose, enforced as written and consistent with state and federal statute and regulation. Since the Administration has also not received any public comments about these rules, the Administration has no recommended course of action at this time and does not recommend changing the regulations in any way.

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

Historical Note

Adopted effective November 20, 1984 (Supp. 84-6).
 Heading changed effective October 1, 1985 (Supp. 85-5).
 Change in heading only effective January 1, 1987, filed
 December 31, 1986 (Supp. 86-6). Section repealed by
 final rulemaking at 5 A.A.R. 294, effective January 8,
 1999 (Supp. 99-1).

R9-22-339. Repealed**Historical Note**

Adopted effective October 1, 1985 (Supp. 85-5).
 Amended effective October 1, 1986 (Supp. 86-5).
 Amended subsection (B) effective October 1, 1987
 (Supp. 87-4). Amended effective January 14, 1997 (Supp.
 97-1). Section repealed by final rulemaking at 5 A.A.R.
 294, effective January 8, 1999 (Supp. 99-1).

R9-22-340. Reserved**Historical Note**

Adopted effective October 1, 1986 (Supp. 86-5). Section
 repealed by final rulemaking at 5 A.A.R. 294, effective
 January 8, 1999 (Supp. 99-1).

R9-22-341. Repealed**Historical Note**

Adopted effective March 1, 1987, filed December 31,
 1986 (Supp. 86-6). Section repealed by final rulemaking
 at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-342. Repealed**Historical Note**

Adopted effective September 29, 1992 (Supp. 92-3).
 Amended effective September 22, 1997 (Supp. 97-3).
 Section repealed by final rulemaking at 5 A.A.R. 294,
 effective January 8, 1999 (Supp. 99-1).

R9-22-343. Repealed**Historical Note**

Adopted under an exemption from the provisions of the
 Administrative Procedure Act, effective July 1, 1993
 (Supp. 93-3). Amended under an exemption from the pro-
 visions of the Administrative Procedure Act, effective
 October 26, 1993 (Supp. 93-4). Section repealed by final
 rulemaking at 5 A.A.R. 294, effective January 8, 1999
 (Supp. 99-1).

R9-22-344. Repealed**Historical Note**

Adopted under an exemption from the provisions of the
 Administrative Procedure Act, effective October 8, 1996;
 filed with the Office of the Secretary of State November
 6, 1996 (Supp. 96-4). Section repealed by final rulemak-
 ing at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-
 1).

ARTICLE 4. PENALTY FOR OBTAINING ELIGIBILITY BY FRAUD**R9-22-401. Definitions**

Definitions. The following definitions apply specifically to terms
 used within this Article:

“Amounts incurred by the system” include capitation pay-
 ments, costs incurred by any contractor in excess of capitation,
 reinsurance, and other administrative, legal or investigative
 costs associated with a person who obtained eligibility con-
 trary to A.R.S. §§ 36-2905.04 and/or A.R.S. § 36-2991.

“Application for eligibility” means any request for benefits
 administered by AHCCCS under the authority of A.R.S. Title
 36, Chapter 29, including applications for presumptive eligi-
 bility submitted to hospitals as described under Article 16 of
 this Chapter.

“Penalty” means an amount not to exceed the amounts
 incurred by the system during any time period that the person
 would have been ineligible for benefits but for the false or
 fraudulent information provided on the application for eligibil-
 ity. A penalty does not include, and does not need to be
 reduced by, the amount of any overpayments that AHCCCS
 may be entitled to recoup from a person who violated A.R.S. §
 36-2905.04 and/or A.R.S. § 36-2991.

Historical Note

Adopted as an emergency effective May 20, 1982 pursu-
 ant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-
 3). Former Section R9-22-401 adopted as an emergency
 now adopted as a permanent rule effective August 30,
 1982 (Supp. 82-4). Amended effective January 31, 1986
 (Supp. 86-1). Amended effective January 31, 1997 (Supp.
 97-1). Amended by final rulemaking at 5 A.A.R. 867,
 effective March 4, 1999 (Supp. 99-1). Section repealed
 by final rulemaking at 8 A.A.R. 424, effective January
 10, 2002 (Supp. 02-1). New Section made by final
 rulemaking at 22 A.A.R. 3191, effective October 19,
 2016 (Supp. 16-4).

R9-22-402. Determining the Amount of the Penalty

- A. AHCCCS shall determine the amount of a penalty according
 to A.R.S. § 36-2905.04(B) or A.R.S. § 36-2991(B), whichever
 is applicable, and this Article.
- B. In addition to any penalty imposed pursuant to ARS §§ 36-
 2905.04 or 36-2991, and this Article, the Administration may
 also recoup from the person the amounts incurred by the sys-
 tem as a part of the notice and appeal process described in this
 Article.

