

**D-1**

**STATE BOARD OF PHARMACY (R19-1203)**

Title 4, Chapter 23, Board of Pharmacy, Articles 1, 2, 4, 6, 8, and 11

**Amend:** R4-23-110, R4-23-204, R4-23-205, R4-23-407, R4-23-408, R4-23-411,  
R4-23-607, R4-23-1103, R4-23-1106

**Repeal:** R4-23-801



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** December 3, 2019

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

**FROM:** Council Staff

**DATE:** November 8, 2019

**SUBJECT: STATE BOARD OF PHARMACY (R19-1203)**

Title 4, Chapter 23, Board of Pharmacy, Articles 1, 2, 4, 6, 8, and 11

**Amend:** R4-23-110, R4-23-204, R4-23-205, R4-23-407, R4-23-408, R4-23-411, R4-23-607, R4-23-1103, R4-23-1106

**Repeal:** R4-23-801

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### Summary:

This regular rulemaking from the State Board of Pharmacy ("Board) seeks to amend multiple rules in Title 4, Chapter 23, Articles 1, 2, 4, 6, and 11 and repeal one rule in Article 8. The Board indicates the rulemaking is an effort to comply with Executive Order 2019-01 by making minor changes to remove unnecessary or burdensome regulatory requirements and comply with statutory changes.

Specifically, in a rulemaking approved by Council on April 2, 2019 (See 25 A.A.R. 1015 (April 26, 2019)), a definition of virtual wholesaler was removed to provide time for the Board to consider public comment. The revised definition of virtual wholesaler, as required under A.R.S. § 32-1901, is included in this rulemaking. Under Laws 2018, Chapter 228, the legislature amended A.R.S. § 32-1901 to remove reference to "graduate intern" so the term is removed from Sections included in this rulemaking. R4-23-205 is amended to add fees for temporary licenses as specifically authorized under A.R.S. § 32-3124(H); R4-23-204 is amended to comply with A.R.S. § 32-3248.02, which requires health professionals to obtain continuing education

regarding opioids; and R4-23-1103 is amended to comply with A.R.S. § 32-1924(F), which establishes a 36-month license for a pharmacy technician trainee. R4-23-607 is amended to clarify that a nonresident permittee is required to be licensed in both Arizona and the jurisdiction of residence.

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

Yes. The Board cites to both general and specific statutory authority for these rules.

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

Yes. R4-23-205 is being amended to add fees for temporary licenses. Pursuant to A.R.S. § 41-1008(A)(1), "an agency shall not charge or receive a fee or make a rule establishing a fee unless the fee for the specific activity is expressly authorized by statute...." Here, A.R.S. § 32-3124(H) states, "[a] health profession regulatory board may establish an application and fee in rule for temporary licensure under this section." As such, the new fee for temporary licensure is in compliance with A.R.S. § 41-1008(A)(1).

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 did not review or rely on any study in conducting this rulemaking.

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

The Board is making minor changes to remove unnecessary or burdensome regulatory requirements to comply with statute. As a result, the Board believes the rulemaking will have minimal economic impact on stakeholders. Stakeholders include the Board, licensees who prescribe opioids, applicants wishing to obtain a temporary license, and virtual wholesalers.

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 indicates that because the costs associated with the rulemaking are minimal and reasonable and they did not consider less costly or less intrusive alternative methods.

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

The Board is the only state agency directly affected by the rulemaking and will incur the cost of implementing the rule making. No political subdivisions are directly affected. The Board believes that the changes and requirements in the rulemaking impose minimal economic burdens on stakeholders. The Board believes it is not possible to reduce the impact on small business and achieve the goal of protecting public safety. No private persons or consumers are directly affected by the rule making.

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

No. The Board made two non-substantive changes between the Notice of Proposed Rulemaking and Notice of Final Rulemaking before the Council. First, the Board changed R4-23-408(H)(1)(e) to clarify that a hard-copy record is required if a prescription order is for any controlled substance to make the rule consistent with federal law. Second, the Board changed R4-23-1103(C)(5) to clarify there are two Board-approved certification examinations for pharmacy technicians.

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

The Board received three comments on this proposed rulemaking.

First, one commenter expressed concern regarding R4-23-1103 and that the 36-month expiration of a pharmacy technician license with no opportunity for renewal would cause hardship for some individuals. The Board responded that A.R.S. § 32-1924(F) specifies the 36-month expiration and no opportunity for renewal. Therefore, the only way to address this concern would be through statutory change.

The other two comments from the Consumer Healthcare Products Association and the Council for Responsible Nutrition both supported repeal of R4-23-801.

Council staff finds that the Board adequately addressed comments on this rulemaking.

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

The Board indicates that it does not issue general permits, but individual licenses as specifically authorized by the Board's statutes. *See* A.R.S. §§ 32-1904(A)(5) and 32-1922. As such, the Board is in compliance with A.R.S. § 41-1037.

10. **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 that no rule is more stringent than federal law.

11. **Conclusion**

The Board is conducting this rulemaking to remove unnecessary or burdensome regulatory requirements and comply with statutory changes. While the rulemaking establishes a new fee, the Board has cited specific statutory authority for establishing a new fee related to temporary licensure. The Board has adequately responded to the three public comments on this

rulemaking. The Board is requesting 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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Physical Address: 1616 W. Adams, Suite 120, Phoenix, AZ 85007  
Mailing Address: P.O. Box 18520, Phoenix, AZ 85005  
p) 602-771-2727 f) 602-771-2749 www.azpharmacy.gov

October 16, 2019

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 October 11, 2019, 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 the five-year-review report.
- C. New fee: As specifically authorized under A.R.S. § 32-3124(H), a new fee is added for a temporary license.
- 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
  - 4. Public comments

Sincerely,

A handwritten signature in blue ink that reads "Kamlesh 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**

R4-23-110	Amend
R4-23-204	Amend
R4-23-205	Amend
R4-23-407	Amend
R4-23-408	Amend
R4-23-411	Amend
R4-23-607	Amend
R4-23-801	Repeal
R4-23-1103	Amend
R4-23-1106	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)

Implementing statute: A.R.S. §§ 32-1923.01, 32-1924(F), 32-1925, 32-1936, 32-1964, 32-1968, 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: 25 A.A.R. 2092, August 16, 2019

Notice of Proposed Rulemaking: 25 A.A.R. 2159, August 30, 2019

**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 complying with Executive Order 2019-01 by making minor changes to remove unnecessary or burdensome regulatory requirements and comply with statute. In a rulemaking approved by Council on April 2, 2019 (See 25 A.A.R. 1015 (April 26, 2019)), a definition of virtual wholesaler was removed to provide time for the Board to consider public comment. The revised definition of virtual wholesaler, as required under A.R.S. § 32-1901, is included in this rulemaking. Under Laws 2018, Chapter 228, the legislature amended A.R.S. § 32-1901 to remove reference to “graduate intern” so the term is removed from Sections included in this rulemaking. R4-23-205 is amended to add fees for temporary licenses as specifically authorized under A.R.S. § 32-3124(H); R4-23-204 is amended to comply with A.R.S. § 32-3248.02, which requires health professionals to obtain continuing education regarding opioids; and R4-23-1103 is amended to comply with A.R.S. § 32-1924(F), which establishes a 36-month license for a pharmacy technician trainee. R4-23-607 is amended to clarify that a nonresident permittee is required to be licensed in both Arizona and the jurisdiction of residence. Exemptions from EO2019-01 were provided by Emily Rajakovich, in the Governor’s Office, by e-mails dated April 1, 2019, and July 12, 2019.

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

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

Not applicable

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

The rulemaking will have minimal economic impact because it simply removes unnecessary or burdensome requirements or makes rule consistent with statute. An individual who chooses to obtain a temporary license will incur the cost of the fee for the temporary license but will have the benefit of being able to be employed while an application for licensure is processed. A person that chooses to operate as a virtual wholesaler is required to obtain either a full-service or non-prescription wholesalers permit and pay the applicable fee.

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

Between the proposed and final rulemakings, the Board made the following non-substantive changes:

R4-23-408(H)(1)(e) to clarify that a hard-copy record is required if a prescription order is for any controlled substance. This change makes the rule consistent with federal law.

R4-23-1103(C)(5) to clarify there are two Board-approved certification examinations for pharmacy technicians.

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

The Board received comments from three individuals. The comments, the Board's analysis, and the Board's response follow:

COMMENT	ANALYSIS	RESPONSE
R4-23-1103: Concern was expressed that the 36-month expiration of a pharmacy technician license with no opportunity for renewal would cause hardship for some individuals.	A.R.S. § 32-1924(F) specifies the 36-month expiration and no opportunity for renewal. The only way to address the comment is through statutory change.	No change
R4-23-801: Letters from both the Consumer Healthcare Products Association and the Council for Responsible	The Board appreciates the support.	No change

Nutrition supported the repeal of this Section.		
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**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 Board does not issue general permits. Rather, the Board issues individual licenses as required by the Board’s statutes to each person that is qualified by 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:**

No rule in this rulemaking is more stringent than federal law. There is federal law governing medications and those requiring a prescription order. R4-23-408(H) is consistent with 21 CFR 1304.04 relating to maintenance of records and inventories.

**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:**

None of the rules in this 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 1. ADMINISTRATION**

Section

R4-23-110. Definitions

**ARTICLE 2. PHARMACIST LICENSURE**

Section

R4-23-204. Continuing Education Requirements

R4-23-205. Fees

**ARTICLE 4. PROFESSIONAL PRACTICES**

Section

R4-23-407. Prescription Requirements

R4-23-408. Computer Records

R4-23-411. Pharmacist-administered or ~~Pharmacy or Graduate~~ Intern-administered Immunizations

**ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS**

Section

R4-23-607. Nonresident Permits

**ARTICLE 8. DRUG CLASSIFICATION**

Section

R4-23-801. ~~Dietary Supplements~~ Repealed

**ARTICLE 11. PHARMACY TECHNICIANS**

Section

R4-23-1103. Pharmacy Technician Trainee Licensure

R4-23-1106. Continuing Education Requirements

## ARTICLE 1. ADMINISTRATION

### R4-23-110. Definitions

In addition to definitions in A.R.S. § 32-1901, the following definitions apply to this Chapter:

“Active ingredient” means any component that furnishes pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease or that affects the structure or any function of the body of man or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug, that are present in the finished drug product in a modified form, and that furnish the specified activity or effect.

“AHCCCS” means the Arizona Health Care Cost Containment System.

“Annual family income” means the combined yearly gross earned income and unearned income of all adult individuals within a family unit.

“Approved course in pharmacy law” means a continuing education activity that addresses practice issues related to state or federal pharmacy statutes, rules, or regulations.

“Approved Provider” means an individual, institution, organization, association, corporation, or agency that is approved by the Accreditation Council for Pharmacy Education (ACPE) in accordance with ACPE’s policy and procedures or by the Board as meeting criteria indicative of the ability to provide quality continuing education.

“Assisted living facility” means a residential care institution as defined in A.R.S. § 36-401.

“Authentication of product history” means identifying the purchasing source, the ultimate fate, and any intermediate handling of any component of a radiopharmaceutical or other drug.

“Automated dispensing system” means a mechanical system in a long-term care facility that performs operations or activities, other than compounding or administration, relative to the storage, packaging, counting, labeling, and dispensing of medications, and which collects, controls, and maintains all transaction information.

“Automated storage and distribution system” means a mechanical system that performs operations or activities other than counting, compounding, or administration, relative to the storage, packaging, or distributing of drugs or devices and that collects, controls, and maintains all transaction information.

“Batch” means a specific quantity of drug that has uniform character and quality, within specified limits, and is produced according to a single manufacturing order during the same cycle of manufacture.

“Beyond-use date” means:

A date determined by a pharmacist and placed on a prescription label at the time of dispensing to indicate a time beyond which the contents of the prescription are not recommended to be used; or

A date determined by a pharmacist and placed on a compounded pharmaceutical product's label at the time of preparation as specified in R4-23-410(B)(3)(d), R4-23-410(I)(6)(e), or R4-23-410(J)(1)(d) to indicate a time beyond which the compounded pharmaceutical product is not recommended to be used.

“Biological safety cabinet” means a containment unit suitable for the preparation of low to moderate risk agents when there is a need for protection of the product, personnel, and environment, consistent with National Sanitation Foundation (NSF) standards, published in the National Sanitation Foundation Standard 49, Class II (Laminar Flow) Biohazard Cabinetry, NSF International P. O. Box 130140, Ann Arbor, MI, revised June 1987 edition, (and no future amendments or editions), incorporated by reference and on file with the Board.

“Care-giver” means a person who cares for someone who is sick or disabled or an adult who cares for an infant or child and includes a patient's husband, wife, son, daughter, mother, father, sister, brother, legal guardian, nurse, or medical practitioner.

“Change of ownership,” as used in A.R.S. § 32-1901.01(A), means a change of at least 30 percent in voting stock or vested interest that has direct operational oversight.

“Community pharmacy” means any place under the direct supervision of a pharmacist where the practice of pharmacy occurs or where prescription orders are compounded and dispensed other than a hospital pharmacy or a limited service pharmacy.

“Component” means any ingredient used in compounding or manufacturing drugs in dosage form, including an ingredient that may not appear in the finished product.

“Compounding and dispensing counter” means a pharmacy counter working area defined in this Section where a pharmacist ~~or a graduate intern, pharmacy intern,~~ pharmacy intern, pharmacy technician, or pharmacy technician trainee under the supervision of a pharmacist compounds, mixes, combines, counts, pours, or prepares and packages a prescription medication to dispense an individual prescription order or prepackages a drug for future dispensing.

“Computer system” means an automated data-processing system that uses a programmable electronic device to store, retrieve, and process data.

“Computer system audit” means an accounting method, involving multiple single-drug usage reports and audits, used to determine a computer system's ability to store, retrieve, and process original and refill prescription dispensing information.

“Contact hour” means 50 minutes of participation in a continuing education activity sponsored by an Approved Provider.

“Container” means:

A receptacle, as described in the official compendium or the federal act, that is used in manufacturing or compounding a drug or in distributing, supplying, or dispensing the finished dosage form of a drug; or

A metal receptacle designed to contain liquefied or vaporized compressed medical gas and used in manufacturing, transfilling, distributing, supplying, or dispensing a compressed medical gas.

“Continuing education” means a structured learning process required of a licensee to maintain licensure that includes study in the general areas of socio-economic and legal aspects of health care; the properties and actions of drugs and dosage forms; etiology, characteristics and therapeutics of disease status; or pharmacy practice.

“Continuing education activity” means continuing education obtained through an institute, seminar, lecture, conference, workshop, mediated instruction, programmed learning course, or postgraduate study in an accredited college or school of pharmacy.

“Continuing education unit” or “CEU” means 10 contact hours of participation in a continuing education activity sponsored by an Approved Provider.

“Continuous quality assurance program” or “CQA program” means a planned process designed by a pharmacy permittee to identify, evaluate, and prevent medication errors.

“Correctional facility” has the same meaning as in A.R.S. §§ 13-2501 and 31-341.

“CRT” means a cathode ray tube or other mechanism used to view information produced or stored by a computer system.

“CSPMP” means the Controlled Substances Prescription Monitoring Program established under A.R.S. Title 36, Chapter 28.

“Current good compounding practices” means the minimum standards for methods used in, and facilities or controls used for, compounding a drug to ensure that the drug has the identity and strength and meets the quality and purity characteristics it is represented to possess.

“Current good manufacturing practice” means the minimum standard for methods used in, and facilities or controls used for manufacturing, processing, packing, or holding a drug to ensure that the drug meets the requirements of the federal act as to safety, and has the identity and strength and meets the quality and purity characteristics it is represented to possess.

“Cytotoxic” means a pharmaceutical that is capable of killing living cells.

“Day” means a calendar day unless otherwise specified.

“DEA” means the Drug Enforcement Administration as defined in A.R.S. § 32-1901.

“Declared disaster areas” means areas designated by the governor or by a county, city, or town under A.R.S. § 32-1910 as those areas that have been adversely affected by a natural disaster or terrorist attack and require extraordinary measures to provide adequate, safe, and effective health care for the affected population.

“Delinquent license” means a pharmacist, ~~pharmacy intern, graduate intern,~~ or pharmacy technician license the Board suspends for failure to renew or pay all required fees on or before the date the renewal is due.

“Dietary supplement or food supplement,” as used in A.R.S. § 32-1904(B), means a product (other than tobacco) that:

Is intended to supplement the diet that contains one or more of the following dietary ingredients: a vitamin, a mineral, ~~an~~ herb or other botanical, ~~an~~ amino acid, a dietary substance for use by humans to supplement the diet by increasing the total daily intake, or a concentrate, metabolite, constituent, extract, or combinations of these ingredients;

Is intended for ingestion in pill, capsule, tablet, or liquid form;

Is not represented for use as a conventional food or as the sole item of a meal or diet; and

Is labeled as a “dietary supplement” or “food supplement.”

“Digital signature” has the same meaning as in A.R.S. § 41-132(E).

“Dispensing pharmacist” means a pharmacist who, in the process of dispensing a prescription medication after the complete preparation of the prescription medication and before delivery of the prescription medication to a patient or patient’s agent, verifies, checks, and initials the prescription medication label, as required in R4-23-402(A).

“Drug sample” means a unit of a prescription drug that a manufacturer provides free of charge to promote the sale of the drug.

“Durable medical equipment” or “DME” means technologically sophisticated medical equipment that may be used by a patient or consumer in a home or residence. DME may be prescription-only devices as defined in A.R.S. § 32-1901. DME includes:

Air-fluidized beds,

Apnea monitors,  
Blood glucose monitors and diabetic testing strips,  
Continuous Positive Airway Pressure (CPAP) machines,  
Electronic and computerized wheelchairs and seating systems,  
Feeding pumps,  
Home phototherapy devices,  
Hospital beds,  
Infusion pumps,  
Medical oxygen and oxygen delivery systems excluding compressed medical gases,  
Nebulizers,  
Respiratory disease management devices,  
Sequential compression devices,  
Transcutaneous electrical nerve stimulation (TENS) unit, and  
Ventilators.

“Earned income” means monetary payments received by an individual as a result of work performed or rental property owned or leased by the individual, including:

Wages,  
Commissions and fees,  
Salaries and tips,  
Profit from self-employment,  
Profit from rent received from a tenant or boarder, and

Any other monetary payments received by an individual for work performed or rental of property.

“Electronic signature” has the same meaning as in A.R.S. § 44-7002.

“Eligible patient” means a patient who a pharmacist determines is eligible to receive an immunization using professional judgment after consulting with the patient regarding the patient’s current health condition, recent health condition, and allergies.

“Emergency drug supply unit” means those drugs that may be required to meet the immediate and emergency therapeutic needs of long-term care facility residents and hospice inpatient facility

patients, and which are not available from any other authorized source in sufficient time to prevent risk of harm to residents or patients.

“Extreme emergency” means the occurrence of a fire, water leak, electrical failure, public disaster, or other catastrophe constituting an imminent threat of physical harm to pharmacy personnel or patrons.

“Family unit” means:

A group of individuals residing together who are related by birth, marriage, or adoption; or

An individual who:

Does not reside with another individual; or

Resides only with another individual or group of individuals to whom the individual is unrelated by birth, marriage, or adoption.

“FDA” means the Food and Drug Administration, a federal agency within the United States Department of Health and Human Services, established to set safety and quality standards for foods, drugs, cosmetics, and other consumer products.

“Health care decision maker” has the same meaning as in A.R.S. § 12-2291.

“Health care institution” has the same meaning as in A.R.S. § 36-401.

“Hospice inpatient facility” means a health care institution licensed under A.R.S. § 36-401 and Article 8 that provides hospice services to a patient requiring inpatient services.

“Immediate notice” means a required notice sent by mail, fax, or electronic mail to the Board Office within 24 hours.

“Immunizations training program” means an immunization training program for pharmacists; and ~~pharmacy interns, and graduate interns~~ that meets the requirements of R4-23-411(E).

“Inactive ingredient” means any component other than an “active ingredient” present in a drug.

“Internal test assessment” means performing quality assurance or other procedures necessary to ensure the integrity of a test.

“ISO Class 5 environment” means an atmospheric environment that complies with the ISO/TC209 International Cleanroom Standards, specifically ANSI/IEST/ISO-14644-1:1999: Cleanrooms and associated controlled environments--Part 1: Classification of air cleanliness, first edition dated May 1, 1999, (and no future amendments or editions), incorporated by reference and on file in the Board office.

“ISO Class 7 environment” means an atmospheric environment that complies with the ISO/TC209 International Cleanroom Standards, specifically ANSI/IEST/ISO-14644-1:1999: Cleanrooms and associated controlled environments--Part 1: Classification of air cleanliness, first edition dated May 1, 1999, (and no future amendments or editions), incorporated by reference and on file in the Board office.

“Licensed health care professional” means an individual who is licensed and regulated under A.R.S. Title 32, Chapter 7, 11, 13, 14, 15, 16, 17, 18, 25, 29, or 35.

“Limited-service correctional pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that:

    Holds a current Board permit under A.R.S. § 32-1931;

    Is located in a correctional facility; and

    Uses pharmacists, interns, and support personnel to compound, produce, dispense, and distribute drugs.

“Limited-service long-term care pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board-issued permit and dispenses prescription medication or prescription-only devices to patients in long-term care facilities.

“Limited-service mail-order pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board permit under A.R.S. § 32-1931 and dispenses a majority of its prescription medication or prescription-only devices by mailing or delivering the prescription medication or prescription-only device to an individual by the United States mail, a common or contract carrier, or a delivery service.

“Limited-service nuclear pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board permit under A.R.S. § 32-1931 and provides radiopharmaceutical services.

“Limited-service pharmacy permittee” means a person who holds a current limited-service pharmacy permit in compliance with A.R.S. §§ 32-1929, 32-1930, 32-1931, and A.A.C. R4-23-606.

“Limited-service sterile pharmaceutical products pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board permit under A.R.S. § 32-1931 and dispenses a majority of its prescription medication or prescription-only devices as sterile pharmaceutical products.

“Long-term care consultant pharmacist” means a pharmacist providing consulting services to a long-term care facility.

“Long-term care facility” or “LTCF” means a nursing care institution as defined in A.R.S. § 36-401.

“Lot” means a batch or any portion of a batch of a drug, or if a drug produced by a continuous process, an amount of drug produced in a unit of time or quantity in a manner that assures its uniformity. In either case, a lot is identified by a distinctive lot number and has uniform character and quality with specified limits.

“Lot number” or “control number” means any distinctive combination of letters or numbers, or both, from which the complete history of the compounding or manufacturing, control, packaging, and distribution of a batch or lot of a drug can be determined.

“Low-income subsidy” means Medicare-provided assistance that may partially or fully cover the costs of drugs and is based on the income of an individual and, if applicable, the individual’s spouse.

“Materials approval unit” means any organizational element having the authority and responsibility to approve or reject components, in-process materials, packaging components, and final products.

“Mechanical counting device for a drug in solid, oral dosage form” means a mechanical device that counts drugs in solid, oral dosage forms for dispensing and includes an electronic balance when used to count drugs.

“Mechanical storage and counting device for a drug in solid, oral dosage form” means a mechanical device that stores and counts and may package or label drugs in solid, oral dosage forms for dispensing.

“Mediated instruction” means information transmitted via intermediate mechanisms such as audio or video tape or telephone transmission.

“Medical practitioner-patient relationship” means that before prescribing, dispensing, or administering a prescription-only drug, prescription-only device, or controlled substance to a person, a medical practitioner, as defined in A.R.S. § 32-1901, shall first conduct a physical examination of that person or have previously conducted a physical examination. This subdivision does not apply to:

A medical practitioner who provides temporary patient supervision on behalf of the patient’s regular treating medical practitioner;

Emergency medical situations as defined in A.R.S. § 41-1831;

Prescriptions written to prepare a patient for a medical examination; or

Prescriptions written, prescription-only drugs, prescription-only devices, or controlled substances issued for use by a county or tribal public health department for immunization programs, emergency treatment, in response to an infectious disease investigation, public health emergency, infectious disease outbreak or act of bioterrorism. For purposes of this subsection, “bioterrorism” has the same meaning as in A.R.S. § 36-781.

“Medicare” means a federal health insurance program established under Title XVIII of the Social Security Act.

“Medication error” means any unintended variation from a prescription or medication order. Medication error does not include any variation that is corrected before the medication is dispensed to the patient or patient’s care-giver, or any variation allowed by law.

“Mobile pharmacy” means a pharmacy that is self-propelled or movable by another vehicle that is self-propelled.

“MPJE” means Multistate Pharmacy Jurisprudence Examination, a Board-approved national pharmacy law examination written and administered in cooperation with NABP.

“NABP” means National Association of Boards of Pharmacy.

“NABPLEX” means National Association of Boards of Pharmacy Licensure Examination.

“NAPLEX” means North American Pharmacist Licensure Examination.

“Order” means either of the following:

A prescription order as defined in A.R.S. § 32-1901; or

A medication order as defined in A.A.C. R4-23-651.

“Other designated personnel” means a non-pharmacist individual who is permitted in the pharmacy area, for a limited time, under the direct supervision of a pharmacist, to perform non-pharmacy related duties, such as trash removal, floor maintenance, and telephone or computer repair.

“Outpatient” means an individual who is not a residential patient in a health care institution.

“Outpatient setting” means a location that provides medical treatment to an outpatient.

“Patient profile” means a readily retrievable, centrally located information record that contains patient demographics, allergies, and medication profile.

“Pharmaceutical patient care services” means the provision of drug selection, drug utilization review, drug administration, drug therapy monitoring, and other drug-related patient care services intended to achieve outcomes related to curing or preventing a disease, eliminating or reducing a patient’s

symptoms, or arresting or slowing a disease process, by identifying and resolving or preventing potential and actual drug-related problems.

“Pharmaceutical product” means a medicinal drug.

“Pharmacy counter working area” means a clear and continuous working area that contains no major obstacles such as a desktop computer, computer monitor, computer keyboard, external computer drive device, printer, fax machine, pharmacy balance, typewriter, or pill-counting machine, but may contain individual documents or prescription labels, pens, prescription blanks, refill log, pill-counting tray, spatula, stapler, or other similar items necessary for the prescription-filling process.

“Pharmacy law continuing education” means a continuing education activity that addresses practice issues related to state or federal pharmacy statutes, rules, or regulations, offered by an Approved Provider.

“Pharmacy permittee” means a person who holds a current pharmacy permit that complies with A.R.S. §§ 32-1929, 32-1930, 32-1931, 32-1934, and R4-23-606 and R4-23-652.

“Physician” means a medical practitioner licensed under A.R.S. Title 32, Chapter 13 or 17.

“Physician-in-charge” means a physician who is responsible to the Board for all aspects of a prescription medication donation program required in A.R.S. § 32-1909 and operated in the physician’s office or in a health care institution.

“Poverty level” means the annual family income for a family unit of a particular size, as specified in the poverty guidelines updated annually in the *Federal Register* by the U.S. Department of Health and Human Services.

“Precursor chemical” means a precursor chemical I as defined in A.R.S. § 13-3401(26) and a precursor chemical II as defined in A.R.S. § 13-3401(27).

“Prepackaged drug” means a drug that is packaged in a frequently prescribed quantity, labeled in compliance with A.R.S. §§ 32-1967 and 32-1968, stored, and subsequently dispensed by a pharmacist ~~or a graduate intern~~ or pharmacy intern under the supervision of a pharmacist, who verifies at the time of dispensing that the drug container is properly labeled, in compliance with A.R.S. § 32-1968, for the patient.

“Prep area” means a specified area either within an ISO class 7 environment or adjacent to but outside an ISO class 7 environment that:

Allows the assembling of necessary drugs, supplies, and equipment for compounding sterile pharmaceutical products, but does not allow the use of paper products such as boxes or bulk drug storage;

Allows personnel to don personnel protective clothing, such as gown, gloves, head cover, and booties before entering the clean compounding area; and

Is a room or a specified area within a room, such as an area specified by a line on the floor.

“Primary care provider” means the medical practitioner who is treating an individual for a disease or medical condition.

“Proprietor” means the owner of a business permitted by the Board under A.R.S. §§ 32-1929, 32-1930, 32-1931, and 32-1934.

“Provider pharmacy” means a pharmacy that contracts with a long-term care facility to supply prescription medication or other services for residents of a long-term care facility.

“Radiopharmaceutical” means any drug that emits ionizing radiation and includes:

Any nonradioactive reagent kit, nuclide generator, or ancillary drug intended to be used in the preparation of a radiopharmaceutical, but does not include drugs such as carbon-containing compounds or potassium-containing salts, that contain trace quantities of naturally occurring radionuclides; and

Any biological product that is labeled with a radionuclide or intended to be labeled with a radionuclide.

“Radiopharmaceutical quality assurance” means performing and interpreting appropriate chemical, biological, and physical tests on radiopharmaceuticals to determine the suitability of the radiopharmaceutical for use in humans and animals. Radiopharmaceutical quality assurance includes internal test assessment, authentication of product history, and appropriate record retention.

“Radiopharmaceutical services” means procuring, storing, handling, compounding, preparing, labeling, quality assurance testing, dispensing, distributing, transferring, recordkeeping, and disposing of radiochemicals, radiopharmaceuticals, and ancillary drugs. Radiopharmaceutical services include quality assurance procedures, radiological health and safety procedures, consulting activities associated with the use of radiopharmaceuticals, and any other activities required for the provision of pharmaceutical care.

“Red C stamp” means a device used with red ink to imprint an invoice with a red letter C at least one inch high, to make an invoice of a Schedule III through IV controlled substance, as defined in A.R.S. § 36-2501, readily retrievable, as required by state and federal rules.

“Refill” means other than the original dispensing of the prescription order, dispensing a prescription order in the same quantity originally ordered or in multiples of the originally ordered quantity when specifically authorized by the prescriber, if the refill is authorized by the prescriber:

In the original prescription order;

By an electronically transmitted refill order that the pharmacist promptly documents and files; or

By an oral refill order that the pharmacist promptly documents and files.

“Regulated chemical” means the same as in A.R.S. § 13-3401(30).

“Remodel” means to alter structurally the pharmacy area or location.

“Remote drug storage area” means an area that is outside the premises of the pharmacy, used for the storage of drugs, locked to deny access by unauthorized persons, and secured against the use of force.

“Resident” means:

An individual admitted to and living in a long-term care facility or an assisted living facility,

An individual who has a place of habitation in Arizona and lives in Arizona as other than a tourist, or

A person ~~who~~ that owns or operates a place of business in Arizona.

“Responsible person” means the owner, manager, or other employee who is responsible to the Board for a permitted establishment’s compliance with the laws and administrative rules of this state and of the federal government pertaining to distribution of drugs, devices, precursor chemicals, and regulated chemicals. Nothing in this definition relieves other individuals from the responsibility to comply with state and federal laws and administrative rules.

“Score transfer” means the process that enables an applicant to take the NAPLEX in a jurisdiction and be eligible for licensure by examination in other jurisdictions.

“Security features” means attributes incorporated into the paper of a prescription order, referenced in A.R.S. § 32-1968(A)(4), that are approved by the Board or its staff and include one or more of the following designed to prevent duplication or aid the authentication of a paper document: laid lines, enhanced laid lines, thermochromic ink, artificial watermark, fluorescent ink, chemical void, persistent void, penetrating numbers, high-resolution border, high-resolution latent images, micro-printing, prismatic printing, embossed images, abrasion ink, holograms, and foil stamping.

“Shared order filling” means the following:

Preparing, packaging, compounding, or labeling an order, or any combination of these functions, that are performed by:

A person with a current Arizona Board license, located at an Arizona pharmacy, on behalf of and at the request of another resident or nonresident pharmacy; or

A person, located at a nonresident pharmacy, on behalf of and at the request of an Arizona pharmacy; and

Returning the filled order to the requesting pharmacy for delivery to the patient or patient’s care-giver or, at the request of this pharmacy, directly delivering the filled order to the patient.

“Shared order processing” means the following:

Interpreting the order, performing order entry verification, drug utilization review, drug compatibility and drug allergy review, final order verification, and when necessary, therapeutic intervention, or any combination of these order processing functions, that are performed by:

A pharmacist or intern, under pharmacist supervision, with a current Arizona Board license, located at an Arizona pharmacy, on behalf of and at the request of another resident or nonresident pharmacy; or

A pharmacist or intern, under pharmacist supervision, located at a nonresident pharmacy, on behalf of and at the request of an Arizona pharmacy; and

After order processing is completed, returning the processed order to the requesting pharmacy for order filling and delivery to the patient or patient’s care-giver or, at the request of this pharmacy, returning the processed order to another pharmacy for order filling and delivery to the patient or patient’s care-giver.

“Shared services” means shared order filling or shared order processing, or both.

“Sight-readable” means that an authorized individual is able to examine a record and read its information from a CRT, microfiche, microfilm, printout, or other method acceptable to the Board or its designee.

“Single-drug audit” means an accounting method that determines the numerical and percentage difference between a drug’s beginning inventory plus purchases and ending inventory plus sales.

“Single-drug usage report” means a computer system printout of original and refill prescription order usage information for a single drug.

“Standard-risk sterile pharmaceutical product” means a sterile pharmaceutical product compounded from sterile commercial drugs using sterile commercial devices or a sterile pharmaceutical optic or ophthalmic product compounded from non-sterile ingredients.

“State of emergency” means a governmental declaration issued under A.R.S. § 32-1910 as a result of a natural disaster or terrorist attack that results in individuals being unable to refill existing prescriptions.

“Sterile pharmaceutical product” means a medicinal drug free from living biological organisms.

“Strength” means:

The concentration of the drug substance (for example, weight/weight, weight/volume, or unit dose/volume basis); or

The potency, that is, the therapeutic activity of a drug substance as indicated by bioavailability tests or by controlled clinical data (expressed, for example, in terms of unity by reference to a standard).

“Substantial-risk sterile pharmaceutical product” means a sterile pharmaceutical product compounded as a parenteral or injectable dosage form from non-sterile ingredients.

“Supervision” means a pharmacist is present, assumes legal responsibility, and has direct oversight of activities relating to acquiring, preparing, distributing, administering, and selling prescription medications by ~~pharmacy~~ interns, ~~graduate interns~~, pharmacy technicians, or pharmacy technician trainees and when used in connection with the intern training requirements means that, in a pharmacy where intern training occurs, a ~~pharmacy~~ an intern preceptor assumes the primary responsibility of teaching the intern during the entire period of the training.

“Supplying” means selling, transferring, or delivering to a patient or a patient’s agent one or more doses of:

A nonprescription drug in the manufacturer’s original container for subsequent use by the patient,  
or

A compressed medical gas in the manufacturer’s or compressed medical gas distributor’s original container for subsequent use by the patient.

“Support personnel” means an individual, working under the supervision of a pharmacist, trained to perform clerical duties associated with the practice of pharmacy, including cashiering, bookkeeping, pricing, stocking, delivering, answering non-professional telephone inquiries, and documenting third-party reimbursement. Support personnel shall not perform the tasks of a pharmacist, ~~pharmacy~~ intern, ~~graduate intern~~, pharmacy technician, or pharmacy technician trainee.

“Temporary pharmacy facility” means a facility established as a result of a declared state of emergency to temporarily provide pharmacy services within or adjacent to declared disaster areas.

“Tourist” means an individual who is living in Arizona but maintains a place of habitation outside of Arizona and lives outside of Arizona for more than six months during a calendar year.

“Transfill” means a manufacturing process by which one or more compressed medical gases are transferred from a bulk container to a properly labeled container for subsequent distribution or supply.

“Unearned income” means monetary payment received by an individual that is not compensation for work performed or rental of property owned or leased by the individual, including:

- Unemployment insurance,

- Workers’ compensation,

- Disability payments,

- Payments from the Social Security Administration,

- Payments from public assistance,

- Periodic insurance or annuity payments,

- Retirement or pension payments,

- Strike benefits from union funds,

- Training stipends,

- Child support payments,

- Alimony payments,

- Military family allotments,

- Regular support payments from a relative or other individual not residing in the household,

- Investment income,

- Royalty payments,

- Periodic payments from estates or trusts, and

- Any other monetary payments received by an individual that are not:

  - As a result of work performed or rental of property owned by the individual,

  - Gifts,

  - Lump-sum capital gains payments,

Lump-sum inheritance payments,  
Lump-sum insurance payments, or  
Payments made to compensate for personal injury.

“Verified signature” or “signature verifying” means in relation to a Board license or permit application or report, form, or agreement, the hand-written or electronic signature of an individual who, by placing a hand-written or electronic signature on a hard-copy or electronic license or permit application or report, form, or agreement agrees with and verifies that the statements and information within or attached to the license or permit application or report, form, or agreement are true in every respect and that inaccurate reporting can result in denial or loss of a license or permit or report, form, or agreement.

“Veteran” means an individual who has served in the United States Armed Forces.

“Virtual manufacturer” means an entity that contracts for the manufacture of a drug or device for which the entity:

Owns the New Drug Application or Abbreviated New Drug Application number, as defined by the FDA, for a drug;

Owns the Unique Device Identification number, as defined by the FDA, for a prescription device;

Is not involved in the physical manufacture of the drug or device; and

Contracts with an Arizona-permitted manufacturing entity for the physical manufacture of the drug or device; or

If the contracted manufacturing entity is in a location not included in the definition at A.R.S. 32-1901 of other jurisdiction, the virtual manufacturer ensures the facility is inspected every time the virtual manufacturer submits an initial or renewal application and determined to comply with current good manufacturing practices as defined by the federal act and the official compendium.

Virtual manufacturer includes an entity that may be identified as an own-label distributor, which contracts with a manufacturer to produce a drug or device and with another entity to package and label the drug or device, which is then sold under the distributor’s name or another name.

“Virtual wholesaler” means an entity that engages in the wholesale distribution of a drug or device in, into, or out of Arizona but does not take physical possession of the drug or device. A virtual wholesaler distributes a drug or device only from a Board-permitted facility to:

A Board-permitted pharmacy, drug manufacturer, full-service drug wholesaler, or non-prescription drug wholesaler; or

A medical practitioner licensed under A.R.S. Title 32; and

Virtual wholesaler includes an entity that may be identified as a broker that buys and sells goods for others or a person that facilitates distribution of a drug, chemical, or device regulated by the Board.

“Wholesale distribution” means distribution of a drug to a person other than a consumer or patient, but does not include:

Selling, purchasing, or trading a drug or offering to sell, purchase, or trade a drug for emergency medical reasons. For purposes of this Section, “emergency medical reasons” includes transferring a prescription drug by a community or hospital pharmacy to another community or hospital pharmacy to alleviate a temporary shortage;

Selling, purchasing, or trading a drug, offering to sell, purchase, or trade a drug, or dispensing a drug as specified in a prescription;

Distributing a drug sample by a manufacturers’ or distributors’ representative; or

Selling, purchasing, or trading blood or blood components intended for transfusion.

“Wholesale distributor” means any person engaged in wholesale distribution of drugs, including: manufacturers; repackers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers’ and distributors’ warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies that conduct wholesale distributions in the amount of at least 5% of gross sales.

## ARTICLE 2. PHARMACIST LICENSURE

### R4-23-204. Continuing Education Requirements

A. ~~General.~~ Under A.R.S. § 32-1936, continuing professional pharmacy education is mandatory for all licensees.

1. General continuing education requirement. In accordance with A.R.S. § ~~32-1925(G)~~ 32-1925(F), the Board shall not renew a license unless the ~~applicant~~ licensee has, during the two years preceding the application for renewal, participated in 30 contact hours (3.0 ~~CEU’s~~ CEUs) of continuing education activity sponsored by an Approved Provider as defined in R4-23-110, ~~of which at least three contact hours (0.3 CEU’s) are approved courses in pharmacy law. Subject to A.R.S. § 32-1937, a pharmacist licensed for less than 24 months shall obtain continuing education~~

~~units in an amount determined by multiplying 1.25 hours times the number of months between the date of initial licensure and the next license renewal date.~~

2. Special continuing education requirement. The Board shall not renew a license unless:
  - a. A licensee certified under R4-23-411 to administer immunizations, vaccines, and emergency medications has participated in at least two contact hours of continuing education activity related to administering immunizations, vaccines, and emergency medications; and
  - b. A licensee authorized to dispense controlled substances has participated in at least three contact hours of opioid-related, substance use disorder-related, or addiction-related continuing education activity.
3. A pharmacist is exempt from the continuing education requirement in subsections (A)(1) and (2) between the time of initial licensure and first renewal.

**B.** Acceptance of continuing education units (~~CEU's~~) CEUs. The Board shall:

1. ~~Only accept CEU's~~ Accept CEUs for continuing education activities sponsored only by an Approved Provider;
2. ~~Only accept CEU's~~ Accept CEUs accrued only during the two-year period immediately before licensure renewal;
3. Not allow ~~CEU's~~ CEUs accrued in a biennial renewal period ~~in excess of the 3.0 CEU's required~~ to be carried forward to the succeeding biennial renewal period;
4. Allow a pharmacist who leads, instructs, or lectures to a group of health professionals on pharmacy-related topics in a continuing education ~~activities~~ activity sponsored by an Approved Provider to receive ~~CEU's~~ CEUs for a presentation by following the same attendance procedures as any other attendee of the continuing education activity; and
5. Not accept as ~~CEU's~~ CEUs the performance of normal teaching duties within a learning institution by a pharmacist whose primary responsibility is the education of health professionals.

**C.** Continuing education records and reporting ~~CEU's~~ CEUs. A pharmacist shall:

1. No change
  - a. No change
  - b. No change
2. At the time of licensure renewal, attest to the number of ~~CEU's~~ CEUs the pharmacist participated in during the renewal period on the biennial renewal form; and
3. Mo change

**D.** No change

**E.** No change

**R4-23-205. Fees**

**A. No change**

1. No change
2. No change

**B. No change**

1. No change
  - a. No change
  - b. No change
2. ~~Pharmacy or graduate intern~~ Intern. Initial licensure: \$50.
3. No change
  - a. No change
  - b. No change
4. Temporary license valid for 30 days:
  - a. Pharmacist: \$120.
  - b. Intern: \$50.
  - c. Pharmacy technician: \$50.