Historical Note

Adopted as an emergency effective May 20, 1982, pursu-
 ant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-
 3). Former Section R9-22-402 adopted as an emergency
 now adopted and amended as a permanent rule effective
 August 30, 1982 (Supp. 82-4). Amended effective Janu-
 ary 31, 1986 (Supp. 86-1). Amended effective January
 14, 1997 (Supp. 97-1). Amended by final rulemaking at 6
 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Section
 repealed by final rulemaking at 8 A.A.R. 424, effective
 January 10, 2002 (Supp. 02-1). New Section made by
 final rulemaking at 22 A.A.R. 3191, effective October 19,
 2016 (Supp. 16-4).

R9-22-403. Mitigating and Aggravating Circumstances

- A. AHCCCS shall consider any of the following to be mitigating
 circumstances when determining the amount of a penalty for
 obtaining eligibility by fraud.
 1. Degree of culpability. The degree of culpability of a per-
 son is a mitigating circumstance if the person did not
 intend to provide or cause to be provided false informa-
 tion on the application for eligibility but was negligent as
 to the truthfulness of the information provided.
 2. Prior Offenses. At the time of the submittal of the appli-
 cation the person:
 - a. Did not have any prior criminal convictions; and
 - b. Had not been held civilly liable for defrauding a
 public assistance program.
 3. Financial condition. The financial condition of a person
 who violates A.R.S. §§ 36-2905.04 or 36-2991 is a miti-

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gating circumstance if the imposition of a penalty without reduction will render the person incapable of obtaining necessities of life such as food, clothing, and shelter. AHCCCS may consider the resources available to the person when determining the amount of the penalty.

4. Other matters as justice may require. AHCCCS shall take into account other circumstances of a mitigating nature, if in the interest of justice; the circumstances require a reduction of the penalty.
- B.** AHCCCS shall consider any of the following to be aggravating circumstances when determining the amount of a penalty for obtaining eligibility by fraud.
1. Degree of culpability. The degree of culpability of a person who provides or causes to be provided false information on the application for eligibility is an aggravating circumstance if the person knows or had reason to know that the information provided on the application for eligibility was false, or the person failed to correct the false information prior to AHCCCS incurring a financial loss as a result of the application for eligibility.
 2. Prior offenses. At any time before the submittal of the application for eligibility, the person was held criminally or civilly liable for committing any fraud, waste, or abuse against any public assistance program.
 3. Financial Loss. The person's violation of A.R.S. §§ 36-2905.04 or 36-2991 caused a loss to the system equal to or exceeding \$5,000.00.
 4. Other matters as justice may require. AHCCCS shall take into account other circumstances of an aggravating nature, if in the interest of justice; the circumstances require an increase of the penalty.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-403 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective January 31, 1986 (Supp. 86-1). Amended by adding subsection (C) effective October 1, 1987 (Supp. 87-4). Amended effective January 14, 1997 (Supp. 97-1). Section repealed by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). New Section made by final rulemaking at 22 A.A.R. 3191, effective October 19, 2016 (Supp. 16-4).

R9-22-404. Notice of Intent

- A.** If AHCCCS imposes a penalty pursuant to this Article, AHCCCS shall hand deliver or send by certified mail, return receipt requested, or Federal Express to the person, a written Notice of Intent to impose a penalty.
- B.** The Notice of Intent shall include:
 1. The legal and factual basis for AHCCCS' determination that there has been a violation of A.R.S. §§ 36-2905.04 and/or 36-2991;
 2. The penalty;
 3. The amounts incurred by the system as a result of the violation of A.R.S. §§ 36-2905.04 and/or 36-2991, if AHCCCS intends to recoup those amounts through this process; and
 4. The procedure for requesting a State Fair Hearing.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-404 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective January 31, 1986 (Supp. 86-1). Amended effective January

14, 1997 (Supp. 97-1). Section repealed by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). New Section made by final rulemaking at 22 A.A.R. 3191, effective October 19, 2016 (Supp. 16-4).

R9-22-405. Failure to Respond to the Notice of Intent

If a person fails to respond to the Notice of Intent within the time-frame described in A.A.C. § R9-22-406(A), AHCCCS shall uphold the penalty and recoupment amounts described in the Notice of Intent.

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-405 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended as an emergency effective February 23, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Amended as a permanent rule effective May 16, 1983; text of the amended rule similar to the emergency (Supp. 83-3). Amended effective January 31, 1986 (Supp. 86-1). Amended effective January 14, 1997 (Supp. 97-1). Section repealed by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). New Section made by final rulemaking at 22 A.A.R. 3191, effective October 19, 2016 (Supp. 16-4).