**C. No change**

1. No change
2. No change
  - a. No change
  - b. No change
  - c. No change
3. No change
4. ~~Nonprescription drug, retail:~~
  - a. ~~Category I (30 or fewer items): \$120 biennially.~~
  - b. ~~Category II (more than 30 items): \$200 biennially.~~
- ~~5.4.~~ No change
- ~~6.5.~~ No change
- ~~7.6.~~ No change

**D. No change**

1. No change
2. No change

**E. No change**

**F. No change**

**G.** No change

1. No change
2. No change
3. No change

**H.** No change

1. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
2. No change
3. No change
4. No change

**I.** No change

**J.** No change

1. No change
2. No change

**ARTICLE 4. PROFESSIONAL PRACTICES**

**R4-23-407. Prescription Requirements**

**A.** Prescription orders. A pharmacist shall ensure that:

1. A prescription order the pharmacist uses to dispense a drug or device includes the following information:
  - a. Date of issuance;
  - b. Name and address of the patient for whom or the owner of the animal for which the drug or device is dispensed;
  - c. Drug name, strength, and dosage form or device name;
  - d. Name of the manufacturer or distributor of the drug or device if the prescription order is written generically or a substitution is made;
  - e. Prescribing medical practitioner's directions for use;
  - f. Date of dispensing;
  - g. Quantity prescribed and if different, quantity dispensed;
  - h. For a prescription order for a controlled substance, the medical practitioner's address and DEA number;

- i. For a written prescription order, the medical practitioner's signature;
  - j. For an electronically transmitted prescription order, the medical practitioner's digital or electronic signature;
  - k. For an oral prescription order, the medical practitioner's name and telephone number; and
  - l. Name or initials of the dispensing pharmacist;
2. A prescription order is kept by the pharmacist or pharmacy permittee as a record of the dispensing of a drug or device for seven years from the date the drug or device is dispensed, ~~except for a drug or device personally administered by a medical practitioner to the medical practitioner's patient;~~ and
  3. The dispensing of a drug or device complies with the packaging requirements of the official compendium and state and federal law.
  4. If the drug dispensed is a schedule II controlled substance that is an opioid, the drug is placed in a container that has a red cap and a warning label stating "CAUTION: OPIOID, Risk of Overdose and Addiction" or other similarly clear language indicating the possibility of overdose and addiction. Under delegation from the Board, the Executive Director may waive the red-cap requirement if implementing the requirement is not feasible because of the specific dosage form or packaging type.
- B.** Prescription refills. A pharmacist shall ensure that the following information is recorded on the back of a prescription order when it is refilled:
1. Date refilled,
  2. Quantity dispensed,
  3. Name or approved abbreviation of the manufacturer or distributor if the prescription order is written generically or a substitution is made, and
  4. The name or initials of the dispensing pharmacist.
- C.** Prescription order adaptation. Except for a prescription order for a controlled substance, a pharmacist, using professional judgment, may make the following adaptations to a prescription order if the pharmacist documents the adaptation in the patient's record:
1. Change the prescribed quantity if the prescribed quantity is not a package size commercially available from the manufacturer;
  2. Change the prescribed dosage form or directions for use if the change achieves the intent of the prescribing medical practitioner;
  3. Complete missing information on the prescription order if there is sufficient evidence to support the change; and

4. Extend the quantity of a maintenance drug for the limited quantity necessary to achieve medication refill synchronization for the patient.

**C.D.** A pharmacist may furnish a copy of a prescription order to the patient for whom it is prescribed or to the authorized representative of the patient if the copy is clearly marked “COPY FOR REFERENCE PURPOSES ONLY” or other similar statement. A copy of a prescription order is not a valid prescription order and a pharmacist shall not dispense a drug or device from the information on a copy.

**D.E.** Transfer of prescription order information. For a transfer of prescription order information to be valid, a pharmacy permittee or pharmacist-in-charge shall ensure that:

1. Both the original and the transferred prescription order are maintained for seven years after the last dispensing date;
2. The original prescription order information for a Schedule III, IV, or V controlled substance is transferred only as specified in 21 CFR 1306.25, ~~published April 1, 2008, and no future amendments or editions, incorporated by reference, and on file with the Board, and available from the U.S. Government Printing Office, U.S. Superintendent of Documents, Washington, DC 20402-0001;~~
3. The original prescription order information for a non-controlled substance drug is transferred without limitation only up to the number of originally authorized refills;
4. For a transfer within Arizona:
  - a. The transfer of original prescription order information for a non-controlled substance drug meets the following conditions:
    - i. The transfer of information is communicated electronically, verbally, or by fax directly between:
      - (1) Two licensed pharmacists,
      - (2) A licensed pharmacist and a licensed ~~pharmacy or graduate~~ intern, or
      - (3) Two licensed ~~pharmacy or graduate~~ interns;
    - ii. The following information is recorded by the transferring pharmacist or ~~pharmacy or graduate~~ intern:
      - (1) The word “void” is written on the face of the invalidated original prescription unless it is an electronic or oral transfer and the transferred prescription order information is invalidated in the transferring pharmacy’s computer system; and
      - (2) The name and identification code, number, or address and telephone number of the pharmacy to which the prescription is transferred, the name of the receiving pharmacist or ~~pharmacy or graduate~~ intern, the date of transfer, and the name of the

- transferring pharmacist or ~~pharmacy or graduate~~ intern is written on the back of the prescription or entered into the transferring pharmacy's computer system; and
- iii. The following information is recorded by the receiving pharmacist or ~~pharmacy or graduate~~ intern on the transferred prescription order:
- (1) The word "transfer;"
  - (2) Date of issuance of the original prescription order;
  - (3) Original number of refills authorized on the original prescription order;
  - (4) Date of original dispensing;
  - (5) Number of valid refills remaining and the date of the last refill;
  - (6) Name and identification code, number, or address, telephone number, and original prescription number of the pharmacy from which the prescription is transferred;
  - (7) Name of the transferring pharmacist or ~~pharmacy or graduate~~ intern; and
  - (8) Name of the receiving pharmacist or ~~pharmacy or graduate~~ intern;
- b. The transfer of original prescription order information for a Schedule III, IV, or controlled substance meets the following conditions:
- i. The transfer of information is communicated directly between two licensed pharmacists or interns electronically, or verbally, ~~or by fax~~;
  - ii. The following information is recorded by the transferring pharmacist or intern:
    - (1) The word "void" is written on the face of the invalidated original prescription order unless it is an electronic or oral transfer and the transferred prescription order information is invalidated in the transferring pharmacy's computer system; and
    - (2) The name, address, and DEA number of the pharmacy to which the prescription is transferred, the name of the receiving pharmacist, the date of transfer, and the name of the transferring pharmacist is written on the back of the prescription order or entered into the transferring pharmacy's computer system; and
  - iii. The following information is recorded by the receiving pharmacist on the transferred prescription order:
    - (1) The word "transfer;"
    - (2) Date of issuance of original prescription order;
    - (3) Original number of refills authorized on the original prescription order;
    - (4) Date of original dispensing;
    - (5) Number of valid refills remaining and the date of the last refill;
    - (6) Name, address, DEA number, and original prescription number of the pharmacy from which the prescription is transferred;

- (7) Name of the transferring pharmacist; and
  - (8) Name of the receiving pharmacist;
5. For a transfer from out-of-state:
- a. The transfer of original prescription order information for a non-controlled substance drug meets the conditions in subsections ~~(D)(4)(a)(i)~~ (E)(4)(a)(i) and ~~(D)(4)(a)(iii)~~ (E)(4)(a)(iii); and
  - b. The transfer of original prescription order information for a Schedule III, IV, or V controlled substance meets the conditions in subsections ~~(D)(4)(b)(i)~~ (E)(4)(b)(i) and ~~(D)(4)(b)(iii)~~ (E)(4)(b)(iii); and
6. For an electronic transfer, the electronic transfer of original prescription order information meets the following conditions:
- a. The electronic transfer is between pharmacies owned by the same company using a common or shared database;
  - b. The electronic transfer of original prescription order information for a non-controlled substance drug is performed by a pharmacist or ~~a pharmacy or graduate~~ intern, pharmacy technician trainee, or pharmacy technician under the supervision of a pharmacist;
  - c. The electronic transfer of original prescription order information for a controlled substance is performed between two licensed pharmacists;
  - d. The electronic transfer of original prescription order information for a non-controlled substance drug meets the following conditions:
    - i. The transferring pharmacy's computer system:
      - (1) Invalidates the transferred original prescription order information;
      - (2) Records the identification code, number, or address of the pharmacy to which the prescription order information is transferred;
      - (3) Records the name or identification code of the receiving pharmacist, ~~pharmacy or graduate~~ intern, pharmacy technician trainee, or pharmacy technician; and
      - (4) Records the date of transfer; and
    - ii. The receiving pharmacy's computer system;
      - (1) Records that a prescription transfer occurred;
      - (2) Records the date of issuance of the original prescription order;
      - (3) Records the original number of refills authorized on the original prescription order;
      - (4) Records the date of original dispensing;
      - (5) Records the number of valid refills remaining and the date of the last refill;
      - (6) Records the identification code, number, or address and original prescription number

- of the pharmacy from which the prescription is transferred;
- (7) Records the name or identification code of the receiving pharmacist or ~~pharmacy or~~  
~~graduate~~ intern, pharmacy technician trainee, or pharmacy technician; and
- (8) Records the date of transfer;
- e. The electronic transfer of original prescription order information for a controlled substance meets the following conditions:
  - i. The transferring pharmacy's computer system:
    - (1) Invalidates the transferred original prescription order information;
    - (2) Records the identification code, number, or address, and DEA number of the pharmacy to which the prescription order information is transferred;
    - (3) Records the name or identification code of the receiving pharmacist;
    - (4) Records the date of transfer; and
    - (5) Records the name or identification code of the transferring pharmacist; and
  - ii. The electronic prescription order information received by the computer system of the receiving pharmacy includes the information required in subsection ~~(D)(4)(b)(iii)~~  
(E)(4)(b)(iii); and
- f. In addition to electronic documentation of a transferred prescription order in the computer system, an original prescription order containing the requirements of this Section is filed in compliance with A.R.S. § 32-1964.

**E.F.** Transmission of a prescription order from a medical practitioner to a pharmacy by fax.

1. A medical practitioner or medical practitioner's agent may transmit a prescription order for a Schedule III, IV, or V controlled substance, prescription-only drug, or nonprescription drug to a pharmacy by fax under the following conditions:
  - a. The prescription order is faxed only to the pharmacy of the patient's choice;
  - b. The faxed prescription order:
    - i. Contains all the information required for a prescription order in A.R.S. §§ 32-1968 and 36-2525; and
    - ii. Is only faxed from the medical practitioner's practice location, except that a nurse in a hospital, long-term care facility, or inpatient hospice may send a fax of a prescription order for a patient of the facility; and
  - c. The faxed prescription order shall contain the following additional information:
    - i. The date the prescription order is faxed;
    - ii. The fax number of the prescribing medical practitioner or the facility from which the prescription order is faxed, and the telephone number of the facility; and

- iii. The name of the person who transmits the fax, if other than the medical practitioner.
2. A medical practitioner or medical practitioner's agent may fax a prescription order for a Schedule II controlled substance for information purposes only, unless the faxed prescription order meets the requirements of A.R.S. § 36-2525(F) and (G).
3. A pharmacy may receive a faxed prescription order for a Schedule II controlled substance for information purposes only, except a faxed prescription order for a Schedule II controlled substance that meets the requirements of A.R.S. § 36-2525(F) and (G) may serve as the original written prescription order.
4. To meet the seven-year record retention requirement of A.R.S. § 32-1964, a pharmacy shall receive a faxed prescription order on a plain paper ~~fax machine, except a pharmacy that does not have a plain paper fax machine~~ or may make a copy photocopy of a the faxed prescription order ~~received on a non-plain paper fax machine~~.
5. A medical practitioner or the medical practitioner's agent may fax refill authorizations to a pharmacy if the faxed authorization includes the medical practitioner's telephone ~~number~~ and fax ~~number~~ numbers, the medical practitioner's signature or medical practitioner's agent's name, and date of authorization.

**F.G.** Electronic transmission of a prescription order from a medical practitioner to a pharmacy.

1. Unless otherwise prohibited by law, a medical practitioner or medical practitioner's agent may transmit a prescription order by electronic means, directly or through an intermediary, including an E-prescribing network, to the dispensing pharmacy as specified in A.R.S. § 32-1968.
2. For electronic transmission of a Schedule II, III, IV, or V controlled substance prescription order, the medical practitioner and pharmacy shall ensure that the transmission complies with any security or other requirements of federal law.
3. The medical practitioner and pharmacy shall ensure that all electronic transmissions comply with all the security requirements of state or federal law related to the privacy of protected health information.
4. In addition to the information required to be included on a prescription order as specified in A.R.S. § 32-1968, an electronically transmitted prescription order shall include:
  - a. The date of transmission; and
  - b. If the individual transmitting the prescription is not the medical practitioner, the name of the medical practitioner's authorized agent who transmits the prescription order.
5. A pharmacy receiving an electronically transmitted prescription order shall maintain the prescription order as specified in A.R.S. § 32-1964 or R4-23-408(H)(2).

6. A medical practitioner or medical practitioner's agent shall transmit an electronic prescription order only to the pharmacy of the patient's choice.

**R4-23-408. Computer Records**

**A.** Systems manual. A pharmacy permittee or pharmacist-in-charge shall:

1. Develop, implement, and comply with policies and procedures for the following operational aspects of a computer system:
  - a. Examples of all output documentation provided by the computer system that contains original or refill prescription order or patient profile information;
  - b. Steps a pharmacy employee follows when the computer system is not operational due to scheduled or unscheduled system interruption;
  - c. Regular and routine backup file procedure and file maintenance, including secure storage of backup files;
  - d. Audit procedures, personnel code assignments, and personnel responsibilities; and
  - e. Quality assurance mechanism for data entry validation;
2. Review biennially and, if necessary, revise the policies and procedures required under this Section;
3. Document the review required under subsection (A)(2);
4. Assemble the policies and procedures as a written manual or by another method approved by the Board or its designee; and
5. Make the policies and procedures available within the pharmacy for reference by pharmacy personnel and inspection by the Board or its designee.

**B.** Computer system data storage and retrieval. A pharmacy permittee or pharmacist-in-charge shall ensure ~~that~~ the computer system is capable of:

1. Producing sight-readable information on all original and refill prescription orders and patient profiles;
2. Providing online retrieval (via CRT display or hard-copy printout) of original prescription order information required in A.R.S. § 32-1968(C), R4-23-402(A), and R4-23-407(A);
3. Providing online retrieval (via CRT display or hard-copy printout) of patient profile information required in R4-23-402(A);
4. Providing documentation identifying the pharmacist responsible for dispensing each original or refill prescription order, except a pharmacy permittee with a computer system that is in use before the effective date of this Section that cannot provide documentation identifying the dispensing

- pharmacist may continue to use the computer system by providing manual documentation identifying the dispensing pharmacist;
5. Producing a printout of all prescription order information, including a single-drug usage report that contains:
    - a. The name of the prescribing medical practitioner;
    - b. The name and address of the patient;
    - c. The quantity dispensed on each original or refill prescription order;
    - d. The date of dispensing for each original or refill prescription order;
    - e. The name or identification code of the dispensing pharmacist; and
    - f. The serial number of each prescription order; and
  6. Providing a printout of requested prescription order information to an individual pharmacy within 72 hours of the request if prescription order information is maintained in a centralized computer record system.
- C. A pharmacy permittee or pharmacist-in-charge of a pharmacy that uses a pharmacy computer system:
1. Shall notify the D.E.A. and the Board in writing that original and refill prescription order information and patient profiles are stored in a pharmacy computer system;
  2. Shall comply with this Section if the pharmacy computer system's refill records are used as an alternative to the manual refill records required in R4-23-407(B);
  3. Is exempt from the manual refill recordkeeping requirements of R4-23-407(B), if the pharmacy computer system complies with the requirements of this Section; and
  4. Shall ensure that documentation of the accuracy of original and refill prescription order information entered into a computer system is provided by each pharmacist using the computer system and kept on file in the pharmacy for seven years from the date of the last refill. Documentation includes one of the following:
    - a. A hard-copy printout of each day's original and refill prescription order data that:
      - i. States original and refill data for prescriptions dispensed by each pharmacist is reviewed for accuracy;
      - ii. Includes the printed name of each dispensing pharmacist; and
      - iii. Is signed and initialed by each dispensing pharmacist; or
    - b. A log book or separate file of daily statements that:
      - i. States original and refill data for prescriptions dispensed by each pharmacist is reviewed for accuracy;
      - ii. Includes the printed name of each dispensing pharmacist; and
      - iii. Is signed and initialed by each dispensing pharmacist.

- D.** If a pharmacy computer system does not comply with the requirements of subsections (A), (B), and (F), the pharmacy permittee or pharmacist-in-charge shall bring the computer system into compliance within three months of a notice of noncompliance or violation letter. If the computer system is still noncompliant with subsection (A), (B), or (F) after three months, the pharmacy permittee or pharmacist-in-charge shall immediately comply with the manual recordkeeping requirements of R4-23-402 and R4-23-407.
- E.** If a pharmacy's personnel perform manual recordkeeping under subsection (D), the pharmacy's personnel shall continue manual recordkeeping until the pharmacist-in-charge sends proof, verified by a Board compliance officer, that the computer system complies with subsections (A), (B), and (F).
- F. Security.** To maintain the confidentiality of patient records, a pharmacy permittee or pharmacist-in-charge shall ensure ~~that~~:
1. The computer system has security and systems safeguards designed to prevent and detect unauthorized access, modification, or manipulation of prescription order information and patient profiles; and
  2. After a prescription order is dispensed, any alteration of prescription order information is documented, including the identification of the pharmacist responsible for the alteration.
- G.** A computer system that does not comply with all the requirements of subsections (A), (B), and (F) may be used in a pharmacy if:
1. The computer system was in use in the pharmacy before July 11, 2001, and
  2. The pharmacy complies with the manual recordkeeping requirements of R4-23-402 and R4-23-407.
- H. Prescription records and retention.**
1. Instead of filing the original hard-copy prescription order as required in A.R.S. § 32-1964, a pharmacy permittee or pharmacist-in-charge may use an electronic imaging recordkeeping system, if:
    - a. The system is capable of capturing, storing, and reproducing the exact image of a prescription order, including the reverse side of the prescription order if necessary;
    - b. Any notes of clarification of ~~and~~ or alterations to a prescription order are directly associated with the electronic image of the prescription order;
    - c. ~~The~~ A prescription order image and any associated notes of clarification ~~to~~ of or alterations to ~~a~~ the prescription order are retained for ~~a period not less~~ no fewer than seven years from the date the prescription order is last dispensed;
    - d. ~~The original hard-copy prescription is maintained for no less than 30 days after the date dispensed;~~

~~e.d.~~ Policies and procedures for the use of an electronic imaging recordkeeping system are developed, implemented, reviewed, and revised in the same manner described in subsection (A) and complied with; and

~~f.e.~~ The prescription is not for a ~~schedule II~~ controlled substance.

2. If a pharmacy's computer system fields are automatically populated by an electronically transmitted prescription order, the automated record constitutes the original prescription order and a hard-copy or electronic image is not required if the computer system is capable of maintaining, printing, and providing all the prescription order information required in A.R.S. §§ 32-1968 and 36-2525 and R4-23-407(A) within 72 hours of a request by the Board, the Board's compliance officers, other authorized regulatory board agents, or authorized officers of the law.

I. A pharmacy permittee or pharmacist-in-charge shall make all prescription records available within 72 hours after a Board request.

**R4-23-411. Pharmacist-administered or ~~Pharmacy or Graduate Intern-administered~~  
Immunizations**

A. ~~Certification~~ 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 a ~~pharmacy or graduate~~ 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 ~~pharmacy or graduate~~ intern meet the qualifications and standards specified by A.R.S. § 32-1974 and this Section;
2. The Board ~~certifies~~ authorizes both the pharmacist and ~~pharmacy or graduate~~ intern as specified in subsection (D);
3. No change
  - a. No change
  - b. No change
4. No change
5. No change
6. No change

- B.** A pharmacist or ~~a pharmacy or graduate~~ 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 ~~pharmacy or graduate~~ intern meet the qualifications and standards specified by A.R.S. § 32-1974 and this Section; and
  2. The Board ~~certifies~~ authorizes both the pharmacist and ~~pharmacy or graduate~~ intern as specified in subsection (D).
- C.** A pharmacist or ~~pharmacy or graduate~~ intern who is ~~certified~~ 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, ~~pharmacy or graduate~~ intern, or employee; and
  2. No change
- D.** Qualifications ~~for certification~~ 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 ~~issue a certificate authorizing~~ authorize the administration of immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient ~~to~~ by a pharmacist or ~~pharmacy or graduate~~ intern who meets the following qualifications:
1. No change
  2. No change
  3. No change
- E.** Immunizations training program requirements. A training program for pharmacists or ~~pharmacy or graduate~~ 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. No change
  2. No change
  3. No change
  4. No change
  5. No change
  6. No change
- F.** No change
1. A pharmacist or ~~pharmacy or graduate~~ intern ~~certified~~ 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. No change
  - b. No change
  - c. No change
  - d. No change
  - e. The name of the pharmacist or ~~pharmacy or graduate~~ intern administering the immunization, vaccine, or emergency medication;
  - f. A record of the pharmacist's or ~~pharmacy or graduate~~ intern's consultation with the patient determining that the patient is an eligible patient as defined in R4-23-110;
  - ~~g. The date and time that the written report specified in subsection (F)(2) was sent to the patient's primary care provider or physician;~~
  - ~~h.g.~~ Consultation or other professional information provided to the patient by the pharmacist or ~~pharmacy or graduate~~ intern;
  - ~~i.h.~~ No change
  - ~~j.i.~~ No change
2. ~~The~~ As required under A.R.S. § 32-1974(F)(1), the pharmacist or ~~pharmacy or graduate~~ 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) ~~within 48 hours after the immunization or vaccination.~~ The pharmacy shall document the time and date the report is sent and make the ~~required records specified in subsection (F)(1) and~~ a 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, ~~pharmacy or graduate~~ intern, pharmacy permittee, or pharmacist-in-charge shall comply with applicable state and federal privacy statutes and rules when releasing patient health information.
- H.** ~~Renewal of a certificate for pharmacist administered immunizations. A pharmacist remains in good standing to administer immunizations, vaccines, and emergency medications if, at the time of license renewal under R4-23-202, the pharmacist attests the following to the Board:~~
- ~~1. Current certification in basic cardiopulmonary resuscitation, and~~
  - ~~2. Completion of a minimum of two contact hours (0.2 CEU) of continuing education related to immunizations during the biennial license renewal period. A pharmacist may use the continuing education hours required in this subsection as part of the total continuing education hours required for pharmacist license renewal.~~

**1.H.** Pharmacist-administered or ~~pharmacy or graduate~~ intern-administered adult immunizations that require a prescription order. A pharmacist or ~~pharmacy or graduate~~ intern ~~certified~~ 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 or graduate~~ 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 6. PERMITS AND DISTRIBUTION OF DRUGS

### **R4-23-607. Nonresident Permits**

**A.** Permit. A person that is not a resident of Arizona shall not sell or distribute any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical into Arizona without possessing both:

1. A current Board-issued nonresident pharmacy permit, nonresident manufacturer permit, nonresident full-service or nonprescription drug wholesale permit, or nonresident nonprescription drug permit; and
2. A current equivalent license or permit issued by the licensing authority in the jurisdiction where the person resides.

**B.** No change

**C.** No change

1. No change
2. No change
3. No change
4. No change

**D.** No change

**E.** No change

1. No change
  - a. No change
    - i. No change
    - ii. No change
    - iii. No change
  - b. No change

- i. No change
    - ii. No change
    - iii. No change
  - c. No change
  - d. Provide permit and license records upon request, if immediately available, or in no fewer than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
- 2. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
- 3. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
  - f. No change
  - g. No change
- 4. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
- 5. No change
  - a. No change
  - b. No change
  - c. No change
- F.** No change

**ARTICLE 8. DRUG CLASSIFICATION**

**R4-23-801. Dietary Supplements Repealed**

~~A person who sells, distributes, or provides a product that is labeled as a dietary supplement and is labeled or marketed as a treatment for any deficiency disease, for the correction of any symptom of disease, or for the prevention, mitigation, or cure of any disease, either by direct statement or by inference, is selling, distributing, or providing a drug and is subject to the requirements of A.R.S. Title 32, Chapter 18 and 4 A.A.C. 23.~~

**ARTICLE 11. PHARMACY TECHNICIANS**

**R4-23-1103. Pharmacy Technician Trainee Licensure**

**A.** No change

**B.** No change

1. No change

a. No change

b. No change

i. No change

ii. No change

iii. No change

2. No change

**C.** No change

1. No change

2. No change

3. No change

4. No change

5. A pharmacy technician trainee license is valid for ~~24~~ 36 months from the date issued. A pharmacy technician trainee who does not complete the prescribed training program and pass ~~the Pharmacy Technician Certification Board (PTCB) examination or another~~ 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.** Re-application for licensure.~~

1. ~~The Board may allow a pharmacy technician trainee whose license expires before the pharmacy technician trainee completes the prescribed training program and passes the Pharmacy Technician Certification Board (PTCB) examination or another Board-approved pharmacy technician examination to reapply for licensure not more than one time. A pharmacy technician trainee whose license has expired may make a special request to the Board under R4-23-401 for approval to reapply for licensure.~~
2. ~~The Board shall base its decision to grant or deny a special request to reapply for licensure on an assessment of:~~
  - a. ~~The reasons the pharmacy technician trainee did not complete a pharmacy technician training program and the likelihood that the pharmacy technician trainee will complete a pharmacy technician training program within the next 24 months,~~
  - b. ~~The reasons the pharmacy technician trainee failed the pharmacy technician examination and the likelihood that the pharmacy technician trainee will pass the pharmacy technician examination within the next 24 months, and~~
  - c. ~~Other extenuating circumstances.~~
3. ~~A pharmacy technician trainee that receives Board approval to reapply for licensure shall submit a completed application manually on a form furnished by the Board and pay the licensure fee specified in R4-23-205(A)(4).~~

**~~E.D.~~** ~~Time frames~~ Time frames for pharmacy technician trainee licensure. The Board office shall follow the ~~time frames~~ time frames established in R4-23-202(F).

**~~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.

#### **R4-23-1106. Continuing Education Requirements**

- A.** General. According to A.R.S. § 32-1925(~~I~~)(H), the Board shall not renew a pharmacy technician license unless the ~~applicant~~ licensee has during the two years preceding the application for renewal:
1. Participated in 20 contact hours or two CEUs of continuing education activity sponsored by an Approved Provider, as defined in R4-23-110, and
  2. ~~At least two of the contact hours or 0.2 of the CEUs are approved courses in pharmacy law. For a pharmacy technician licensed less than 24 months the continuing education contact hours are calculated by multiplying 0.83 hours times the number of months between the date of initial licensure and the licensee's next license renewal date~~ A pharmacy technician licensee is exempt

from the continuing education requirement in subsection (A)(1) between the time of initial licensure and first renewal.

**B. Valid CEUs. The Board shall:**

1. ~~Only accept~~ Accept CEUs for continuing education activities sponsored only by an Approved Provider;
2. ~~Only accept~~ Accept CEUs accrued during only the two-year period immediately before licensure renewal;
3. Not allow CEUs accrued in a biennial renewal period ~~in excess of the required two CEUs~~ to be carried forward to the succeeding biennial renewal period;
4. Allow a pharmacy technician who leads, instructs, or lectures to a group of health professionals on pharmacy-related topics in a continuing education ~~activities~~ activity sponsored by an Approved Provider to receive CEUs for a presentation by following the same attendance procedures as any other attendee of the continuing education activity; and
5. Not accept as a CEU a pharmacy technician's normal teaching duties within a learning institution if the pharmacy technician's primary responsibility is the education of health professionals.

**C. Continuing education records and reporting CEUs. A pharmacy technician shall:**

1. Maintain continuing education records that:
  - a. Verify the continuing education activities the pharmacy technician participated in during the preceding five years; and
  - b. Consist of a statement of credit or a certificate issued by an Approved Provider at the conclusion of a continuing education activity;
2. At the time of licensure renewal, attest to the number of CEUs the pharmacy technician participated in during the renewal period on the biennial renewal form; and
3. When requested by the Board office, submit proof of continuing education participation within 20 days of the request.

**D. The Board shall deem a pharmacy technician's failure to comply with the continuing education participation, recording, or reporting requirements of this Section as unprofessional conduct and grounds for disciplinary action by the Board under A.R.S. § 32-1927.01.**

**E. A pharmacy technician who is aggrieved by any decision of the Board concerning continuing education units may request a hearing before the Board.**

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT<sup>1</sup>**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 23. BOARD OF PHARMACY**

1. Identification of the rulemaking:

The Board is complying with Executive Order 2019-01 by making minor changes to remove unnecessary or burdensome regulatory requirements and comply with statute. In a rulemaking approved by Council on April 2, 2019 (See 25 A.A.R. 1015 (April 26, 2019)), a definition of virtual wholesaler was removed to provide time for the Board to consider public comment. The revised definition of virtual wholesaler, as required under A.R.S. § 32-1901, is included in this rulemaking. Under Laws 2018, Chapter 228, the legislature amended A.R.S. § 32-1901 to remove reference to “graduate intern” so the term is removed from Sections included in this rulemaking. R4-23-205 is amended to add fees for temporary licenses as specifically authorized under A.R.S. § 32-3124(H); R4-23-204 is amended to comply with A.R.S. § 32-3248.02, which requires health professionals to obtain continuing education regarding opioids; and R4-23-1103 is amended to comply with A.R.S. § 32-1924(F), which establishes a 36-month license for a pharmacy technician trainee. R4-23-607 is amended to clarify that a nonresident permittee is required to be licensed in both Arizona and the jurisdiction of residence. Exemptions from EO2019-01 were provided by Emily Rajakovich, in the Governor’s Office, by e-mails dated April 1, 2019, and July 12, 2019.

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

Until the rulemaking is completed, the Board’s rules will contain unnecessary or burdensome requirements and not be consistent with statute.

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 for a regulatory board to have rules that contain unnecessary or burdensome requirements or are inconsistent with statute.

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

When the rulemaking is completed, the Board’s rules will not contain unnecessary or burdensome requirements and will be consistent with statute.

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<sup>1</sup> 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. A brief summary of the information included in the economic, small business, and consumer impact statement:

The Board believes the rulemaking will have minimal economic impact because it simply removes unnecessary or burdensome requirements or makes rule consistent with statute. An individual who chooses to obtain a temporary license will incur the cost of the fee for the temporary license but will have the benefit of being able to be employed while an application for licensure is processed. A person that chooses to operate as a virtual wholesaler is required to obtain either a full-service or non-prescription wholesalers permit and pay the applicable fee.

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](mailto:kgandhi@azpharmacy.gov)

Website: [www.azpharmacy.gov](http://www.azpharmacy.gov)

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

Licensees who prescribe opioids, applicants wishing to obtain a temporary license, virtual wholesalers, and the Board will be directly affected by, bear the costs of, or directly benefit from the rulemaking. The rulemaking will indirectly affect all licensees and applicants by removing unnecessary or burdensome requirements and making the rules consistent with statute.

The Board has not started tracking the number of virtual wholesalers but expects to do so in the near future. To date, the Board has received no applications for a temporary license.

There are currently 5,157 pharmacists and interns authorized by the Board to administer immunizations, vaccines, and emergency medications. As a condition of continuing the authorization, each will be required to obtain two contact hours of continuing education relevant to administering immunizations, vaccines, and emergency medications. These two hours of continuing education are part of rather than in addition to the 30-hour biennial

continuing education requirement applicable to all pharmacists and interns. Pharmacists and interns authorized to administer immunizations, vaccines, and emergency medications have the benefit of being able to provide an additional service to members of the public. The continuing education requirement is minimal and necessary to protect the health and safety of those who choose to obtain immunizations or vaccines at a pharmacy.

The requirement that a licensee authorized to dispense controlled substances participate in at least three contact hours of opioid-related, substance use disorder-related, or addiction-related continuing education during each license-renewal cycle is established in statute (See A.R.S. § 32-3248.02). The legislature enacted this statutory provision to address the current epidemic opioid-related abuse. This rulemaking simply makes the Board's rule regarding continuing education consistent with statute. These three hours of continuing education are part of rather than in addition to the 30-hour biennial continuing education requirement applicable to all pharmacists and interns.

The legislature amended A.R.S. § 32-1924(F) to allow a pharmacy technician trainee to receive a 36-month, non-renewable license. Previously, a pharmacy technician trainee could obtain a 24-month license and could reapply once for another 24-month license. In the past, approximately 33 percent of pharmacy technician trainees reapplied because they had not completed the training or passed the examination required for licensure as a pharmacy technician. The Board does not have data yet but believes approximately 25 percent of pharmacy technician trainees will not complete training or pass the required examination during the 36 months provided.

The Board incurred the cost of doing this rulemaking and will incur the cost of implementing it. The Board will have the benefit of rules that are consistent with statute and minimize regulatory burdens on licensees and applicants. The Board has 23 FTES, 6 of whom are dedicated to the Controlled Substances Prescription Monitoring Program. The Board's current appropriation is \$2,642,200.

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. The Board will not need a new full-time employee to implement or enforce the rules.

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:

Licensees 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 believes the rulemaking will have no impact private or public employment.

7. Impact on small businesses<sup>2</sup>:

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

Licensees are small businesses subject to the rulemaking.

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

Licensees to whom R4-23-204(A)(2) is applicable will have to maintain records showing compliance with the continuing education requirement. An applicant applying for a temporary license will incur the cost of making application and paying the required fee. A person choosing to operate as a virtual wholesaler will incur the cost of making application for either a full-service or non-prescription wholesalers' permit and paying the applicable fee. Under R4-23-607, a person who is not a resident of Arizona is required to be licensed in both Arizona and the person's residential jurisdiction before selling or distributing drugs into Arizona.

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

Many of the changes in this rulemaking remove regulatory requirements or make the rules consistent with statute. The Board determined the fees established are reasonable and necessary to enable the Board to perform the licensing and regulatory activities required to fulfill its responsibility to protect public health and safety. Making application for a license and maintaining records of compliance with requirements impose minimal economic burdens. The Board believes it is not possible to reduce the impact of the rules on small businesses and achieve the goal of protecting public health and safety.

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

No private persons or consumers are directly affected by the rulemaking.

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

9. Probable effects on state revenues:

If there are applications for a temporary license or to operate as a virtual wholesaler, 10 percent of the amount collected will be contributed to the state's general fund.

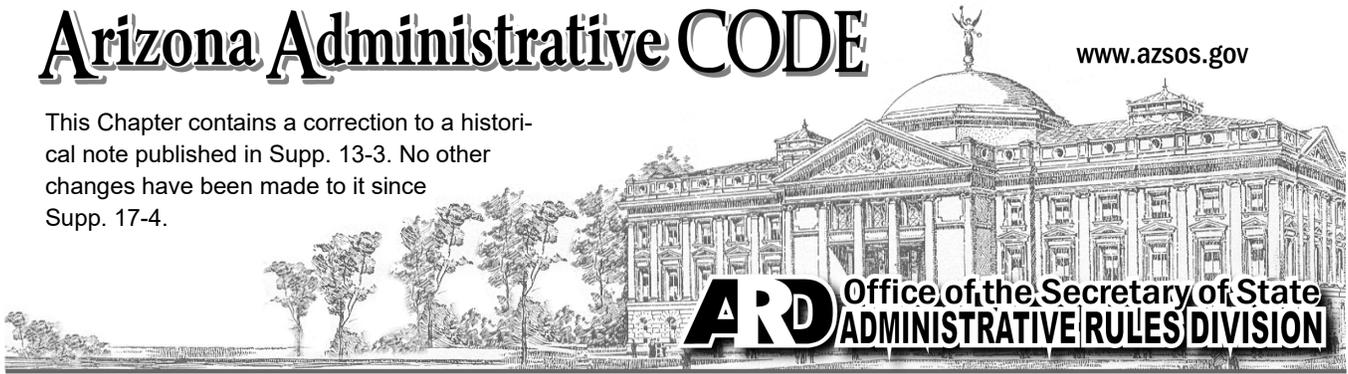
10. Less intrusive or less costly alternative methods considered:

Because the costs associated with the rulemaking are minimal and reasonable, the Board did not consider less intrusive or less costly alternative methods.

# Arizona Administrative CODE

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This Chapter contains a correction to a historical note published in Supp. 13-3. No other changes have been made to it since Supp. 17-4.



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The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

*Due to a clerical error the historical note has been removed in R4-23-675 referencing an amendment in Supp. 13-3.*

#### Questions about these rules? Contact:

Name: Kamlesh Gandhi  
Address: Board of Pharmacy  
1616 W. Adams St., Suite 120  
Phoenix, AZ 85007  
Telephone: (602) 771-2740  
Fax: (602) 771-2749  
E-mail: [kgandhi@azpharmacy.gov](mailto:kgandhi@azpharmacy.gov)

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#### The correction in this Chapter in supplement 18-2 replaces supplement 17-4, 85 pages

Please note that the Chapter you are about to replace may have rules still 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.

## 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  
ADMINISTRATIVE RULES DIVISION

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### RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘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.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. 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 2018 is cited as Supp. 18-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

### AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

### 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.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under 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 *Register* online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections 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

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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



Administrative Rules Division  
 The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

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Authority: A.R.S. § 32-1904 et seq.

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*Article 5, consisting of Sections R4-23-501 through R4-23-505, expired effective August 30, 2013 (Supp. 14-1).*

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## Board of Pharmacy

**ARTICLE 1. ADMINISTRATION****R4-23-101. General**

A. 4 A.A.C. 23 applies to all actions and proceedings of the Board and shall be deemed a part of the record in any Board action or proceeding without formal introduction of, or reference to the rules. A party to a Board action is deemed to have knowledge of the rules. The Board office shall provide a copy of the rules:

1. To each license applicant who submits a completed application packet; and
2. To each permit applicant during the final compliance inspection after the Board approves the permit application.

B. The Board, within its jurisdiction, may, in the interest of justice, excuse the failure of any person to comply with the rules.

C. The Board, within its jurisdiction, may grant an extension of time within which to comply with any rule when it deems the extension to be in the interest of justice.

**Historical Note**

Former Rules 1.1000, 1.1200, and 1.1300; Amended effective August 23, 1978 (Supp. 78-4). Amended by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1); Historical Note updated (Supp. 06-2).

**R4-23-102. Meetings**

A. The Board shall hold not less than four meetings per fiscal year to conduct general business and interview permit and license applicants.

B. A special meeting of the Board may be held at any time subject to the call of the President or a majority of the Board members and in compliance with the notification requirements of A.R.S. § 38-431.02.

**Historical Note**

Former Rules 1.2100, 1.2200, 1.2300, and 1.2400. Amended by final rulemaking at 7 A.A.R. 2143, effective May 1, 2001 (Supp. 01-2).

**R4-23-103. Repealed****Historical Note**

Former Rules 1.3100, 1.3200, 1.3300, and 1.3400; Amended subsection (C) effective August 9, 1983 (Supp. 83-4). Section repealed by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1); Historical Note updated (Supp. 06-2).

**R4-23-104. Repealed****Historical Note**

Former Rules 1.4011, 1.4110, 1.4120, 1.4200, 1.4210, 1.4220, 1.4300, 1.4400, 1.5500, 1.5600, 1.5700, and 1.4500; Amended effective August 23, 1978 (Supp. 78-5); Amended by deleting subsection (B) and renumbering subsections (C) through (J) as subsections (B) through (I) effective August 9, 1983 (Supp. 83-4). Amended effective February 8, 1991 (Supp. 91-1). Section repealed by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1); Historical Note updated (Supp. 06-2).

**R4-23-105. Repealed****Historical Note**

Former Rules 1.5100, 1.5200, 1.5300, and 1.5400; Amended subsection (B) effective August 9, 1983 (Supp. 83-4). Section repealed by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1); Historical Note updated (Supp. 06-2).

ical Note updated (Supp. 06-2).

**R4-23-106. Repealed****Historical Note**

Former Rules 1.5800 and 1.5900. Section repealed by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1); Historical Note updated (Supp. 06-2).

**R4-23-107. Repealed****Historical Note**

Former Rules 1.5910, 1.5920, 1.5921, and 1.5922. Section repealed by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1); Historical Note updated (Supp. 06-2).

**R4-23-108. Repealed****Historical Note**

Former Rule 1.5930. Section repealed by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1); Historical Note updated (Supp. 06-2).

**R4-23-109. Repealed****Historical Note**

Former Rules 1.7100, 1.7200, and 1.7300. Amended effective July 14, 1977 (Supp. 77-4). Amended effective February 8, 1991 (Supp. 91-1). Section repealed by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1); Historical Note updated (Supp. 06-2).

**R4-23-110. Definitions**

In addition to definitions in A.R.S. § 32-1901, the following definitions apply to this Chapter:

“Active ingredient” means any component that furnishes pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease or that affects the structure or any function of the body of man or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug, that are present in the finished drug product in a modified form, and that furnish the specified activity or effect.

“AHCCCS” means the Arizona Health Care Cost Containment System.

“Annual family income” means the combined yearly gross earned income and unearned income of all adult individuals within a family unit.

“Approved course in pharmacy law” means a continuing education activity that addresses practice issues related to state or federal pharmacy statutes, rules, or regulations.

“Approved Provider” means an individual, institution, organization, association, corporation, or agency that is approved by the Accreditation Council for Pharmacy Education (ACPE) in accordance with ACPE’s policy and procedures or by the Board as meeting criteria indicative of the ability to provide quality continuing education.

“Assisted living facility” means a residential care institution as defined in A.R.S. § 36-401.

“Authentication of product history” means identifying the purchasing source, the ultimate fate, and any intermediate handling of any component of a radiopharmaceutical or other drug.

“Automated dispensing system” means a mechanical system in a long-term care facility that performs operations or activities, other than compounding or administration, relative to the

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storage, packaging, counting, labeling, and dispensing of medications, and which collects, controls, and maintains all transaction information.

“Automated storage and distribution system” means a mechanical system that performs operations or activities other than counting, compounding, or administration, relative to the storage, packaging, or distributing of drugs or devices and that collects, controls, and maintains all transaction information.

“Batch” means a specific quantity of drug that has uniform character and quality, within specified limits, and is produced according to a single manufacturing order during the same cycle of manufacture.

“Beyond-use date” means:

A date determined by a pharmacist and placed on a prescription label at the time of dispensing to indicate a time beyond which the contents of the prescription are not recommended to be used; or

A date determined by a pharmacist and placed on a compounded pharmaceutical product’s label at the time of preparation as specified in R4-23-410(B)(3)(d), R4-23-410(I)(6)(e), or R4-23-410(J)(1)(d) to indicate a time beyond which the compounded pharmaceutical product is not recommended to be used.

“Biological safety cabinet” means a containment unit suitable for the preparation of low to moderate risk agents when there is a need for protection of the product, personnel, and environment, consistent with National Sanitation Foundation (NSF) standards, published in the National Sanitation Foundation Standard 49, Class II (Laminar Flow) Biohazard Cabinetry, NSF International P. O. Box 130140, Ann Arbor, MI, revised June 1987 edition, (and no future amendments or editions), incorporated by reference and on file with the Board.

“Care-giver” means a person who cares for someone who is sick or disabled or an adult who cares for an infant or child and includes a patient’s husband, wife, son, daughter, mother, father, sister, brother, legal guardian, nurse, or medical practitioner.

“Community pharmacy” means any place under the direct supervision of a pharmacist where the practice of pharmacy occurs or where prescription orders are compounded and dispensed other than a hospital pharmacy or a limited service pharmacy.

“Component” means any ingredient used in compounding or manufacturing drugs in dosage form, including an ingredient that may not appear in the finished product.

“Compounding and dispensing counter” means a pharmacy counter working area defined in this Section where a pharmacist or a graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee under the supervision of a pharmacist compounds, mixes, combines, counts, pours, or prepares and packages a prescription medication to dispense an individual prescription order or prepackages a drug for future dispensing.

“Computer system” means an automated data-processing system that uses a programmable electronic device to store, retrieve, and process data.