R9-22-406. Request for State Fair Hearing

- A.** To dispute the agency action described in the Notice of Intent, the person shall file a written Request for State Fair Hearing with AHCCCS within sixty (60) days from the date of receipt of the Notice of Intent.
- B.** If AHCCCS receives a timely request for a State Fair Hearing from the person, AHCCCS shall mail a Notice of Hearing pursuant to the Uniform Administrative Hearing Procedures described in A.R.S. Title 41, Chapter 6, Article 10.
- C.** AHCCCS shall accept a written request for withdrawal of a hearing request if the written request for withdrawal is received from the person before AHCCCS mails a Notice of Hearing under the Uniform Administrative Hearing Procedures described in A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-406 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-406 repealed, new Section R9-22-406 adopted as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Former Section R9-22-316 repealed, new Section R9-22-316 adopted as a permanent rule effective May 16, 1983; text of the Section identical to the emergency (Supp. 83-3). Amended effective January 31, 1986 (Supp. 86-1). Amended effective January 14, 1997 (Supp. 97-1). Section repealed by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). New Section made by final rulemaking at 22 A.A.R. 3191, effective October 19, 2016 (Supp. 16-4).

R9-22-407. Burden of Proof

- A.** In any State Fair Hearing conducted under this Article, AHCCCS shall prove a violation of A.R.S. §§ 36-2905.04 and/or 36-2991, and any aggravating circumstances by a preponderance of the evidence.

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- B. AHCCCS does not have to prove any specific intent to defraud.
- C. A person shall bear the burden of producing and proving by a preponderance of the evidence any affirmative defense or any circumstance that would justify reducing the amount of the penalty.

Historical Note

New Section made by final rulemaking at 22 A.A.R. 3191, effective October 19, 2016 (Supp. 16-4).

R9-22-408. Rescission of the Notice of Intent

AHCCCS may rescind the Notice of Intent at any time prior to the State Fair Hearing without prejudice.

Historical Note

New Section made by final rulemaking at 22 A.A.R. 3191, effective October 19, 2016 (Supp. 16-4).

ARTICLE 5. GENERAL PROVISIONS AND STANDARDS**R9-22-501. General Provisions and Standards - Related Definitions**

In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

“Quality management” means a process used by professional health personnel through a formal program involving multiple organizational components and committees to:

- Assess the degree to which services provided conform to desired medical standards and practices; and
- Quality improvement or maintenance of care and services.

“Quality Improvement” means a process designed to achieve, through ongoing measurements and intervention, significant improvement that is sustained over time, in the areas of clinical care and non-clinical care and is expected to have a favorable effect on health outcomes and member satisfaction. Quality Improvement includes focusing organizational efforts on improving performance and utilizing data to develop intervention strategies to improve performance and outcomes.

“Utilization management/review” means a methodology used by professional health personnel to assess the medical indications, appropriateness, and efficiency of care provided. Utilization management applies to a contractor’s process to evaluate and approve or deny the medical necessity, appropriateness, efficacy and efficiency of health care services, procedures, or settings. Utilization review includes processes for prior authorization, concurrent review, retrospective review, and case management.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-501 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-501 repealed, former Section R9-22-502 renumbered and adopted without change as Section R9-22-501 effective October 1, 1983 (Supp. 83-5). Former Section R9-22-501 repealed, former Section R9-22-526 renumbered and amended as Section R9-22-501 effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005

(Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

R9-22-502. Pre-existing Conditions

- A. A contractor shall not impose a pre-existing condition exclusion with respect to covered services.
- B. A contractor or subcontractor shall not adopt or use any procedure to identify a person who has an existing or anticipated medical or psychiatric condition in order to discourage or exclude the person from enrolling in the contractor’s health plan or encourage the person to enroll in another health plan.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-502 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-502 renumbered without change as Section R9-22-501, former Section R9-22-503 renumbered and amended as Section R9-22-502 effective October 1, 1983 (Supp. 83-5). Former Section R9-22-502 repealed, new Section R9-22-502 adopted effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4). Amended by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

R9-22-503. Provider Requirements Regarding Records

The provider shall maintain records that meet uniform accounting standards and generally accepted practices for maintenance of medical records, including detailed specification of all patient services delivered, the rationale for delivery, and the service date. A provider shall maintain and upon request, make available to a contractor and to the Administration, financial and medical records relating to payment for not less than five years from the date of final payment, or for records relating to costs and expenses to which the Administration has taken exception, five years after the date of final disposition or resolution of the exception. Providers shall provide one copy of a medical record at no cost if requested by the member.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-503 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-503 renumbered and amended as Section R9-22-502, new Section R9-22-503 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended effective May 30, 1986 (Supp. 86-3). Amended subsection (D) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsections (F) and (G) effective December 22, 1987 (Supp. 87-4). Amended subsection (I) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). New Section made by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

R9-22-504. Marketing; Prohibition Against Induce-

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

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

B. The director shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and

medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.

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

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

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

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

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

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

ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

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

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

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

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

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

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

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

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall

include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

or I. The director may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

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

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

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

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

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

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.

2. A copayment of five dollars for each physician office visit.
3. A copayment of ten dollars for each urgent care visit.
4. A copayment of thirty dollars for each emergency department visit.