“Computer system audit” means an accounting method, involving multiple single-drug usage reports and audits, used to determine a computer system’s ability to store, retrieve, and process original and refill prescription dispensing information.

“Contact hour” means 50 minutes of participation in a continuing education activity sponsored by an Approved Provider.

“Container” means:

A receptacle, as described in the official compendium or the federal act, that is used in manufacturing or compounding a drug or in distributing, supplying, or dispensing the finished dosage form of a drug; or

A metal receptacle designed to contain liquefied or vaporized compressed medical gas and used in manufacturing, transfilling, distributing, supplying, or dispensing a compressed medical gas.

“Continuing education” means a structured learning process required of a licensee to maintain licensure that includes study in the general areas of socio-economic and legal aspects of health care; the properties and actions of drugs and dosage forms; etiology, characteristics and therapeutics of disease status; or pharmacy practice.

“Continuing education activity” means continuing education obtained through an institute, seminar, lecture, conference, workshop, mediated instruction, programmed learning course, or postgraduate study in an accredited college or school of pharmacy.

“Continuing education unit” or “CEU” means 10 contact hours of participation in a continuing education activity sponsored by an Approved Provider.

“Continuous quality assurance program” or “CQA program” means a planned process designed by a pharmacy permittee to identify, evaluate, and prevent medication errors.

“Correctional facility” has the same meaning as in A.R.S. §§ 13-2501 and 31-341.

“CRT” means a cathode ray tube or other mechanism used to view information produced or stored by a computer system.

“CSPMP” means the Controlled Substances Prescription Monitoring Program established under A.R.S. Title 36, Chapter 28.

“Current good compounding practices” means the minimum standards for methods used in, and facilities or controls used for, compounding a drug to ensure that the drug has the identity and strength and meets the quality and purity characteristics it is represented to possess.

“Current good manufacturing practice” means the minimum standard for methods used in, and facilities or controls used for manufacturing, processing, packing, or holding a drug to ensure that the drug meets the requirements of the federal act as to safety, and has the identity and strength and meets the quality and purity characteristics it is represented to possess.

“Cytotoxic” means a pharmaceutical that is capable of killing living cells.

“Day” means a calendar day unless otherwise specified.

“DEA” means the Drug Enforcement Administration as defined in A.R.S. § 32-1901.

“Declared disaster areas” means areas designated by the governor or by a county, city, or town under A.R.S. § 32-1910 as those areas that have been adversely affected by a natural disaster or terrorist attack and require extraordinary measures to provide adequate, safe, and effective health care for the affected population.

“Delinquent license” means a pharmacist, pharmacy intern, graduate intern, or pharmacy technician license the Board sus-

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pendes for failure to renew or pay all required fees on or before the date the renewal is due.

“Dietary supplement or food supplement” means a product (other than tobacco) that:

Is intended to supplement the diet that contains one or more of the following dietary ingredients: a vitamin, a mineral, an herb or other botanical, an amino acid, a dietary substance for use by humans to supplement the diet by increasing the total daily intake, or a concentrate, metabolite, constituent, extract, or combinations of these ingredients;

Is intended for ingestion in pill, capsule, tablet, or liquid form;

Is not represented for use as a conventional food or as the sole item of a meal or diet; and

Is labeled as a “dietary supplement” or “food supplement.”

“Digital signature” has the same meaning as in A.R.S. § 41-132(E).

“Dispensing pharmacist” means a pharmacist who, in the process of dispensing a prescription medication after the complete preparation of the prescription medication and before delivery of the prescription medication to a patient or patient’s agent, verifies, checks, and initials the prescription medication label, as required in R4-23-402(A).

“Drug sample” means a unit of a prescription drug that a manufacturer provides free of charge to promote the sale of the drug.

“Durable medical equipment” or “DME” means technologically sophisticated medical equipment that may be used by a patient or consumer in a home or residence. DME may be prescription-only devices as defined in A.R.S. § 32-1901(75). DME includes:

- Air-fluidized beds,
- Apnea monitors,
- Blood glucose monitors and diabetic testing strips,
- Continuous Positive Airway Pressure (CPAP) machines,
- Electronic and computerized wheelchairs and seating systems,
- Feeding pumps,
- Home phototherapy devices,
- Hospital beds,
- Infusion pumps,
- Medical oxygen and oxygen delivery systems excluding compressed medical gases,
- Nebulizers,
- Respiratory disease management devices,
- Sequential compression devices,
- Transcutaneous electrical nerve stimulation (TENS) unit, and
- Ventilators.

“Earned income” means monetary payments received by an individual as a result of work performed or rental property owned or leased by the individual, including:

Wages,

Commissions and fees,

Salaries and tips,

Profit from self-employment,

Profit from rent received from a tenant or boarder, and

Any other monetary payments received by an individual for work performed or rental of property.

“Electronic signature” has the same meaning as in A.R.S. § 44-7002.

“Eligible patient” means a patient who a pharmacist determines is eligible to receive an immunization using professional judgment after consulting with the patient regarding the patient’s current health condition, recent health condition, and allergies.

“Emergency drug supply unit” means those drugs that may be required to meet the immediate and emergency therapeutic needs of long-term care facility residents and hospice inpatient facility patients, and which are not available from any other authorized source in sufficient time to prevent risk of harm to residents or patients.

“Extreme emergency” means the occurrence of a fire, water leak, electrical failure, public disaster, or other catastrophe constituting an imminent threat of physical harm to pharmacy personnel or patrons.

“Family unit” means:

A group of individuals residing together who are related by birth, marriage, or adoption; or

An individual who:

Does not reside with another individual; or

Resides only with another individual or group of individuals to whom the individual is unrelated by birth, marriage, or adoption.

“FDA” means the Food and Drug Administration, a federal agency within the United States Department of Health and Human Services, established to set safety and quality standards for foods, drugs, cosmetics, and other consumer products.

“Health care decision maker” has the same meaning as in A.R.S. § 12-2291.

“Health care institution” has the same meaning as in A.R.S. § 36-401.

“Hospice inpatient facility” means a health care institution licensed under A.R.S. § 36-401 and Article 8 that provides hospice services to a patient requiring inpatient services.

“Immediate notice” means a required notice sent by mail, facsimile, or electronic mail to the Board Office within 24 hours.

“Immunizations training program” means an immunization training program for pharmacists, pharmacy interns, and graduate interns that meets the requirements of R4-23-411(E).

“Inactive ingredient” means any component other than an “active ingredient” present in a drug.

“Internal test assessment” means performing quality assurance or other procedures necessary to ensure the integrity of a test.

“ISO Class 5 environment” means an atmospheric environment that complies with the ISO/TC209 International Clean-

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room Standards, specifically ANSI/IES/ISO-14644-1:1999: Cleanrooms and associated controlled environments--Part 1: Classification of air cleanliness, first edition dated May 1, 1999, (and no future amendments or editions), incorporated by reference and on file in the Board office.

“ISO Class 7 environment” means an atmospheric environment that complies with the ISO/TC209 International Cleanroom Standards, specifically ANSI/IES/ISO-14644-1:1999: Cleanrooms and associated controlled environments--Part 1: Classification of air cleanliness, first edition dated May 1, 1999, (and no future amendments or editions), incorporated by reference and on file in the Board office.

“Licensed health care professional” means an individual who is licensed and regulated under A.R.S. Title 32, Chapter 7, 11, 13, 14, 15, 16, 17, 18, 25, 29, or 35.

“Limited-service correctional pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that:

    Holds a current Board permit under A.R.S. § 32-1931;

    Is located in a correctional facility; and

    Uses pharmacists, interns, and support personnel to compound, produce, dispense, and distribute drugs.

“Limited-service long-term care pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board-issued permit and dispenses prescription medication or prescription-only devices to patients in long-term care facilities.

“Limited-service mail-order pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board permit under A.R.S. § 32-1931 and dispenses a majority of its prescription medication or prescription-only devices by mailing or delivering the prescription medication or prescription-only device to an individual by the United States mail, a common or contract carrier, or a delivery service.

“Limited-service nuclear pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board permit under A.R.S. § 32-1931 and provides radiopharmaceutical services.

“Limited-service pharmacy permittee” means a person who holds a current limited-service pharmacy permit in compliance with A.R.S. §§ 32-1929, 32-1930, 32-1931, and A.A.C. R4-23-606.

“Limited-service sterile pharmaceutical products pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board permit under A.R.S. § 32-1931 and dispenses a majority of its prescription medication or prescription-only devices as sterile pharmaceutical products.

“Long-term care consultant pharmacist” means a pharmacist providing consulting services to a long-term care facility.

“Long-term care facility” or “LTFC” means a nursing care institution as defined in A.R.S. § 36-401.

“Lot” means a batch or any portion of a batch of a drug, or if a drug produced by a continuous process, an amount of drug produced in a unit of time or quantity in a manner that assures its uniformity. In either case, a lot is identified by a distinctive lot number and has uniform character and quality with specified limits.

“Lot number” or “control number” means any distinctive combination of letters or numbers, or both, from which the complete history of the compounding or manufacturing, control,

packaging, and distribution of a batch or lot of a drug can be determined.

“Low-income subsidy” means Medicare-provided assistance that may partially or fully cover the costs of drugs and is based on the income of an individual and, if applicable, the individual’s spouse.

“Materials approval unit” means any organizational element having the authority and responsibility to approve or reject components, in-process materials, packaging components, and final products.

“Mechanical counting device for a drug in solid, oral dosage form” means a mechanical device that counts drugs in solid, oral dosage forms for dispensing and includes an electronic balance when used to count drugs.

“Mechanical storage and counting device for a drug in solid, oral dosage form” means a mechanical device that stores and counts and may package or label drugs in solid, oral dosage forms for dispensing.

“Mediated instruction” means information transmitted via intermediate mechanisms such as audio or video tape or telephone transmission.

“Medical practitioner-patient relationship” means that before prescribing, dispensing, or administering a prescription-only drug, prescription-only device, or controlled substance to a person, a medical practitioner, as defined in A.R.S. § 32-1901, shall first conduct a physical examination of that person or have previously conducted a physical examination. This subdivision does not apply to:

    A medical practitioner who provides temporary patient supervision on behalf of the patient’s regular treating medical practitioner;

    Emergency medical situations as defined in A.R.S. § 41-1831;

    Prescriptions written to prepare a patient for a medical examination; or

    Prescriptions written, prescription-only drugs, prescription-only devices, or controlled substances issued for use by a county or tribal public health department for immunization programs, emergency treatment, in response to an infectious disease investigation, public health emergency, infectious disease outbreak or act of bioterrorism. For purposes of this subsection, “bioterrorism” has the same meaning as in A.R.S. § 36-781.

“Medicare” means a federal health insurance program established under Title XVIII of the Social Security Act.

“Medication error” means any unintended variation from a prescription or medication order. Medication error does not include any variation that is corrected before the medication is dispensed to the patient or patient’s care-giver, or any variation allowed by law.

“Mobile pharmacy” means a pharmacy that is self-propelled or movable by another vehicle that is self-propelled.

“MPJE” means Multistate Pharmacy Jurisprudence Examination, a Board-approved national pharmacy law examination written and administered in cooperation with NABP.

“NABP” means National Association of Boards of Pharmacy.

“NABPLEX” means National Association of Boards of Pharmacy Licensure Examination.

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“NAPLEX” means North American Pharmacist Licensure Examination.

“Order” means either of the following:

A prescription order as defined in A.R.S. § 32-1901; or

A medication order as defined in A.A.C. R4-23-651.

“Other designated personnel” means a non-pharmacist individual who is permitted in the pharmacy area, for a limited time, under the direct supervision of a pharmacist, to perform non-pharmacy related duties, such as trash removal, floor maintenance, and telephone or computer repair.

“Outpatient” means an individual who is not a residential patient in a health care institution.

“Outpatient setting” means a location that provides medical treatment to an outpatient.

“Patient profile” means a readily retrievable, centrally located information record that contains patient demographics, allergies, and medication profile.

“Pharmaceutical patient care services” means the provision of drug selection, drug utilization review, drug administration, drug therapy monitoring, and other drug-related patient care services intended to achieve outcomes related to curing or preventing a disease, eliminating or reducing a patient’s symptoms, or arresting or slowing a disease process, by identifying and resolving or preventing potential and actual drug-related problems.

“Pharmaceutical product” means a medicinal drug.

“Pharmacy counter working area” means a clear and continuous working area that contains no major obstacles such as a desktop computer, computer monitor, computer keyboard, external computer drive device, printer, facsimile machine, pharmacy balance, typewriter, or pill-counting machine, but may contain individual documents or prescription labels, pens, prescription blanks, refill log, pill-counting tray, spatula, stapler, or other similar items necessary for the prescription-filling process.

“Pharmacy law continuing education” means a continuing education activity that addresses practice issues related to state or federal pharmacy statutes, rules, or regulations, offered by an Approved Provider.

“Pharmacy permittee” means a person who holds a current pharmacy permit that complies with A.R.S. §§ 32-1929, 32-1930, 32-1931, 32-1934, and R4-23-606 and R4-23-652.

“Physician” means a medical practitioner licensed under A.R.S. Title 32, Chapter 13 or 17.

“Physician-in-charge” means a physician who is responsible to the Board for all aspects of a prescription medication donation program required in A.R.S. § 32-1909 and operated in the physician’s office or in a health care institution.

“Poverty level” means the annual family income for a family unit of a particular size, as specified in the poverty guidelines updated annually in the *Federal Register* by the U.S. Department of Health and Human Services.

“Precursor chemical” means a precursor chemical I as defined in A.R.S. § 13-3401(26) and a precursor chemical II as defined in A.R.S. § 13-3401(27).

“Prepackaged drug” means a drug that is packaged in a frequently prescribed quantity, labeled in compliance with A.R.S. §§ 32-1967 and 32-1968, stored, and subsequently dispensed

by a pharmacist or a graduate intern or pharmacy intern under the supervision of a pharmacist, who verifies at the time of dispensing that the drug container is properly labeled, in compliance with A.R.S. § 32-1968, for the patient.

“Prep area” means a specified area either within an ISO class 7 environment or adjacent to but outside an ISO class 7 environment that:

Allows the assembling of necessary drugs, supplies, and equipment for compounding sterile pharmaceutical products, but does not allow the use of paper products such as boxes or bulk drug storage;

Allows personnel to don personnel protective clothing, such as gown, gloves, head cover, and booties before entering the clean compounding area; and

Is a room or a specified area within a room, such as an area specified by a line on the floor.

“Primary care provider” means the medical practitioner who is treating an individual for a disease or medical condition.

“Proprietor” means the owner of a business permitted by the Board under A.R.S. §§ 32-1929, 32-1930, 32-1931, and 32-1934.

“Provider pharmacy” means a pharmacy that contracts with a long-term care facility to supply prescription medication or other services for residents of a long-term care facility.

“Radiopharmaceutical” means any drug that emits ionizing radiation and includes:

Any nonradioactive reagent kit, nuclide generator, or ancillary drug intended to be used in the preparation of a radiopharmaceutical, but does not include drugs such as carbon-containing compounds or potassium-containing salts, that contain trace quantities of naturally occurring radionuclides; and

Any biological product that is labeled with a radionuclide or intended to be labeled with a radionuclide.

“Radiopharmaceutical quality assurance” means performing and interpreting appropriate chemical, biological, and physical tests on radiopharmaceuticals to determine the suitability of the radiopharmaceutical for use in humans and animals. Radiopharmaceutical quality assurance includes internal test assessment, authentication of product history, and appropriate record retention.

“Radiopharmaceutical services” means procuring, storing, handling, compounding, preparing, labeling, quality assurance testing, dispensing, distributing, transferring, recordkeeping, and disposing of radiochemicals, radiopharmaceuticals, and ancillary drugs. Radiopharmaceutical services include quality assurance procedures, radiological health and safety procedures, consulting activities associated with the use of radiopharmaceuticals, and any other activities required for the provision of pharmaceutical care.

“Red C stamp” means a device used with red ink to imprint an invoice with a red letter C at least one inch high, to make an invoice of a Schedule III through IV controlled substance, as defined in A.R.S. § 36-2501, readily retrievable, as required by state and federal rules.

“Refill” means other than the original dispensing of the prescription order, dispensing a prescription order in the same quantity originally ordered or in multiples of the originally ordered quantity when specifically authorized by the prescriber, if the refill is authorized by the prescriber:

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In the original prescription order;

By an electronically transmitted refill order that the pharmacist promptly documents and files; or

By an oral refill order that the pharmacist promptly documents and files.

“Regulated chemical” means the same as in A.R.S. § 13-3401(30).

“Remodel” means to alter structurally the pharmacy area or location.

“Remote drug storage area” means an area that is outside the premises of the pharmacy, used for the storage of drugs, locked to deny access by unauthorized persons, and secured against the use of force.

“Resident” means:

An individual admitted to and living in a long-term care facility or an assisted living facility,

An individual who has a place of habitation in Arizona and lives in Arizona as other than a tourist, or

A person who owns or operates a place of business in Arizona.

“Responsible person” means the owner, manager, or other employee who is responsible to the Board for a permitted establishment’s compliance with the laws and administrative rules of this state and of the federal government pertaining to distribution of drugs, devices, precursor chemicals, and regulated chemicals. Nothing in this definition relieves other individuals from the responsibility to comply with state and federal laws and administrative rules.

“Score transfer” means the process that enables an applicant to take the NAPLEX in a jurisdiction and be eligible for licensure by examination in other jurisdictions.

“Security features” means attributes incorporated into the paper of a prescription order, referenced in A.R.S. § 32-1968(A)(4), that are approved by the Board or its staff and include one or more of the following designed to prevent duplication or aid the authentication of a paper document: laid lines, enhanced laid lines, thermochromic ink, artificial watermark, fluorescent ink, chemical void, persistent void, penetrating numbers, high-resolution border, high-resolution latent images, micro-printing, prismatic printing, embossed images, abrasion ink, holograms, and foil stamping.

“Shared order filling” means the following:

Preparing, packaging, compounding, or labeling an order, or any combination of these functions, that are performed by:

A person with a current Arizona Board license, located at an Arizona pharmacy, on behalf of and at the request of another resident or nonresident pharmacy; or

A person, located at a nonresident pharmacy, on behalf of and at the request of an Arizona pharmacy; and

Returning the filled order to the requesting pharmacy for delivery to the patient or patient’s care-giver or, at the request of this pharmacy, directly delivering the filled order to the patient.

“Shared order processing” means the following:

Interpreting the order, performing order entry verification, drug utilization review, drug compatibility and drug allergy review, final order verification, and when neces-

sary, therapeutic intervention, or any combination of these order processing functions, that are performed by:

A pharmacist or intern, under pharmacist supervision, with a current Arizona Board license, located at an Arizona pharmacy, on behalf of and at the request of another resident or nonresident pharmacy; or

A pharmacist or intern, under pharmacist supervision, located at a nonresident pharmacy, on behalf of and at the request of an Arizona pharmacy; and

After order processing is completed, returning the processed order to the requesting pharmacy for order filling and delivery to the patient or patient’s care-giver or, at the request of this pharmacy, returning the processed order to another pharmacy for order filling and delivery to the patient or patient’s care-giver.

“Shared services” means shared order filling or shared order processing, or both.

“Sight-readable” means that an authorized individual is able to examine a record and read its information from a CRT, microfiche, microfilm, printout, or other method acceptable to the Board or its designee.

“Single-drug audit” means an accounting method that determines the numerical and percentage difference between a drug’s beginning inventory plus purchases and ending inventory plus sales.

“Single-drug usage report” means a computer system printout of original and refill prescription order usage information for a single drug.

“Standard-risk sterile pharmaceutical product” means a sterile pharmaceutical product compounded from sterile commercial drugs using sterile commercial devices or a sterile pharmaceutical optic or ophthalmic product compounded from non-sterile ingredients.

“State of emergency” means a governmental declaration issued under A.R.S. § 32-1910 as a result of a natural disaster or terrorist attack that results in individuals being unable to refill existing prescriptions.

“Sterile pharmaceutical product” means a medicinal drug free from living biological organisms.

“Strength” means:

The concentration of the drug substance (for example, weight/weight, weight/volume, or unit dose/volume basis); or

The potency, that is, the therapeutic activity of a drug substance as indicated by bioavailability tests or by controlled clinical data (expressed, for example, in terms of unity by reference to a standard).

“Substantial-risk sterile pharmaceutical product” means a sterile pharmaceutical product compounded as a parenteral or injectable dosage form from non-sterile ingredients.

“Supervision” means a pharmacist is present, assumes legal responsibility, and has direct oversight of activities relating to acquiring, preparing, distributing, administering, and selling prescription medications by pharmacy interns, graduate interns, pharmacy technicians, or pharmacy technician trainees and when used in connection with the intern training requirements means that, in a pharmacy where intern training occurs, a pharmacy intern preceptor assumes the primary responsibility,

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ity of teaching the intern during the entire period of the training.

“Supplying” means selling, transferring, or delivering to a patient or a patient’s agent one or more doses of:

A nonprescription drug in the manufacturer’s original container for subsequent use by the patient, or

A compressed medical gas in the manufacturer’s or compressed medical gas distributor’s original container for subsequent use by the patient.

“Support personnel” means an individual, working under the supervision of a pharmacist, trained to perform clerical duties associated with the practice of pharmacy, including cashiering, bookkeeping, pricing, stocking, delivering, answering non-professional telephone inquiries, and documenting third-party reimbursement. Support personnel shall not perform the tasks of a pharmacist, pharmacy intern, graduate intern, pharmacy technician, or pharmacy technician trainee.

“Temporary pharmacy facility” means a facility established as a result of a declared state of emergency to temporarily provide pharmacy services within or adjacent to declared disaster areas.

“Tourist” means an individual who is living in Arizona but maintains a place of habitation outside of Arizona and lives outside of Arizona for more than six months during a calendar year.

“Transfill” means a manufacturing process by which one or more compressed medical gases are transferred from a bulk container to a properly labeled container for subsequent distribution or supply.

“Unearned income” means monetary payment received by an individual that is not compensation for work performed or rental of property owned or leased by the individual, including:

Unemployment insurance,

Workers’ compensation,

Disability payments,

Payments from the Social Security Administration,

Payments from public assistance,

Periodic insurance or annuity payments,

Retirement or pension payments,

Strike benefits from union funds,

Training stipends,

Child support payments,

Alimony payments,

Military family allotments,

Regular support payments from a relative or other individual not residing in the household,

Investment income,

Royalty payments,

Periodic payments from estates or trusts, and

Any other monetary payments received by an individual that are not:

As a result of work performed or rental of property owned by the individual,

Gifts,

Lump-sum capital gains payments,

Lump-sum inheritance payments,

Lump-sum insurance payments, or

Payments made to compensate for personal injury.

“Verified signature” or “signature verifying” means in relation to a Board license or permit application or report, form, or agreement, the hand-written or electronic signature of an individual who, by placing a hand-written or electronic signature on a hard-copy or electronic license or permit application or report, form, or agreement agrees with and verifies that the statements and information within or attached to the license or permit application or report, form, or agreement are true in every respect and that inaccurate reporting can result in denial or loss of a license or permit or report, form, or agreement.

“Veteran” means an individual who has served in the United States Armed Forces.

“Wholesale distribution” means distribution of a drug to a person other than a consumer or patient, but does not include:

Selling, purchasing, or trading a drug or offering to sell, purchase, or trade a drug for emergency medical reasons. For purposes of this Section, “emergency medical reasons” includes transferring a prescription drug by a community or hospital pharmacy to another community or hospital pharmacy to alleviate a temporary shortage;

Selling, purchasing, or trading a drug, offering to sell, purchase, or trade a drug, or dispensing a drug as specified in a prescription;

Distributing a drug sample by a manufacturers’ or distributors’ representative; or

Selling, purchasing, or trading blood or blood components intended for transfusion.

“Wholesale distributor” means any person engaged in wholesale distribution of drugs, including: manufacturers; repackers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers’ and distributors’ warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies that conduct wholesale distributions in the amount of at least 5% of gross sales.

#### Historical Note

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(Supp. 01-1). Amended by final rulemaking at 8 A.A.R.

409 and 8 A.A.R. 646, effective January 10, 2002 (Supp.

02-1). Amended by final rulemaking at 8 A.A.R. 416,

effective January 10, 2002 (Supp. 02-1). Amended by

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final rulemaking at 8 A.A.R. 1256, effective March 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 8 A.A.R. 4898 and 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1064, effective May 4, 2003 (Supp. 03-1). Amended by final rulemaking at 9 A.A.R. 5030, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 3391, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 10 A.A.R. 3967, effective November 13, 2004 (Supp. 04-3). Amended by final rulemaking at 10 A.A.R. 4356, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 2258, effective August 6, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 12 A.A.R. 3981, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 520, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 440, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 616, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3477, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 14 A.A.R. 3405, effective October 4, 2008; amended by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3). Amended by final rulemaking at 14 A.A.R. 4400, effective January 3, 2009; amended by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4). Amended by final rulemaking at 18 A.A.R. 2603, effective December 2, 2012 (Supp. 12-4). Amended by final rulemaking at 18 A.A.R. 2609, effective December 2, 2012 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 2894, effective November 10, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 1364, effective August 2, 2014 (Supp. 14-2). Amended by exempt rulemaking under Laws 2016, Ch. 284, § 3 at 22 A.A.R. 2606, effective August 31, 2016 (Supp. 16-3).

**R4-23-111. Notice of Hearing**

- A. Except as provided in A.R.S. § 32-1928(B), the Board shall revoke, suspend, place on probation, or fine a licensee or permittee only after:
1. Notice is served under this Section, and
  2. A hearing is conducted under R4-23-122.
- B. The Board shall give notice of hearing to a party at least 30 days before the date set for the hearing in the manner described in R4-23-115(E) and (F). The notice shall include:
1. A statement of the date, time, place, and nature of the hearing;
  2. A statement of the legal authority and jurisdiction for the hearing;
  3. A reference to the particular section or sections of statute and rule involved; and
  4. A statement of the violation or issue asserted by the Board.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-112. Ex Parte Communications**

A party shall not communicate, either directly or indirectly, with a Board member about any substantive issue in a pending matter unless:

1. All parties are present;
2. It is during a scheduled proceeding, where an absent party fails to appear after proper notice; or
3. It is by written motion with copies to all parties.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-113. Motions**

- A. Purpose. A party requesting a ruling from the Board shall file a motion. Motions may be made for rulings such as:
1. Continuing or expediting a hearing under R4-23-116;
  2. Vacating a hearing under R4-23-117;
  3. Scheduling a prehearing conference under R4-23-118;
  4. Quashing a subpoena under R4-23-119;
  5. Requesting telephonic testimony under R4-23-120; and
  6. Reconsidering a previous order under R4-23-121.
- B. Form. Unless made during a prehearing conference or hearing, motions shall be made in writing and shall conform to the requirements of R4-23-115. All motions, whether written or oral, shall state the factual and legal grounds supporting the motion, and the requested action.
- C. Time limits. Absent good cause, or unless otherwise provided by law or these rules, written motions shall be filed with the Board office at least 15 days before the hearing. A party demonstrates good cause by showing that the grounds for the motion could not have been known in time, using reasonable diligence and:
1. A ruling on the motion will further administrative convenience, expedition or economy; or
  2. A ruling on the motion will avoid undue prejudice to any party.
- D. Response to motion. A party shall file a written response stating any objection to the motion within five days of service, or as directed by the Board.
- E. Oral argument. A party may request oral argument when filing a motion or response. If necessary to develop a complete record, the Board shall grant oral argument.
- F. Rulings. Rulings on motions, other than those made during a prehearing conference or the hearing, shall be in writing and served on all parties.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-114. Computing Time**

In computing any time period, the Board shall exclude the day from which the designated time period begins to run. The Board shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, the Board shall exclude Saturdays, Sundays, and legal holidays.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-115. Filing Documents**

- A. Docket. The Board shall open a docket for each hearing. All documents filed in a matter with the Board shall be date stamped on the day received by the Board office and entered in the docket.
- B. Definition. "Documents" include papers such as complaints, answers, motions, responses, notices, and briefs.
- C. Form. A party shall state on the document the name and address of each party served and how service was made under subsection (E). A document shall contain the Board caption and the Board's docket number.

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- D. Signature.** A document filed with the Board shall be signed by the party or the party's attorney. A signature constitutes a certification that the signer has read the document, has a good faith basis for submission of the document, and that it is not filed for the purpose of delay or harassment.
- E. Filing and service.** A copy of a document filed with the Board shall be served on all parties. Filing with the Board office and service shall be completed by personal delivery; first-class, certified, or express mail; or facsimile.
- F. Date of filing and service.** A document is filed with the Board on the date it is received by the Board office, as established by the Board office's date stamp on the face of the document. A copy of a document is served on a party as follows:
1. On the date it is personally served,
  2. Five days after it is mailed by first-class or express mail,
  3. On the date of the return receipt if it is mailed by certified mail, or
  4. On the date indicated on the facsimile transmission.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-116. Continuing or Expediting a Hearing; Reconvening a Hearing**

- A. Continuing or expediting a hearing.** When ruling on a motion to continue or expedite, the Board shall consider such factors as:
1. The time remaining between the filing of the motion and the hearing date;
  2. The position of other parties;
  3. The reasons for expediting the hearing or for the unavailability of the party, representative, or counsel on the date of the scheduled hearing;
  4. Whether testimony of an unavailable witness can be taken telephonically or by deposition; and
  5. The status of settlement negotiations.
- B. Reconvening a hearing.** The Board may recess a hearing and reconvene at a future date by a verbal ruling.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-117. Vacating a Hearing**

The Board shall vacate a calendared hearing and return the matter to the Board office for further action, if:

1. The parties agree to vacate the hearing;
2. The Board dismisses the matter;
3. The non-Board party withdraws the appeal; or
4. Facts demonstrate to the Board that it is appropriate to vacate the hearing for the purpose of informal disposition, or if the action will further administrative convenience, expedition, and economy and does not conflict with law or cause undue prejudice to any party.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-118. Prehearing Conference**

- A. Procedure.** The Board may hold a prehearing conference. The conference may be held telephonically. The Board may issue a prehearing order outlining the issues to be discussed.
- B. Record.** The Board may record any agreements reached during a prehearing conference by electronic or mechanical means, or memorialize them in an order.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-119. Subpoenas**

- A. Form.** A party shall request a subpoena in writing from the Board and shall include:
1. The caption and docket number of the matter;
  2. A list or description of any documents sought;
  3. The full name and home or business address of the custodian of the documents sought or all persons to be subpoenaed;
  4. The date, time, and place to appear or to produce documents pursuant to the subpoena; and
  5. The name, address, and telephone number of the party, or the party's attorney, requesting the subpoena.
- B.** The Board may require a brief statement of the relevance of testimony or documents.
- C. Service of subpoena.** Any person who is not a party and is at least 18 years of age may serve a subpoena. The person shall serve the subpoena by delivering a copy to the person to be served. The person serving the subpoena shall provide proof of service by filing with the Board office a certified statement of the date and manner of service and the names of the persons served.
- D. Objection to subpoena.** A party, or the person served with a subpoena who objects to the subpoena, or any portion of it, may file an objection with the Board. The objection shall be filed within five days after service of the subpoena, or at the outset of the hearing if the subpoena is served fewer than five days before the hearing.
- E. Quashing, modifying subpoenas.** The Board shall quash or modify a subpoena if:
1. It is unreasonable or oppressive, or
  2. The desired testimony or evidence may be obtained by an alternative method.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-120. Telephonic Testimony**

The Board may grant a motion for telephonic testimony if:

1. Personal attendance by a party or witness at the hearing will present an undue hardship for the party or witness;
2. Telephonic testimony will not cause undue prejudice to any party; and
3. The proponent of the telephonic testimony pays for any cost of obtaining the testimony telephonically.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-121. Rights and Responsibilities of Parties**

- A. Generally.** A party may present testimony and documentary evidence and argument with respect to the contested issue and may examine and cross-examine witnesses.
- B. Preparation.** A party shall have all witnesses, documents, and exhibits available on the date of the hearing.
- C. Exhibits.** A party shall provide a copy of each exhibit to all other parties at the time the exhibit is offered to the Board, unless the exhibit was previously provided to all other parties.
- D. Responding to orders.** A party shall comply with an order issued by the Board concerning the conduct of a hearing. Unless an objection is made orally during a pre-hearing conference or hearing, a party shall file a motion requesting the Board to reconsider the order.

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**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-122. Conduct of Hearing**

- A.** Public access. Unless otherwise provided by law, all hearings are open to the public and may be conducted in an informal manner as prescribed in A.R.S. § 41-1092 et seq.
- B.** Opening. The Board shall begin the hearing by reading the caption, stating the nature and scope of the hearing, and identifying the parties, counsel, and witnesses for the record.
- C.** Stipulations. The Board shall enter into the record any stipulation, settlement agreement, or consent order entered into by any of the parties before or during the hearing.
- D.** Opening statements. The party with the burden of proof may make an opening statement at the beginning of a hearing. All other parties may make statements in a sequence determined by the Board.
- E.** Order of presentation. After opening statements, the party with the burden of proof shall begin the presentation of evidence, unless the parties agree otherwise or the Board determines that requiring another party to proceed first would be more expeditious or appropriate, and would not prejudice any other party. Copies of documentary evidence may be received in the discretion of the Board. Upon request, parties shall be given an opportunity to compare the copy with the original.
- F.** Examination. A party shall conduct direct and cross examination of witnesses in the order and manner determined by the Board to expedite and ensure a fair hearing. The Board shall make rulings necessary to prevent argumentative, repetitive, or irrelevant questioning and to expedite the examination to the extent consistent with the disclosure of all relevant testimony and information. The Board may take notice of judicially cognizable facts. In addition, the Board may take notice of generally recognized technical or scientific facts within the Board's or its staff's specialized knowledge. A party shall be notified either before or during the hearing or by reference in preliminary reports of the material the Board notices. The Board may use the Board's or its staff's experience, technical competence, and specialized knowledge in the evaluation of the evidence.
- G.** Closing argument. When all evidence has been received, parties shall have the opportunity to present closing oral argument, in a sequence determined by the Board. The Board may permit or require closing oral argument to be supplemented by written memoranda. The Board may permit or require written memoranda to be submitted simultaneously or sequentially, within time periods the Board may prescribe.
- H.** Conclusion of hearing. Unless otherwise provided by the Board, the hearing is concluded upon the submission of all evidence, the making of final argument, and the issuing of a final decision or order of the Board.
- I.** Decisions and orders. Unless otherwise provided by law, any final decisions or order adverse to a party in a hearing shall be in writing or stated in the record. Any final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Unless otherwise provided by law, each party shall be notified either personally or by mail to the party's last known address of record of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed to each party and to each party's attorney of record.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-123. Failure of Party to Appear for Hearing**

If a party fails to appear at a hearing, the Board may proceed with the presentation of the evidence of the appearing party, or vacate the hearing and return the matter to the Board office for any further action.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-124. Witnesses; Exclusion from Hearing**

All witnesses at the hearing shall testify under oath or affirmation. At the request of a party, or at the discretion of the Board, the Board may exclude witnesses who are not parties from the hearing room so that they cannot hear the testimony of other witnesses.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-125. Proof**

- A.** Standard of proof. Unless otherwise provided by law, the standard of proof is a preponderance of the evidence.
- B.** Burden of proof. Unless otherwise provided by law:
  1. The party asserting a claim, right, or entitlement has the burden of proof;
  2. A party asserting an affirmative defense has the burden of establishing the affirmative defense; and
  3. The proponent of a motion shall establish the grounds to support the motion.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-126. Disruptions**

A person shall not interfere with access to or from the hearing room, or interfere, or threaten interference with the hearing. If a person interferes, threatens interference, or disrupts the hearing, the Board may order the disruptive person to leave or be removed.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-127. Hearing Record**

- A.** Maintenance. The Board shall maintain the official administrative record of a matter.
- B.** Transfer of record. Any party requesting a copy of the administrative record or any portion of the administrative record shall make a request to the Board office and shall pay the reasonable costs of duplication.
- C.** Release of exhibits. Exhibits shall be released:
  1. Upon the order of a court of competent jurisdiction; or
  2. Upon motion of the party who submitted the exhibits if the time for judicial appeal has expired and no appeal is pending.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-128. Rehearing or Review and Appeal 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 this Section. For purposes of these rules, the terms "contested case" and "party" are defined in A.R.S. § 41-1001.
- B.** A party to a contested case shall exhaust the party's administrative remedies by filing a motion for rehearing or review within 30 days after the service of the Board decision that is subject to rehearing or review in order to be eligible for judicial review under A.R.S. Title 12, Chapter 7, Article 6. The

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Board shall notify a party in its decision, that is subject to rehearing or review, that the party may file a motion for rehearing or review, and that failure to file a motion for rehearing or review within 30 days after service of the decision has the effect of prohibiting the party from seeking judicial review of the Board's decision.

- 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, its hearing officer, 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 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;
  7. That the Board's decision is a result of passion or prejudice; or
  8. That 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 to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order.
- F. If a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. The Board may extend this period for a maximum of 20 days, for good cause as described in subsection (I).
- G. Not later than 10 days after the date of a decision, after giving parties 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 the motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.
- H. If a rehearing is granted, the Board shall hold the rehearing within 60 days after the order granting the rehearing is issued.
- I. 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.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-129. Notice of Judicial Appeal; Transmitting the Transcript**

- A. Notification to the Board office. Within 10 days of filing a complaint for judicial review of a final administrative decision of the Board, the party shall file a copy of the complaint with the Board office. The Board office shall then transmit the administrative record to the Superior Court.

- B. Transcript. A party requesting a transcript shall arrange for transcription at the party's expense. The Board office shall make a copy of the audio taped record available to the transcriber. The party arranging for transcription shall deliver the transcript, certified by the transcriber under oath to be a true and accurate transcription of the audio taped record, to the Board office, together with one unbound copy.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**ARTICLE 2. PHARMACIST LICENSURE****R4-23-201. General**

- A. License required. Before practicing as a pharmacist in Arizona, a person shall possess a valid pharmacist license issued by the Board. There is no temporary licensure.
- B. Methods of licensure. Licensure as a pharmacist shall be either:
  1. By practical examination, using paper and pencil written testing, computer adaptive testing, or other Board-approved testing method; or
  2. By reciprocity.
- C. Practicing pharmacist holding a delinquent license. Before the Board reinstates an Arizona pharmacist license, a pharmacist, whose Arizona pharmacist license is delinquent for five or more years and who is practicing pharmacy outside the Board's jurisdiction with a pharmacist license issued by another jurisdiction, shall:
  1. Pass the MPJE or other Board-approved jurisprudence examination,
  2. Pay all delinquent annual renewal fees, and
  3. Pay penalty fees.
- D. Non-practicing pharmacist holding a delinquent license. Before the Board reinstates an Arizona pharmacist license, a pharmacist, whose Arizona pharmacist license is delinquent for five or more years and who did not practice pharmacy within the last 12 months before seeking reinstatement, shall:
  1. Complete the requirements in subsection (C), and
  2. Appear before the Board to furnish satisfactory proof of fitness to be licensed as a pharmacist.
- E. Verification of license. A pharmacy permittee or pharmacist-in-charge shall not permit a person to practice as a pharmacist until the pharmacy permittee or pharmacist-in-charge verifies that the person is currently licensed by the Board as a pharmacist.

**Historical Note**

Former Rules 2.1100, 2.1310, 2.1320, and 2.1400. Amended effective August 23, 1978 (Supp. 78-4). Amended by deleting subsection (E) effective April 20, 1982 (Supp. 82-2). Amended subsections (C) and (D) effective August 12, 1988 (Supp. 88-3). Amended effective February 8, 1991 (Supp. 91-1). Amended effective January 12, 1998 (Supp. 98-1). Amended by final rulemaking at 10 A.A.R. 4356, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 19 A.A.R. 2911, effective November 10, 2013 (Supp. 13-3).

**R4-23-202. Licensure by Examination**

- A. Eligibility. To be eligible for licensure as a pharmacist by examination, a person shall:
  1. Have a degree in pharmacy from a school or college of pharmacy approved by the Board as specified in A.R.S. § 32-1935, and whose professional degree program, at the time the person graduates, is accredited by the Accreditation Council for Pharmacy Education; or

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2. Qualify under the requirements of A.R.S. § 32-1922(D); and
  3. Complete not less than 1500 hours of intern training as specified in R4-23-303.
- B. Application.**
1. An applicant for licensure by examination shall:
    - a. Submit a completed application for licensure by examination 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, and
      - ii. The application fee specified in R4-23-205(C).
  2. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.
  3. An applicant for licensure by examination shall register for NAPLEX and MPJE through NABP's registration process.
  4. The Board shall deem an application for licensure by examination invalid after 12 months from the date the application is received. An applicant whose application form is invalid and who wishes to continue licensure procedures, shall submit a new application form and fee as specified in R4-23-205(C).
- C. Passing grade; notification; re-examination.**
1. To pass the required examinations, an applicant shall obtain a score of at least 75 on both the NAPLEX and MPJE.
  2. The Board office shall:
    - a. Retrieve an applicant's NAPLEX and MPJE score from the NABP database no later than two weeks after the applicant's examination date, and
    - b. Provide written notice by mail to an applicant who fails the NAPLEX or MPJE no later than seven days after the Board office retrieves the applicant's score from NABP.
  3. An applicant who fails the NAPLEX or MPJE may register with the NABP to retake the examination within the 12-month period defined in subsection (B)(4). An applicant who fails the NAPLEX or MPJE three times shall petition the Board as specified in R4-23-401 for Board approval before retaking the examination.
  4. For the purpose of licensure by examination, the Board office shall deem a passing score on the NAPLEX or MPJE invalid after 24 months from the applicant's examination date. An applicant who fails to complete the licensure process within the 24-month period, and who wishes to continue licensure procedures, shall retake the examination(s).
- D. NAPLEX score transfer.**
1. The Board office shall deem a score transfer received on the date the NABP transmits the applicant's official score transfer report to the Board office.
  2. An applicant who receives a passing score on the NAPLEX taken in another jurisdiction shall, within 12 months from the date the Board office receives the applicant's official NABP score transfer report from the NABP, make application for licensure according to subsection (B). After 12 months, an applicant may reapply for licensure in this state under the provisions of subsection (B) or R4-23-203(B).
  3. An applicant who takes the NAPLEX in another jurisdiction and fails the examination may apply for licensure in this state under the provisions of subsection (B).
- E. Licensure.**
1. The Board office shall issue a certificate of licensure and a wall license to a successful applicant upon receipt of:
    - a. The initial licensure fee specified in R4-23-205(A)(1)(a), and
    - b. The wall license fee specified in R4-23-205(E)(1)(a).
  2. 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.
- F. Time-frames for licensure by examination.**
1. The Board office shall complete an administrative completeness review within 60 days from the date the application form is received.
    - a. The Board office shall issue a written notice of administrative completeness to the applicant if no deficiencies are found in the application form.
    - b. If the application form is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 60-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
    - c. If the Board office does not provide the applicant with written notice regarding administrative completeness, the application form shall be deemed complete 60 days after receipt by the Board office.
  2. An applicant with an incomplete application form shall submit all of the missing information within 90 days of service of the notice of incompleteness.
    - a. If an applicant cannot submit all missing information within 90 days of service of the notice of incompleteness, the applicant may send a written request for an extension to the Board office postmarked or delivered no later than 90 days from service of the notice of incompleteness.
    - b. The written request for an extension shall document the reasons the applicant is unable to meet the 90-day deadline.
    - c. The Board office shall review the request for an extension of the 90-day deadline and grant the request if the Board office determines that an extension of the deadline will enable the applicant to assemble and submit the missing information. An extension shall be for no more than 30 days. The Board office shall notify the applicant in writing of its decision to grant or deny the request for an extension.
  3. If an applicant fails to submit a complete application form within the time allowed, the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license shall apply again according to subsection (B).
  4. The Board office shall complete a substantive review of the applicant's qualifications in no more than 120 days from the date on which the administrative completeness review of an application form is complete.
    - a. If an applicant is found to be ineligible for licensure by examination, the Board office shall issue a written notice of denial to the applicant.
    - b. If an applicant is found to be eligible to take the NAPLEX, the Board office shall notify the NABP that the applicant is eligible to test. The NABP shall issue the applicant an authorization to test letter.