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

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

36-2905.04. Eligibility by fraud; penalties; enforcement; classification

- A. A person shall not provide or cause to be provided false or fraudulent information to the state as part of an application for the system under section 36-2901, paragraph 6, subdivision (a).
- B. A person who violates subsection A of this section, who is determined eligible for the system and who would have been ineligible for the system if the person had provided true and correct information is subject, in addition to any other penalties that may be prescribed by federal or state law, to a civil penalty of not to exceed the amount incurred by the system, including capitation payments, on behalf of the person. In addition, the person's eligibility may be discontinued in accordance with rules adopted by the director.
- C. In addition to the requirements in state law, the medicaid fraud and abuse controls that are enacted under federal law apply to all persons eligible for the system and all contractors, noncontracting providers and subcontracted providers that provide services to persons who are eligible for the system.
- D. The director shall make the determination to assess a civil penalty and is responsible for collection of the penalty. The director may adopt rules that prescribe procedures for the determination and collection of civil penalties. The director may compromise civil penalties imposed under this section in accordance with criteria established in rules.
- E. The director shall adopt rules providing for the appeal of a decision by a person adversely affected by a determination made by the director under this section. The director's final decision is subject to judicial review in accordance with title 12, chapter 7, article 6.
- F. Amounts paid by the state and recovered under this section shall be deposited in the state general fund, and any applicable federal share shall be returned to the United States department of health and human services.
- G. If a civil penalty imposed pursuant to subsection D of this section is not paid, the state or the administration may file an action to collect the civil penalty in the superior court in Maricopa county. Matters that were raised or could have been raised in a hearing before the director or in an appeal pursuant to title 12, chapter 7, article 6 may not be raised as a defense to the civil action. An action brought pursuant to this subsection shall be initiated within six years after the date the claim is presented.
- H. The department and contractors, subcontracted providers and noncontracting providers shall cooperate with the administration to prevent, discover and prosecute eligibility fraud.
- I. A person who knowingly aids or abets another person pursuant to section 13-301, 13-302 or 13-303 in the commission of an offense under this section or section 13-3713 is guilty of a class 5 felony.

36-2991. Fraud; penalties; enforcement; violation; classification

- A. A person shall not provide or cause to be provided false or fraudulent information on an application for eligibility pursuant to this article.
- B. A person who violates subsection A of this section, who is determined eligible for services pursuant to this article and who would have been determined ineligible if the person had provided true and correct information is subject, in addition to any other penalties that may be prescribed by federal or state law, to a civil penalty of not more than the amount incurred by the system, including capitation payments made on behalf of the person. In addition, the person's eligibility may be discontinued in accordance with rules adopted by the director.
- C. In addition to the requirements of state law, any applicable fraud and abuse controls that are enacted under federal law apply to persons who are eligible for services under this article and to contractors and noncontracting providers who provide services under this article.
- D. The director shall make the determination to assess a civil penalty and is responsible for collection of the penalty. The director may adopt rules that prescribe procedures for the determination and collection of civil penalties. The director may compromise civil penalties imposed under this section in accordance with criteria established in rules.
- E. The director shall adopt rules providing for the appeal of a decision by a person adversely affected by a determination made by the director under this section. The director's final decision is subject to judicial review pursuant to title 12, chapter 7, article 6.
- F. Amounts paid by the state and recovered under this section shall be deposited in the state general fund, and any applicable federal share shall be returned to the United States department of health and human services.
- G. If a civil penalty imposed pursuant to subsection D of this section is not paid, the state may file an action to collect the civil penalty in the superior court in Maricopa county. Matters that were raised or could have been raised in a hearing before the director or in an appeal pursuant to title 12, chapter 7, article 6 may not be raised as a defense to the civil action. An action brought pursuant to this subsection shall be initiated within six years after the date the claim is presented.
- H. A person who knowingly aids or abets another person pursuant to section 13-301, 13-302 or 13-303 in the commission of an offense under this section or section 13-3713 is guilty of a class 5 felony.

DEPARTMENT OF TRANSPORTATION

Title 17, Chapter 4, Article 5

Expire: R17-4-510, R17-4-512

Effective date: September 29, 2021

**GOVERNOR'S REGULATORY REVIEW COUNCIL
NOTICE OF INTENT TO EXPIRE RULES**

1. Agency name: Department of Transportation
2. Title and its heading: 17, Transportation
3. Chapter and its heading: 4, Department of Transportation – Title, Registration, and Driver Licenses
4. Article and its heading: 5, Safety

Pursuant to A.R.S. § 41-1052(M), the Department of Transportation provides to the Governor's Regulatory Review Council a notice of its intent to expire the following rules:

- R17-4-510. Motorcycle Noise Level Limits
- R17-4-512. Child Restraint Systems in Motor Vehicles

Pursuant to A.R.S. § 41-1052(M), the Department of Transportation seeks to expire the rules listed above for the following reasons:

These rules are no longer necessary since the legislative authority was removed. Pursuant to Laws 2021, Chapter 257, in A.R.S. § 28-907 (R17-4-512), the applicable language was removed and A.R.S. § 28-955.02 (R17-4-510) was repealed.

Scott Omer

Scott Omer, Deputy Director/Chief Operating Officer

CHAPTER 4. DEPARTMENT OF TRANSPORTATION - TITLE, REGISTRATION, AND DRIVER LICENSES

final rulemaking at 14 A.A.R. 395, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-509. Repealed**Historical Note**

Adopted effective February 14, 1984 (Supp. 84-1). Former Section R17-4-56 renumbered without change as Section R17-4-509 (Supp. 87-2). Repealed effective December 17, 1993 (Supp. 93-4).

R17-4-510. Motorcycle Noise Level Limits

The Department incorporates by reference 40 CFR 205.152 and 205.166, revised as of July 1, 2019, and no later amendments or editions. The incorporated material is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at <http://www.ofr.gov> or <https://www.govinfo.gov/app/collection/cfr> and ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>. The International Standard Book Number is 9780160952975.

Historical Note

Adopted effective October 17, 1986 (Supp. 86-5). Former Section R17-4-76 renumbered without change as Section R17-4-510 (Supp. 87-2). Section recodified to R17-4-406 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-705 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

R17-4-511. Repealed**Historical Note**

Adopted effective April 21, 1980 (Supp. 80-2). Former Section R17-4-62 renumbered without change as Section R17-4-511 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 3831, effective August 10, 2001 (Supp. 01-3).

R17-4-512. Child Restraint Systems in Motor Vehicles

The Department incorporates by reference the Federal Motor Vehicle Safety Standards for child restraint systems under 49 CFR 571.213, revised as of October 1, 2019, and no later amendments or editions. The incorporated material is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at <http://www.ofr.gov> or <https://www.govinfo.gov/app/collection/cfr> and ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>. The International Standard Book Number is 9780160954894.

Historical Note

Former Rule, General Order 92. Former Section R17-4-37 renumbered without change as Section R17-4-512 (Supp. 87-2). Section recodified to R17-5-302 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section R17-4-512 recodified from R17-4-704 at 7 A.A.R. 4157, effective September 7, 2001 (Supp. 01-3).

Amended by final rulemaking at 14 A.A.R. 397, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

R17-4-513. Emergency Expired**Historical Note**

Emergency rule adopted effective January 4, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired. Emergency rule re-adopted effective May 2, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired.

R17-4-514. Emergency Expired**Historical Note**

Emergency rule adopted effective January 4, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired. Emergency rule re-adopted effective April 25, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired.

R17-4-515. Reserved**R17-4-516. Reserved****R17-4-517. Reserved****R17-4-518. Reserved****R17-4-519. Reserved****R17-4-520. Recodified****Historical Note**

Adopted as Section R17-4-301 and renumbered as Section R17-4-520 effective September 22, 1987 (Supp. 87-3). Section recodified to R17-4-502 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-521. Recodified**Historical Note**

Adopted as Section R17-4-310 and renumbered as Section R17-4-521 effective September 22, 1987 (Supp. 87-3). Section recodified to R17-4-503 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-522. Recodified**Historical Note**

Adopted as Section R17-4-320 and renumbered as Section R17-4-522 effective September 22, 1987 (Supp. 87-3). Amended effective April 12, 1994 (Supp. 94-2). Section recodified to R17-4-506 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

ARTICLE 6. EXPIRED**R17-4-601. Reserved****R17-4-602. Reserved****R17-4-603. Reserved****R17-4-604. Reserved****R17-4-605. Reserved****R17-4-606. Repealed****Historical Note**

Adopted effective February 6, 1984 (Supp. 84-1). Former Section R17-4-507 renumbered without change as Section R17-4-606 (Supp. 87-2). Repealed by summary rulemaking with an interim effective date of March 8,

E-2

DEPARTMENT OF ADMINISTRATION

Title 2, Chapter 15, Article 2

Expire: R2-15-201, R2-15-202, R2-15-203, R2-15-204, R2-15-205, R2-15-206, R2-15-207

Effective date: September 29, 2021

**GOVERNOR'S REGULATORY REVIEW COUNCIL
NOTICE OF INTENT TO EXPIRE RULES**

1. Agency name: Arizona Department of Administration
2. Title and its heading: Title 2, Administration
3. Chapter and its heading: Chapter 15, Department of Administration - General Services Division
5. Article and its heading: Article 2

Pursuant to A.R.S. § 41-1052(M), the Arizona Department of Administration provides to the Governor's Regulatory Review Council a Notice of its Intent to Expire the following rules: R2-15-201 through R2-15-209

Pursuant to A.R.S. § 41-1052(M), the Arizona Department of Administration seeks to expire the rules listed above for the following reasons: Laws 2021, First Regular Session, Chapter 413 (SB 1829) transferred ADOA's State Motor Vehicle Fleet to ADOT upon the general effective date of September 29, 2021.