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- c. If an applicant is found to be eligible to take the MPJE, the Board office shall notify the NABP that the applicant is eligible to test. The NABP shall issue the applicant an authorization to test letter.
- d. The Board office shall deem an applicant's eligibility to test invalid after 12 months from the date the application for licensure by examination is received.
- e. If the Board office finds deficiencies during the substantive review of an application form, the Board office shall issue a written request to the applicant for additional documentation.
- f. The 120-day time-frame for a substantive review of eligibility to take the NAPLEX or MPJE is suspended from the date of a written request for additional documentation until the date that all documentation is received. The applicant shall submit the additional documentation according to subsection (F)(2).
- g. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 45 days.
5. For the purpose of A.R.S. § 41-1072 et seq., the Board establishes the following time-frames for licensure by examination.
- Administrative completeness review time-frame: 60 days.
  - Substantive review time-frame: 120 days.
  - Overall time-frame: 180 days.
- G. License renewal.**
- To renew a license, a pharmacist 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(A)(1)(b).
  - If the biennial renewal fee is not paid by November 1 of the renewal year specified in A.R.S. § 32-1925, the pharmacist license is suspended and the licensee shall not practice as a pharmacist. The licensee shall pay a penalty as provided in A.R.S. § 32-1925 and R4-23-205(G)(1) to vacate the suspension.
  - 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.
  - Time-frames for license renewals. The Board office shall follow the time-frames established in subsection (F).
- Historical Note**
- Former Rules 2.2100, 2.2200, 2.2300, 2.2400, 2.2500, 2.2600, 2.2700, 2.2800, 2.2910, 2.2920, 2.2930, 2.3000, 2.3010, 2.3100; Amended effective August 23, 1978 (Supp. 78-5). Amended effective June 10, 1981 (Supp. 81-3). Former Section R4-23-202 repealed, new Section R4-23-202 adopted effective July 24, 1985 (Supp. 85-4). Amended effective March 13, 1991 (Supp. 91-1). Amended effective January 12, 1998 (Supp. 98-1). Amended by final rulemaking at 8 A.A.R. 409 and 8 A.A.R. 646, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 4356, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 12 A.A.R. 4689, effective February 3, 2007 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 3605, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 2911, effective November 10, 2013 (Supp. 13-3).
- R4-23-203. Licensure by Reciprocity**
- A. Eligibility.** A person is eligible for licensure by reciprocity who:
- Is licensed as a pharmacist in a jurisdiction that provides reciprocity to Arizona licensees,
  - Has passed the NABPLEX or NAPLEX with a score of 75 or better or was licensed by examination in another jurisdiction having essentially the same standards for licensure as this state at the time the pharmacist was licensed,
  - Provides evidence to the Board of having completed the required secondary and professional education and training specified in R4-23-202(A),
  - Has engaged in the practice of pharmacy for at least one year or has met the internship requirements of Article 3 within the year immediately before the date of application, and
  - Has actively practiced as a pharmacist for 400 or more hours within the last calendar year or has an Arizona graduate intern license and has completed 400 hours of internship training in a Board-approved internship training site.
- B. Application.**
- An applicant for licensure by reciprocity shall:
    - Submit a completed application for licensure by reciprocity electronically or manually on a form furnished by the Board, and
    - Submit with the application form:
      - The documents specified in the application form, and
      - The reciprocity fee specified in R4-23-205(B).
  - The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.
  - An applicant for licensure by reciprocity shall register for MPJE through NABP's registration process.
  - The Board office shall deem an application for licensure by reciprocity invalid after 12 months from the date the application is received. An applicant whose application form is invalid and who wishes to continue licensure procedures, shall submit a new application form and fee as specified in R4-23-205(B).
- C. Passing grade; notification; re-examination.**
- To pass the required examination, an applicant shall obtain a score of at least 75 on the MPJE.
  - The Board office shall:
    - Retrieve an applicant's MPJE score from the NABP database no later than two weeks after the applicant's examination date, and
    - Provide written notice by mail to an applicant who fails the MPJE no later than seven days after the Board office retrieves the applicant's score from NABP.
  - An applicant who fails the MPJE may register with the NABP to retake the examination within the 12-month period specified in subsection (B)(4). An applicant who fails the MPJE three times shall petition the Board as specified in R4-23-401 for Board approval before retaking the examination.
  - For the purpose of licensure by reciprocity, the Board office shall deem a passing score on the MPJE invalid after 24 months from the applicant's examination date. An applicant who fails to complete the licensure process within the 24-month period, and who wishes to continue licensure procedures, shall retake the examination.
- D. Licensure.**

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1. The Board office shall issue a certificate of licensure and a wall license to a successful applicant upon receipt of:
    - a. The initial licensure fee specified in R4-23-205(A)(1)(a), and
    - b. The wall license fee specified in R4-23-205(E)(1)(a).
  2. 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.
- E.** Time-frames for licensure by reciprocity. The Board office shall follow the time-frames established for licensure by examination in R4-23-202(F).
- F.** License renewal. License renewal shall be the same as specified in R4-23-202(G).

**Historical Note**

Former Rules 2.4100, 2.4200, 2.4310, 2.4320, 2.4330, 2.4340, 2.4350, 2.4360, 2.4400, 2.4510, 2.4520, 2.4522, 2.4523, 2.4530, 2.4540, 2.4550, 2.4560, 2.4610, 2.4620, and 2.4700; Amended effective August 23, 1978 (Supp. 78-4). Amended subsections (H), (L), (O) through (Q) effective June 10, 1981 (Supp. 81-3). Former Section R4-23-203 repealed, new Section R4-23-203 adopted effective July 24, 1985 (Supp. 85-4). Amended effective March 13, 1991 (Supp. 91-1). Amended effective January 12, 1998 (Supp. 98-1). Amended effective January 12, 1998 (Supp. 98-1). Amended by final rulemaking at 8 A.A.R. 409 and 8 A.A.R. 646, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 4356, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 14 A.A.R. 3605, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 2911, effective November 10, 2013 (Supp. 13-3).

**R4-23-204. Continuing Education Requirements**

- A.** General. In accordance with A.R.S. § 32-1925(G), the Board shall not renew a license unless the applicant has, during the two years preceding the application for renewal, participated in 30 contact hours (3.0 CEU's) of continuing education activity sponsored by an Approved Provider as defined in R4-23-110, of which at least three contact hours (0.3 CEU's) are approved courses in pharmacy law. Subject to A.R.S. § 32-1937, a pharmacist licensed for less than 24 months shall obtain continuing education units in an amount determined by multiplying 1.25 hours times the number of months between the date of initial licensure and the next license renewal date.
- B.** Acceptance of continuing education units (CEU's). The Board shall:
1. Only accept CEU's for continuing education activities sponsored by an Approved Provider;
  2. Only accept CEU's accrued during the two-year period immediately before licensure renewal;
  3. Not allow CEU's accrued in a biennial renewal period in excess of the 3.0 CEU's required to be carried forward to the succeeding biennial renewal period;
  4. Allow a pharmacist who leads, instructs, or lectures to a group of health professionals on pharmacy-related topics in continuing education activities sponsored by an Approved Provider to receive CEU's for a presentation by following the same attendance procedures as any other attendee of the continuing education activity; and
  5. Not accept as CEU's the performance of normal teaching duties within a learning institution by a pharmacist whose primary responsibility is the education of health professionals.
- C.** Continuing education records and reporting CEU's. A pharmacist shall:
1. Maintain continuing education records that:
    - a. Verify the continuing education activities the pharmacist participated in during the preceding five years; and
    - b. Consist of a statement of credit or a certificate issued by an Approved Provider at the conclusion of a continuing education activity;
  2. At the time of licensure renewal, attest to the number of CEU's the pharmacist participated in during the renewal period on the biennial renewal form; and
  3. When requested by the Board office, submit proof of continuing education participation within 20 days of the request.
- D.** The Board may revoke, suspend, or place on probation the license of a pharmacist who fails to comply with continuing education participation, recording, or reporting requirements of this Section.
- E.** A pharmacist who is aggrieved by any decision of the Board or its administrative staff concerning continuing education units may request a hearing before the Board.

**Historical Note**

Adopted effective September 1, 1981 (Supp. 81-5).  
Amended effective March 13, 1991 (Supp. 91-1).  
Amended by final rulemaking at 8 A.A.R. 409 and 8 A.A.R. 646, effective January 10, 2002 (Supp. 02-1).

**R4-23-205. Fees**

- A.** The Board shall collect the full biennial fee for all initial and renewal license and permit applications listed in subsections (B) and (C).
1. If a license or permit is issued from November of an odd-numbered year through October of an even-numbered year, the licensee or permittee shall renew on or before November 1 of the next odd-numbered year.
  2. If a license or permit is issued from November of an even-numbered year through October of an odd-numbered year, the licensee or permittee shall renew on or before November 1 of the next even-numbered year.
- B.** Licensure fees:
1. Pharmacist:
    - a. Initial licensure: \$180.
    - b. Licensure renewal: \$180.
  2. Pharmacy or graduate intern. Initial licensure: \$50.
  3. Pharmacy technician:
    - a. Initial licensure: \$72.
    - b. Licensure renewal: \$72.
- C.** Vendor permit fees (Resident and nonresident):
1. Pharmacy: \$480 biennially (Including hospital, and limited service).
  2. Drug wholesaler or manufacturer:
    - a. Manufacturer: \$1000 biennially.
    - b. Full-service drug wholesaler: \$1000 biennially.
    - c. Nonprescription drug wholesaler: \$500 biennially.
  3. Drug packager or repackager: \$1000 biennially.
  4. Nonprescription drug, retail:
    - a. Category I (30 or fewer items): \$120 biennially.
    - b. Category II (more than 30 items): \$200 biennially.
  5. Compressed medical gas distributor: \$200 biennially.
  6. Durable medical equipment and compressed medical gas supplier: \$100 biennially.
- D.** Pharmacy technician trainee 36-month, non-renewable, license: \$50.
1. If an individual obtained an initial pharmacy technician trainee license before August 9, 2017, the Board shall

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allow the individual to reapply once for a pharmacy technician trainee license if the individual reapplies before the initial license expires and pays a reapplication fee of \$36; and

2. If a pharmacy technician trainee's initial license expires before August 9, 2017, and the pharmacy technician trainee does not reapply before August 9, 2017, the Board shall not allow the former pharmacy technician trainee to reapply.
- E.** Reciprocity fee: \$300.
- F.** Application fee: \$50.
- G.** Certificate fees:
1. Certificate of free sale: \$200 per certificate.
  2. Certificate of good manufacturing practice: \$200 per certificate.
  3. Annual inspection fee calculated at the average hourly rate of a pharmacy inspector multiplied by the duration of the inspection measured in 10-minute increments or portion of a 10-minute increment.
- H.** Other fees:
1. Wall license.
    - a. Pharmacist: \$20.
    - b. Pharmacy or graduate intern: \$10.
    - c. Pharmacy technician: \$10.
    - d. Pharmacy technician trainee: \$10.
  2. Duplicate of any Board-issued license, registration, certificate, or permit: \$10.
  3. Duplicate current renewal license: \$10.
  4. License, permit, or certificate verification: \$15.
- I.** Fees are not refunded under any circumstances except for the Board's failure to comply with its established licensure or permit time frames under R4-23-202 or R4-23-602.
- J.** Penalty. Renewal applications submitted after the expiration date are subject to a penalty as provided in A.R.S. §§ 32-1925 and 32-1931.
1. Licensees: A penalty equal to half the licensee's biennial licensure renewal fee under subsection (B) and not to exceed \$350.
  2. Permittees: A penalty equal to half the permittee's biennial permit fee under subsection (C) and not to exceed \$350.

**Historical Note**

Adopted effective July 24, 1985 (Supp. 84-5). Amended subsection (A) paragraph (1) effective May 20, 1988 (Supp. 88-2). Amended effective August 12, 1988 (Supp. 88-3). Amended effective February 8, 1991 (Supp. 91-1). Amended effective April 1, 1995; filed with the Secretary of State January 31, 1995 (Supp. 95-1). Amended effective January 12, 1998 (Supp. 98-1). Amended by final rulemaking at 6 A.A.R. 4589, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 8 A.A.R. 409 and 8 A.A.R. 646, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 416, effective January 10, 2002 (Supp. 02-1). Amended 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 15 A.A.R. 173, effective March 7, 2009 (Supp. 09-1). Amended by final rulemaking at 20 A.A.R. 1364, effective August 2, 2014 (Supp. 14-2). Amended by exempt rulemaking under Laws 2016, Ch. 284, § 3 at 22 A.A.R. 2606, effective August 31, 2016 (Supp. 16-3). Amended by final exempt rulemaking at 23 A.A.R. 2058, effective August 9, 2017; amended by final exempt rulemaking with amendments to subsection (D), at 23 A.A.R. 2383 (Supp. 17-3).

**ARTICLE 3. INTERN TRAINING AND PHARMACY INTERN PRECEPTORS****R4-23-301. Intern Licensure**

- A.** Licensure as a pharmacy intern or graduate intern is for the purpose of complementing the individual's academic or experiential education in preparation for licensure as a pharmacist. An applicant may request a waiver of intern licensure requirements by submitting a written request as specified in R4-23-401 and appearing in person at a Board meeting.
- B.** The prerequisites for licensure as a pharmacy intern are:
1. Current enrollment, in good standing, in a Board-approved college or school of pharmacy; or
  2. Graduation from a college or school of pharmacy that is not approved by the Board; and
  3. Proof that the applicant is certified by the Foreign Pharmacy Graduate Examination Committee (FPGEC); or
  4. By order of the Board if the Board determines the applicant needs intern training.
- C.** If a pharmacy intern licensee stops attending pharmacy school classes before completing the pharmacy school's requirements for graduation, the licensee shall immediately stop practicing as a pharmacy intern and surrender the pharmacy intern license to the Board or the Board's designee no later than 30 days after the date of the last attended class, unless the licensee petitions the Board as specified in R4-23-401 and receives Board approval to continue working as a pharmacy intern. A student re-entering a pharmacy program who wishes to continue internship training shall reapply for pharmacy intern licensure.
- D.** The prerequisites for licensure as a graduate intern are:
1. Graduation from a Board-approved college or school of pharmacy, and
  2. Application for licensure as a pharmacist by examination or reciprocity, or
  3. By order of the Board if the Board determines that the applicant needs intern training.
- E.** Experiential training. Intern training shall include the activities and services encompassed by the term "practice of pharmacy" as defined in A.R.S. § 32-1901.
- F.** Out-of-state experiential training. An intern shall receive credit for intern training received outside this state if the Board determines that the intern training requirements of the jurisdiction in which the training was received are equal to the minimum requirements for intern training in this state. An applicant seeking credit for intern training received outside this state shall furnish a certified copy of the records of intern training from:
1. The Board of Pharmacy or the intern licensing agency of the other jurisdiction where the training was received; or
  2. In a jurisdiction without an intern licensing agency, the director of the applicant's Board-approved college or school of pharmacy's experiential training program.
- G.** Verification of license. A pharmacy permittee or pharmacist-in-charge shall not permit a person to practice as a pharmacy or graduate intern until the pharmacy permittee or pharmacist-in-charge verifies that the person is currently licensed by the Board as a pharmacy or graduate intern.
- H.** Intern application.
1. An applicant for licensure as a pharmacy intern or graduate intern 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,

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- ii. The initial licensure fee specified in R4-23-205(A)(2), and
  - iii. The wall license fee specified in R4-23-205(E)(1)(b).
- 2. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.
- I. Licensure.**
  - 1. If an applicant is found to be ineligible for intern 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 intern 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 intern or graduate intern prior to 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 intern or graduate intern until the Board office issues a certificate of licensure as specified in subsection (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.
- J. Time-frames for intern licensure.** The Board office shall follow the time-frames established in R4-23-202(F).
- K. License renewal.**
  - 1. A pharmacy intern whose license expires before the intern completes the education or training required for licensure as a pharmacist but less than six years after the issuance of the initial pharmacy intern license may renew the intern license for a period equal to the difference between the expiration date of the initial intern license and six years from the issue date of the initial intern license by payment of a prorated renewal fee based on the initial license fee specified in R4-23-205(A)(2).
  - 2. If a pharmacy intern fails to graduate from a Board-approved college or school of pharmacy within six years from the date the Board issues the initial intern license, the intern is not eligible for relicensure as an intern unless the intern obtains Board approval as specified in A.R.S. § 32-1923(E) and R4-23-401. To remain in good standing, an intern who receives Board approval for relicensure shall pay a prorated renewal fee for the number of months of licensure approved by the Board based on the initial license fee specified in R4-23-205(A)(2) before the license expiration date.
  - 3. If an intern receives Board approval for relicensure and does not pay the renewal fee specified in subsection (2) before the license expiration date, the intern license is suspended and the licensee shall not practice as an intern. The licensee shall pay a penalty as provided in A.R.S. § 32-1925 and R4-23-205(G)(1) to vacate the suspension.
- L. Notification of training.**
  - 1. A pharmacy intern who is employed as an intern outside the experiential training program of a Board-approved college or school of pharmacy or a graduate intern shall notify the Board within ten days of starting or terminating training, or changing training site.
  - 2. The director of a Board-approved college or school of pharmacy's experiential training program shall provide the Board an intern training report as specified in R4-23-304(B)(3).

**Historical Note**

Former Rules 3.1000, 3.1100, 3.1200, 3.2000, 3.2100, and 3.2200; Amended effective August 23, 1978 (Supp. 78-4). Amended effective April 20, 1982 (Supp. 82-2). Amended subsections (A), (F) and (G) effective August 12, 1988 (Supp. 88-3). Amended effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 416, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 4356, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 3565, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 3670, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 2911, effective November 10, 2013 (Supp. 13-3).

**R4-23-302. Training Site and Pharmacy Intern Preceptors**

- A.** To receive credit for intern training hours, a pharmacy or graduate intern shall train in a site that:
  - 1. Holds a valid Arizona pharmacy permit and employs a pharmacy intern preceptor who supervises the intern; or
  - 2. Is an alternative training site. For purposes of this Section, the term alternative training site is a non-pharmacy training site established and monitored by a Board-approved college or school of pharmacy or other non-pharmacy site where pharmacy related activities are performed and where an intern gains experience as specified in R4-23-301(E).
- B.** The Board shall inform a pharmacy or alternative training site that an intern will not get credit for training received at the site if the Board determines that a pharmacy or alternative training site fails to provide experiential training as specified in R4-23-301(E) or violates A.R.S. Chapter 18 Title 32 or Chapter 27 Title 36 or the federal act.
- C.** Pharmacy intern preceptor. To be a pharmacy intern preceptor, a pharmacist shall:
  - 1. Hold a current unrestricted pharmacist license;
  - 2. Have a minimum of one year of experience as an actively practicing pharmacist before acting as a pharmacy intern preceptor;
  - 3. If a pharmacist has been found guilty of violating any federal or state law relating to the practice of pharmacy, drug or device distribution or recordkeeping, or unprofessional conduct, enter into an agreement satisfactory to the Board that places restrictions on the pharmacist's license; and
  - 4. Hold a faculty position in the experiential training program of a Board-approved college or school of pharmacy; or
  - 5. Be approved by the Board as being otherwise qualified as a pharmacy intern preceptor.
- D.** Revocation of preceptorship privileges. The Board shall revoke a pharmacy intern preceptor's privilege to train pharmacy or graduate interns if the Board determines that a pharmacy intern preceptor fails to provide experiential training as specified in R4-23-301(E) or violates A.R.S. Title 32, Chapter 18 or Title 36, Chapter 27 or the federal act. R4-23-111 applies to revocation of preceptor privileges.
- E.** Pharmacist-to-intern ratio. A pharmacy intern preceptor may supervise the training of more than one pharmacy or graduate intern during a calendar quarter. The ratio of pharmacist to intern shall not exceed one pharmacist to two interns in a community pharmacy or limited-service pharmacy setting unless approved by the Board. In considering a request to exceed the ratio, the Board will consider pharmacy space limitations and

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whether exceeding the ratio poses a safety risk to the public health. Subject to R4-23-609 and the safety of public health, there is no pharmacist-to-intern ratio in a practice setting directed by a Board-approved college or school of pharmacy experiential training program.

- F. Preceptor responsibilities. A pharmacy intern preceptor assumes the responsibilities of a teacher and mentor in addition to those of a pharmacist. A preceptor shall thoroughly review pharmacy policy and procedure with each intern. A preceptor is responsible for the pharmacy-related actions of an intern during the specific training period. A preceptor shall give an intern the opportunity for skill development and provide an intern with timely and realistic feedback regarding their progress.