9/28/2021 6:11 p.m.

[Agency Head or Designee]

CHAPTER 15. DEPARTMENT OF ADMINISTRATION - GENERAL SERVICES DIVISION

ARTICLE 1. RESERVED**ARTICLE 2. FLEET MANAGEMENT****R2-15-201. Definitions**

The following terms apply to this Article:

“Accident reporting packet” means the automobile loss report form and witness information cards in the glove compartment of each Fleet Management vehicle.

“ADOA” means the Arizona Department of Administration.

“Approved fueling facility” means a location managed by ADOA or the Arizona Department of Transportation to dispense fuel to Fleet Management vehicles.

“Capitol area” means that area within a ten-mile radius of the State Capitol Complex.

“Director” means the Director of ADOA.

“Domicile-to-duty travel” means travel between an operator’s residence and worksite as prescribed under A.R.S. § 38-622.

“Extended dispatch vehicle” means a Fleet Management vehicle that is dispatched full-time to a using agency that has continuing requirements for official state business travel.

“Fleet administrator” means the person designated by the Director to administer the Fleet Management program.

“Fleet Management” means the section of the ADOA that administers all state-owned vehicles, except those specified in A.R.S. § 41-803(E).

“Fleet Management facility” means the dispatch center, alternative fuel depot, and car wash facility located at 1501 W. Madison, Phoenix, Arizona 85007.

“Fleet Management vehicle” means any state vehicle owned and managed by Fleet Management.

“Maintenance provider” means a person contracting with Fleet Management to provide vehicle maintenance.

“Operator” means a driver of a Fleet Management vehicle.

“Recall” means a demand to return an extended dispatch vehicle because of failure to comply with this Article.

“Taxi” means a general purpose passenger vehicle on a temporary, short-term dispatch assignment.

“Using agency” means any agency to which a Fleet Management vehicle is dispatched.

“Vehicle rotation” means the periodic reassignment of vehicles dispatched to using agencies to equalize use.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Transferred from R2-1-201 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 4265, effective October 20, 2000 (Supp. 00-4).

R2-15-202. Vehicles, Operators, and Uses

- A. Any state employee holding a valid Arizona driver’s license may be an operator if authorized by the employee’s agency.
- B. An operator shall use a Fleet Management vehicle only for state government activities as prescribed under A.R.S. § 38-538.02. Prohibited uses include the following:
 1. Domicile-to-duty transportation of a state employee, unless specifically authorized by the employee’s agency director and approved by the ADOA Director;
 2. Personal convenience; or
 3. Transportation of family members or friends, or any person not essential to accomplishing the purpose for which the vehicle is dispatched.

- C. Fleet Management shall ensure that a Fleet Management vehicle:
 1. Bears a current state license plate in accordance with A.R.S. §§ 28-2351 and 28-2416,
 2. Bears designations in accordance with A.R.S. § 38-538,
 3. Is registered with the Arizona Department of Transportation Motor Vehicle Division, and
 4. Complies with state emissions laws.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Repealed effective February 7, 1990 (Supp. 90-1). Transferred from R2-1-202 (Supp. 91-3). New Section adopted by final rulemaking at 6 A.A.R. 4265, effective October 20, 2000 (Supp. 00-4). Amended by final rulemaking at 18 A.A.R. 1261, effective July 6, 2012 (Supp. 12-2).

R2-15-203. Operator Responsibilities

- A. Fueling facilities.
 1. An operator shall use an approved fueling facility whenever available. If an approved fueling facility is not available, an operator shall use a fueling facility that accepts the Fleet Management-issued credit card, if possible.
 2. An operator assigned an alternative fuel vehicle shall use alternative fuel whenever available.
 3. An operator shall use fuel from regular unleaded self-service pumps.
 4. Except in the case of emergency, operators within the Capitol area shall use the ADOA Fleet Management facility to refuel Fleet Management vehicles.
- B. Purchases and repairs.
 1. An operator shall use the Fleet Management-issued credit card for purchases and repairs only on Fleet Management vehicles.
 2. An operator shall obtain authorization from the maintenance provider before making a purchase or repair for a Fleet Management vehicle that costs more than \$50.00.
- C. Accident reporting.
 1. An operator shall report a fleet management vehicle accident to the police and shall make a written report to Fleet Management within 24 hours after the accident using the automobile loss report form contained in the accident reporting packet. If the operator is incapacitated, the operator’s supervisor shall make the report.
 2. The operator and the operator’s supervisor shall sign the automobile loss report and give it to Fleet Management within 24 hours after the accident.
 3. If another driver is involved, the operator shall request that the other driver fill out the witness information card located in the accident reporting packet. The operator shall obtain the name and telephone number of any witness.
 4. The operator shall submit the police report regarding the accident to Fleet Management within 10 calendar days after the accident.
- D. Traffic citations.
 1. An operator is personally responsible for the prompt payment of any fine for a moving or non-moving traffic citation, other than for mechanical failure, received while driving a Fleet Management vehicle.
 2. If a citation is received for mechanical failure, the operator shall, as soon as possible, deliver the vehicle, with the citation, to Fleet Management for repair.
 3. An operator who receives a traffic citation while driving a Fleet Management vehicle and fails to resolve the matter within 90 calendar days of the citation shall lose the privilege of operating a Fleet Management vehicle. The oper-

CHAPTER 15. DEPARTMENT OF ADMINISTRATION - GENERAL SERVICES DIVISION

ator's privilege shall be reinstated when the operator provides Fleet Management with verification that the operator paid the fine, successfully contested the traffic citation, or attended traffic school and possesses a valid driver's license.

- E. Vehicle operation.**
1. The operator and all passengers shall wear seat belts while the vehicle is in motion.
 2. An operator is responsible for the safe and careful operation of a Fleet Management vehicle and for observing all directives issued by the Governor.
- F. Care of vehicles.** An operator shall ensure that:
1. A Fleet Management vehicle is properly warmed as prescribed in the vehicle operation manual before operation;
 2. A Fleet Management vehicle is kept clean and free of litter;
 3. Any defect or malfunction is promptly reported to Fleet Management. If the Fleet administrator determines that the operator is negligent and fails to safeguard the Fleet Management vehicle, the cost of any resulting damage shall be billed to the using agency;
 4. The vehicle maintenance schedule is followed. Fleet Management vehicles not brought in for scheduled service are subject to recall; and
 5. Smoking does not occur in a Fleet Management vehicle.
 - a. If Fleet Management determines that smoking occurred in a Fleet Management vehicle, the operator's agency shall be billed for the cleaning expense.
 - b. A subsequent incident of smoking in a Fleet Management vehicle shall result in the operator losing the privilege to operate a Fleet Management vehicle.
- G. Taxi return.** An operator shall return a taxi to Fleet Management on the return date specified, unless an extension of the return date is approved by the Fleet Administrator.
- H. Loaning vehicles to other state employees.** An operator to whom a Fleet Management vehicle is dispatched is responsible for proper use of the vehicle. Before allowing another state employee to drive the vehicle, the operator to whom the vehicle is dispatched shall verify that the other state employee is properly licensed and instructed in the proper use of Fleet Management vehicles.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Transferred from R2-1-203 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 4265, effective October 20, 2000 (Supp. 00-4).

R2-15-204. Repealed**Historical Note**

Adopted effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Transferred from R2-1-204 and paragraph labeling corrected (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 4265, effective October 20, 2000 (Supp. 00-4).

R2-15-205. Vehicle Request Procedures

- A.** Using agencies may request either taxis or extended dispatch vehicles.
- B. Taxis**
1. Fleet Management shall fill reservations for a taxi on a first-come, first-serve basis. Vehicles shall be reserved in person, by telephone, in writing, or by electronic means.
 2. Fleet Management shall hold a reserved taxi for one hour beyond the stipulated time of dispatch. If, by that time,

the requesting agency does not pick up the taxi, the request shall be canceled and the taxi shall be dispatched to the next requestor.

3. If a requesting agency fails to pick up a taxi, Fleet Management shall bill the agency for one day's use.
- C. Extended dispatch vehicles**
1. An extended dispatch vehicle request shall be approved by the head of the requesting agency, or the agency head's designee, and forwarded to the Fleet Administrator.
 2. If the extended dispatch vehicle request cannot be satisfied with existing resources, the requesting agency may request appropriated funds for purchase of a vehicle in the next budget cycle, coordinating the request with the Fleet Administrator and the Office of Strategic Planning and Budgeting.
 3. If funds are available, the requesting agency shall purchase the vehicle through Fleet Management and assign the vehicle to the Fleet Management maintenance and replacement program.
 4. The requesting agency shall transfer the appropriate funding to Fleet Management before the vehicle is ordered.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Transferred from R2-1-205 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 4265, effective October 20, 2000 (Supp. 00-4).

R2-15-206. Special Equipment

An agency requesting specially installed equipment such as two-way radios, sirens, cages, or tanks shall submit the request in writing to the Fleet Administrator. The using agency shall pay for the equipment, for installation of the equipment, and for restoration expenses or diminution in value caused by modifications made to install special equipment.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Editorial correction, subsection (B), paragraph (3) (Supp. 84-2). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Transferred from R2-1-206 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 4265, effective October 20, 2000 (Supp. 00-4).

R2-15-207. Billing Rates

- A.** Charges for extended dispatch vehicles are determined by a rate methodology that consists of a cost-per-month charge, a cost-per-mile charge, and a charge for fuel use.
- B.** Charges for taxi vehicles are determined by a rate methodology that consists of a cost-per-day charge and a charge for fuel use.
- C.** Fleet Management rates may vary from fiscal year to fiscal year depending upon the size of the fleet and the cost of new vehicles, maintenance, repairs, overhead, and insurance costs.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Transferred from R2-1-207 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 4265, effective October 20, 2000 (Supp. 00-4).

R2-15-208. Repealed**Historical Note**

Adopted effective July 27, 1983 (Supp. 83-4). Repealed effective February 7, 1990 (Supp. 90-1). Transferred from R2-1-208 (Supp. 91-3).

CHAPTER 15. DEPARTMENT OF ADMINISTRATION - GENERAL SERVICES DIVISION

R2-15-209. Repealed**Historical Note**

Adopted effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Transferred from R2-1-209 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 4265, effective October 20, 2000 (Supp. 00-4).

ARTICLE 3. MATERIALS MANAGEMENT**R2-15-301. Definitions**

In this Article, unless the context otherwise states:

“Capital asset” has the same meaning as “nonexpendable materials” in A.R.S. § 41-2601.

“Department” means the Department of Administration.

“Direct transfer” means the transfer of surplus or excess materials by the Surplus Property Management Office from one state governmental unit to another without physically moving the property to the Surplus Property Management Office.

“Director” means the director of the Department of Administration.

“Established markets” means those places where materials are regularly bought and sold at prices set by open competition.

“Fair market value” means the price at which sales have been consummated for materials of like type, quality, and quantity in a particular market at the time of acquisition.

“General Accounting Administrator” means the person holding the position as Administrator of the General Accounting Office, Financial Services Division of the Department of Administration.

“Posted prices” means the sale price determined by the Surplus Property Administrator to be fair market value.

“State governmental unit” means any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of this state. A.R.S. § 41-2503.

“State plan of operation” means the agreement for acquiring federal surplus property between the state and the United States General Services Administration.

“Surplus Property Administrator” means the person holding the position as Administrator of the Surplus Property Management Office, Management Services Division of the Department of Administration.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Transferred from R2-7-801 (Supp. 91-3). Amended effective April 2, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 3267, effective September 24, 2004 (Supp. 04-3).

R2-15-302. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Transferred from R2-7-802 (Supp. 91-3). Section repealed by final rulemaking at 10 A.A.R. 3267, effective September 24, 2004 (Supp. 04-3).

R2-15-303. Disposition

- A. The Surplus Property Administrator shall act on behalf of the state in all matters pertaining to the disposition of excess and surplus materials.
- B. Except as specifically authorized for the Department of Public Safety under A.R.S. § 41-1713(B)(7), the Arizona Exposition and State Fair Board under A.R.S. § 3-1007(A)(1), Arizona Correctional Industries under A.R.S. §§ 41-1623(E) and 41-1624(B), and the Department of Mines and Mineral Resources under A.R.S. § 27-105(6), a state governmental unit shall not transfer, sell, trade-in, condemn, or otherwise dispose of materials owned by the state without written authorization from the Surplus Property Administrator.
- C. Each state governmental unit shall notify the Surplus Property Administrator of all excess and surplus materials on forms provided by the Surplus Property Administrator. The Surplus Property Administrator shall determine the fair market value of excess and surplus materials.
- D. The Surplus Property Administrator shall facilitate the transfer of excess or surplus materials to or between state agencies, political subdivisions, and eligible nonprofit institutions. The transfer document for state materials shall indicate that the recipient agrees not to transfer title or dispose of the materials within a six-month period, except for motor vehicles, which have a 12-month restriction, without prior approval of the Surplus Property Administrator.
- E. Disposition of surplus materials.
 1. The Surplus Property Administrator shall offer surplus materials through competitive sealed bids, public auction, online sales, established markets, or posted prices. If unusual circumstances render the above methods impractical, the Surplus Property Administrator may employ other disposition methods, including appraisal or barter, provided the Surplus Property Administrator makes a written determination that the procedure is advantageous to the state. The following methods of payment for surplus materials are accepted by the Surplus Property Administrator: a United States Postal Money Order, certified check, cashier’s check, and cash. Other methods of payment may be approved by the Surplus Property Administrator if the Surplus Property Administrator determines the method to be in the best interest of the state.
 2. Competitive sealed bidding. The Surplus Property Administrator shall ensure that:
 - a. Sale notices are publicly available from the Surplus Property Office at least five days before the date set for opening bids;
 - b. Each sale notice lists materials offered for sale, location of materials, and availability of materials for inspection, terms and conditions of sale, and instructions to bidders, including the place, date, and time set for the bid opening;
 - c. Bids are opened publicly;
 - d. Awards are made in accordance with the provisions of the sale notice; and
 - e. Awards are made to the highest responsive and responsible bidder, provided that the price offered by the highest responsive and responsible bidder is acceptable to the Surplus Property Administrator. If the Surplus Property Administrator determines that a bid is not advantageous to the state, the Surplus Property Administrator may reject the bid in whole or in part, resolicit bids a bid, or negotiate the sale, provided that the negotiated sale price is higher than