**Historical Note**

Former Rules 3.3000, 3.3100, 3.3200, 3.3300, 3.3310, 3.3320, 3.3330, 3.3340, 3.3400, 3.4000, 3.4100, 3.4200, 3.4300, and 3.4400; Amended effective August 9, 1983 (Supp. 83-4). Amended by final rulemaking at 8 A.A.R. 416, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 3605, effective November 8, 2008 (Supp. 08-3).

**R4-23-303. Training Time**

- A. Training. The minimum hours of internship training required for licensure by examination shall be 1,500.
1. After enrolling in a Board-approved college or school of pharmacy as prescribed in R4-23-301(B) and receiving a Board-issued pharmacy intern license, a pharmacy intern shall complete all required internship training as part of the pharmacy intern's Board-approved college or school of pharmacy experiential training program.
  2. After receiving a Board-issued pharmacy intern license, an individual who is a graduate of a college or school of pharmacy that is not approved by the Board shall complete a minimum of 1,500 hours of internship training in a training site or sites as defined in R4-23-302(A).
  3. After receiving a Board-issued graduate intern license, a graduate intern shall complete the number of internship training hours required by the Board in a training site or sites as defined in R4-23-302(A).
- B. Start of training and limitation of credit. To receive credit as internship training, the practical experience shall take place in a pharmacy or an alternative training site as specified in R4-23-302(A) and under the supervision of a pharmacy intern preceptor, except for a non-pharmacy site either as part of a Board-approved college or school of pharmacy experiential training program or as approved by the Board or its designee. The Board shall credit no more than 500 hours internship training as a pharmacy or graduate intern in an alternative training site specified in R4-23-302(A)(2).

**Historical Note**

Former Rules 3.5000 and 3.5200; Amended effective August 23, 1978 (Supp. 78-4). Amended effective August 9, 1983 (Supp. 83-4). Amended by final rulemaking at 8 A.A.R. 416, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2619, effective December 2, 2012 (Supp. 12-4).

**R4-23-304. Reports**

- A. Change of employment or mailing address. A pharmacy intern or graduate intern shall notify the Board within ten days of change of employment or mailing address.
- B. Annual reports.
1. A pharmacy intern who is a graduate of a college or school of pharmacy that is not approved by the Board or

is a graduate intern shall provide the Board annual intern training reports for the duration of training. The pharmacy intern shall file an annual intern training report on a report form provided by the Board by calendar year (January 1st through December 31st). An annual intern training report shall be received at the Board's office no later than 30 days after the end of the calendar year. Any intern training hours reported to the Board office more than 30 days after the end of the calendar year in which the training hours were performed shall not be credited toward the total intern training hours required for licensure.

2. After graduation and before sitting for the NAPLEX or MPJE, a pharmacy intern who is a graduate of a Board-approved college or school of pharmacy shall ensure that the director of the Board-approved college or school of pharmacy's experiential training program provides the Board an intern training report that includes:
  - a. The dates and number of training hours experienced, by training site and total; and
  - b. The date signed and experiential training program director's signature verifying that the pharmacy intern successfully completed the experiential training program.

**Historical Note**

Former Rules 3.6100, 3.6200, 3.6300, and 3.6400; Amended effective August 23, 1978 (Supp. 78-4). Amended by final rulemaking at 8 A.A.R. 416, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 4356, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 18 A.A.R. 2619, effective December 2, 2012 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 2911, effective November 10, 2013 (Supp. 13-3).

**R4-23-305. Miscellaneous Intern Training Provisions**

To prevent a loss of intern hour credit and before beginning training, an intern may ask the Board if a training site meets the requirements specified in R4-23-301(E) and R4-23-302(A).

**Historical Note**

Former Rule 3.7000; Amended effective August 23, 1978 (Supp. 78-4). Amended by final rulemaking at 8 A.A.R. 416, effective January 10, 2002 (Supp. 02-1).

**ARTICLE 4. PROFESSIONAL PRACTICES****R4-23-401. Time-frames for Board Approvals and Special Requests**

- A. To request a Board approval required by this Chapter or a special request to deviate from or waive compliance with a requirement of this Chapter, a person shall send a letter by regular mail, e-mail, or facsimile to the Board office, detailing the nature of the approval or special request, including the applicable Arizona Revised Statute or administrative code citation. This Section does not apply to a request from a person regarding the probation, suspension, or revocation of a license or permit.
- B. The Board office shall complete an administrative completeness review within 15 days from the date of receipt of a written request and immediately open a request file for the applicant.
1. The Board office shall issue a written notice of administrative completeness to the applicant if no deficiencies are found in the request.
  2. If the request is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 15-day time-frame for the Board office to finish the adminis-

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- trative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
3. If the Board office does not provide the applicant with notice regarding administrative completeness, the request is deemed complete 15 days after receipt by the Board office.
- C.** An applicant with an incomplete request shall submit all of the missing information within 30 days of service of the notice of incompleteness.
1. If an applicant cannot submit all missing information within 30 days of service of the notice of incompleteness, the applicant may send a written request for an extension to the Board office post-marked or delivered no later than 30 days from service of the notice of incompleteness.
  2. The written request for an extension shall document the reasons the applicant cannot meet the 30-day deadline.
  3. The Board office shall review the request for an extension of the 30-day deadline and grant the request if the Board office determines that an extension of the deadline will enable the applicant to assemble and submit the missing information. An extension shall be for no more than 30 days. The Board office shall notify the applicant in writing of its decision to grant or deny the request for an extension. An applicant who requires an additional extension shall submit an additional written request according to subsections (C)(1) and (C)(2).
- D.** If an applicant fails to submit a complete request within the time allowed, the Board office shall close the applicant's request file. An applicant whose request file is closed and who later wishes to obtain an approval or special request shall apply again according to subsection (A).
- E.** From the date on which the administrative completeness review of a request is finished, the Board shall complete a substantive review of the applicant's request in no more than 120 days.
1. The Board shall:
    - a. Approve the request,
    - b. Deny the request, or
    - c. If the Board determines deficiencies exist, request that the applicant produce additional documentation.
  2. If the Board approves or denies, the Board office shall issue a written approval or denial.
  3. If the Board finds deficiencies during the substantive review of a request, the Board office shall issue a written request to the applicant for additional documentation.
  4. The 120-day time-frame for a substantive review of a request for approval or special request is suspended from the date of a written request for additional documentation until the date of the next Board meeting after all documentation is received. The applicant shall submit the additional documentation according to subsection (C).
  5. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 30 days.
- F.** If the applicant fails to submit the additional information requested within the time allowed, the Board office shall close the applicant's request file. An applicant whose request file is closed and who later wishes to obtain an approval or special request shall apply again according to subsection (A).
- G.** For the purpose of A.R.S. § 41-1072 et seq., the Board establishes the following time-frames for a Board approval required by this Chapter or a special request to deviate from or waive compliance with a requirement of this Chapter:
1. Administrative completeness review time-frame: 15 days;
  2. Substantive review time-frame: 120 days; and
  3. Overall time-frame: 135 days.
- Historical Note**
- Former Rule 4.1000; Former Section R4-23-401 repealed, new Section R4-23-401 adopted effective August 9, 1983 (Supp. 83-4). Amended effective May 16, 1990 (Supp. 90-2). Repealed effective August 24, 1992 (Supp. 92-3). New Section made by final rulemaking at 9 A.A.R. 3184, effective August 30, 2003 (Supp. 03-3).
- R4-23-402. Pharmacist, Graduate Intern, and Pharmacy Intern**
- A.** A pharmacist or a graduate intern or pharmacy intern under the supervision of a pharmacist shall perform the following professional practices in dispensing a prescription medication from a prescription order:
1. Receive, reduce to written form, and manually initial oral prescription orders;
  2. Obtain and record the name of the individual who communicates an oral prescription order;
  3. Obtain, or assume responsibility to obtain, from the patient, patient's agent, or medical practitioner and record, or assume responsibility to record, in the patient's profile, the following information:
    - a. Name, address, telephone number, date of birth (or age), and gender;
    - b. Individual history including known diseases and medical conditions, known drug allergies or drug reactions, and if available a comprehensive list of medications currently taken and medical devices currently used;
  4. Record, or assume responsibility to record, in the patient's profile, a pharmacist's, graduate intern's, or pharmacy intern's comments relevant to the patient's drug therapy, including other information specific to the patient or drug;
  5. Verify the legality and pharmaceutical feasibility of dispensing a drug based upon:
    - a. The patient's allergies,
    - b. Incompatibilities with medications the patient currently takes,
    - c. The patient's use of unusual quantities of dangerous drugs or narcotics,
    - d. A medical practitioner's signature, and
    - e. The frequency of refills;
  6. Verify that a dosage is within proper limits;
  7. Interpret the prescription order, which includes exercising professional judgment in determining whether to dispense a particular prescription;
  8. Compound, mix, combine, or otherwise prepare and package the prescription medication needed to dispense individual prescription orders;
  9. Prepackage or supervise the prepackaging of drugs by a pharmacy technician or pharmacy technician trainee under R4-23-1104. For drugs prepackaged by a pharmacy technician or pharmacy technician trainee, a pharmacist shall:
    - a. Verify the drug to be prepackaged;
    - b. Verify that the label meets the official compendium's standards;
    - c. Check the completed prepackaging procedure and product; and
    - d. Manually initial the completed label; or
    - e. For automated packaging systems, manually initial the completed label or a written log or initial a computer-stored log;

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10. Check prescription order data entry to ensure that the data input:
    - a. Is for the correct patient by verifying the patient's name, address, telephone number, gender, and date of birth or age;
    - b. Is for the correct drug by verifying the drug name, strength, and dosage form;
    - c. Communicates the prescriber's directions precisely by verifying dose, dosage form, route of administration, dosing frequency, and quantity; and
    - d. Is for the correct medical practitioner by verifying the medical practitioner's name, address, and telephone number;
  11. Except as provided in subsection (A)(12), make a final accuracy check of the completed prescription label including verification of medication, accuracy of patient's name, consistency with prescription order, and drug utilization review and initial in handwriting or by another method approved by the Board or its designee the finished label;
  12. If a technology-assisted verification of product program is used, make a final accuracy check of the completed prescription label including accuracy of patient's name, consistency with prescription order, and drug utilization review and initial in handwriting or by another method approved by the Board or its designee the finished label. If a technology-assisted verification of product program is used, verification of product is not required.
  13. Record, or assume responsibility to record, a prescription serial number and date dispensed on the original prescription order;
  14. Obtain, or assume responsibility to obtain, permission to refill a prescription order and record, or assume responsibility to record on the original prescription order:
    - a. Date dispensed,
    - b. Quantity dispensed, and
    - c. Name of medical practitioner or medical practitioner's agent who communicates permission to refill the prescription order;
  15. Reduce to written or printed form, or assume responsibility to reduce to written or printed form, a new prescription order received by:
    - a. Fax,
    - b. E-mail, or
    - c. Other means of communication;
  16. Verify, or assume responsibility to verify, that a completed prescription medication is sold only to the correct patient, patient's care-giver, or authorized agent;
  17. Record on the original prescription order the name or initials of the pharmacist, graduate intern, or pharmacy intern who originally dispenses the prescription order; and
  18. Record on the original prescription order the name or initials of the pharmacist, graduate intern, or pharmacy intern who dispenses each refill.
- B.** Only a pharmacist, graduate intern, or pharmacy intern shall provide oral consultation about a prescription medication to a patient or patient's care-giver in an outpatient setting, including a patient discharged from a hospital. The oral consultation is required whenever the following occurs:
1. The prescription medication has not been previously dispensed to the patient in the same strength or dosage form or with the same directions;
  2. The pharmacist, through the exercise of professional judgment, determines that oral consultation is warranted; or
  3. The patient or patient's care-giver requests oral consultation.
- C.** Oral consultation shall include:
1. Reviewing the name and strength of a prescription medication or name of a prescription-only device and the labeled indication of use for the prescription medication or prescription-only device;
  2. Reviewing the prescription's directions for use;
  3. Reviewing the route of administration; and
  4. Providing oral information regarding special instructions and written information regarding side effects, procedure for missed doses, or storage requirements.
- D.** When, in the professional judgment of the pharmacist or graduate intern or pharmacy intern under the supervision of a pharmacist, or when circumstance precludes it, oral consultation may be omitted if the pharmacist, graduate intern, or pharmacy intern:
1. Personally provides written information to the patient or patient's care-giver that summarizes the information that would normally be orally communicated;
  2. Documents, or assumes responsibility to document, both the circumstance and reason for not providing oral consultation by a method approved by the Board or its designee; and
  3. Offers the patient or patient's care-giver the opportunity to communicate with a pharmacist, graduate intern, or pharmacy intern at a later time and provides a method for the patient or patient's care-giver to contact a pharmacist, graduate intern, or pharmacy intern at the pharmacy.
- E.** The pharmacist or graduate intern or pharmacy intern under the supervision of a pharmacist, through the exercise of professional judgment, may provide oral consultation that includes:
1. Common severe adverse effects, interactions, or therapeutic contraindications, and the action required if they occur;
  2. Techniques of self-monitoring drug therapy;
  3. The duration of the drug therapy; and
  4. Prescription refill information.
- F.** Nothing in subsection (B) requires a pharmacist, graduate intern, or pharmacy intern to provide oral consultation if a patient or patient's care-giver refuses the consultation.
- G.** Using a method approved by the Board or its designee, a pharmacist, graduate intern, or pharmacy intern shall document, or assume responsibility to document, that oral consultation is or is not provided.
- H.** Oral consultation documentation. When oral consultation is required as specified in subsection (B), a pharmacist, graduate intern, or pharmacy intern shall:
1. Document, or assume responsibility to document, that oral consultation is provided; or
  2. When a patient refuses oral consultation or a person other than the patient or patient's care-giver picks up a prescription and oral consultation is not provided, document, or assume responsibility to document, that oral consultation is not provided; or
  3. When a pharmacist, graduate intern, or pharmacy intern determines to omit oral consultation under subsection (D) and oral consultation is not provided, document, or assume responsibility to document, both the circumstance and reason that oral consultation is not provided; and
  4. Document, or assume responsibility to document, the name, initials, or identification code of the pharmacist, graduate intern, or pharmacy intern who did or did not provide oral consultation.

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- I. When a prescription is delivered to the patient or patient's care-giver outside the immediate area of a pharmacy and a pharmacist is not present, the prescription shall be accompanied by written or printed patient medication information that, in addition to the requirements in subsection (C), includes:
1. Approved use for the prescription medication;
  2. Possible adverse reactions;
  3. Drug-drug, food-drug, or disease-drug interactions;
  4. Missed dose information; and
  5. Telephone number of the dispensing pharmacy or another method approved by the Board or its designee that allows a patient or patient's care-giver to consult with a pharmacist.
- J. A prescription medication or prescription-only device, delivered to a patient at a location where a licensed health care professional is responsible for administering the prescription medication to the patient, is exempt from the requirement of subsection (C).
- K. A pharmacist, graduate intern, or pharmacy intern shall wear a badge indicating name and title while on duty.
- L. Nothing in this Section prevents a hospital pharmacist from accepting a prescription order according to rules pertaining specifically to hospital pharmacies.

**Historical Note**

Former Rule 4.1100; Amended effective August 10, 1978 (Supp. 78-4). Amended effective August 9, 1983 (Supp. 83-4). Amended effective May 16, 1990 (Supp. 90-2). Amended effective July 7, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 4656, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 9 A.A.R. 5030, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 2258, effective August 6, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 274, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 12 A.A.R. 4691, effective February 3, 2007 (Supp. 06-4). Amended by final rulemaking at 23 A.A.R. 3257, effective January 8, 2018 (Supp. 17-4).

**R4-23-403. Repealed****Historical Note**

Former Rule 4.1200; Amended effective August 10, 1978 (Supp. 78-4). Amended effective March 28, 1980 (Supp. 80-2). Amended effective August 9, 1983 (Supp. 83-4). Section repealed, new Section adopted effective May 16, 1990 (Supp. 90-2). Amended effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 5 A.A.R. 4441, effective November 2, 1999 (Supp. 99-4). Section repealed by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1).

**R4-23-404. Unethical Practices**

- A. Rebates prohibited. A pharmacist or pharmacy permittee shall not offer, deliver, receive, or accept any unearned rebate, refund, commission, preference, patronage dividend, discount, or other unearned consideration, whether in the form of money or otherwise, as compensation or inducement to refer a patient, client, or customer to any person, except for a rebate or premium paid completely and directly to a patient. A pharmacist or pharmacy permittee shall not:
1. Make payment to a medical practitioner in money or other consideration for a prescription order prescribed by the medical practitioner; or
  2. Make payment to a long-term care or assisted living facility or other health care institution in money, discount,

rental, or other consideration in an amount above the prevailing rate for:

- a. Prescription medication or devices dispensed or sold for a patient or resident of the facility or institution; or
- b. Drug selection or drug utilization review services, drug therapy management services, or other pharmacy consultation services provided for a patient or resident of the facility or institution.

- B. Prescription order-blank advertising prohibited. A pharmacist or pharmacy permittee shall not:
1. Directly or indirectly furnish to a medical practitioner a prescription order-blank that refers to a specific pharmacist or pharmacy in any manner; or
  2. Actively or passively participate in any arrangement or agreement where a prescription order-blank is prepared, written, or issued in a manner that refers to a specific pharmacist or pharmacy.
- C. Fraudulent claim for service. A pharmacist or pharmacy permittee shall not claim the performance of a service that the pharmacist or pharmacy permittee knows or should know was not performed, such as, claiming to dispense a prescription medication that is not dispensed.
- D. Fraudulent claim for a fee. A pharmacist or pharmacy permittee:
1. Shall not claim a fee for a service that is not performed or earned;
  2. May divide a prescription order into two or more portions of prescription medication at the request of a patient, or for some other ethical reason, and charge a dispensing fee for the additional service; and
  3. Shall not divide a prescription order merely to obtain an additional fee.
- E. Prohibiting a prescription-only drug or device from being dispensed over the counter. A pharmacist shall ensure that:
1. A prescription-only drug or device is dispensed only after receipt of a valid prescription order from a licensed medical practitioner;
  2. The dispensed prescription-only drug or device is properly prepared, packaged, and labeled according to this Chapter; and
  3. The prescription order is filed according to this Chapter.
- F. Drugs dispensed in the course of the conduct of a business of dispensing drugs through diagnosis by mail or the internet.
1. A pharmacist shall not dispense a drug from a prescription order if the pharmacist has knowledge, or reasonably should know under the circumstances, that the prescription order was issued on the basis of an internet-based questionnaire or an internet-based consultation without a medical practitioner-patient relationship as defined in R4-23-110.
  2. A pharmacist who dispenses a prescription-only drug, prescription-only device, or controlled substance in violation of this Section is engaging in unethical conduct in violation of A.R.S. § 32-1901.01.

**Historical Note**

Former Rules 4.2110, 4.2120, 4.2130, 4.2210, 4.2230, 4.2400, 4.2500, 4.2600, 4.4100, 4.4200, 4.4310, 4.4320, 4.4400, and 4.4500; Amended effective August 10, 1978 (Supp. 78-4); Amended subsection (I) effective August 9, 1983 (Supp. 83-4). Amended by deleting subsections (H) through (M) effective November 18, 1983 (Supp. 83-6). Amended by final rulemaking at 8 A.A.R. 1256, effective March 7, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 3405, effective October 4, 2008 (Supp.

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08-3).

**R4-23-405. Change of Responsibility**

A pharmacist designated as the pharmacist-in-charge for a pharmacy, manufacturer, or other establishment shall give immediate notice, as defined in R4-23-110, when:

1. The pharmacist's responsibility as a pharmacist-in-charge is terminated; or
2. The pharmacist knows of a pending termination of the pharmacist's responsibility as the pharmacist-in-charge.

**Historical Note**

Former Rules 4.5100 and 4.5200; Amended effective August 9, 1983 (Supp. 83-4). Amended effective February 8, 1991 (Supp. 91-1). Amended effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 1256, effective March 7, 2002 (Supp. 02-1).

**R4-23-406. Repealed****Historical Note**

Adopted as an emergency effective January 10, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Amended as an emergency effective April 2, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days. Adopted effective April 10, 1979 (Supp. 79-1). Former Section R4-23-406 repealed, new Section R4-23-406 adopted effective August 9, 1983 (Supp. 83-4). Amended effective April 1, 1995; filed with the Secretary of State January 31, 1995 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 1256, effective March 7, 2002 (Supp. 02-1). Section repealed by final rulemaking at 10 A.A.R. 230, effective March 6, 2004 (Supp. 04-1).

**R4-23-407. Prescription Requirements**

**A.** Prescription orders. A pharmacist shall ensure that:

1. A prescription order dispensed by the pharmacist includes the following information:
  - a. Date of issuance;
  - b. Name and address of the patient for whom or the owner of the animal for which the drug or device is dispensed;
  - c. Drug name, strength, and dosage form or device name;
  - d. Name of the drug's or device's manufacturer or distributor if the prescription order is written generically or a substitution is made;
  - e. Prescribing medical practitioner's directions for use;
  - f. Date of dispensing;
  - g. Quantity prescribed and if different, quantity dispensed;
  - h. For a prescription order for a controlled substance, the medical practitioner's address and DEA number;
  - i. For a written prescription order, the medical practitioner's signature;
  - j. For an electronically transmitted prescription order, the medical practitioner's digital or electronic signature;
  - k. For an oral prescription order, the medical practitioner's name and telephone number; and
  - l. Name or initials of the dispensing pharmacist;
2. A prescription order is kept by the pharmacist or pharmacy permittee as a record of the dispensing of a drug or device for seven years from the date the drug or device is dispensed, except for a drug or device personally administered by a medical practitioner to the medical practitioner's patient; and

3. The dispensing of a drug or device complies with the packaging requirements of the official compendium and state and federal law.

**B.** Prescription refills. A pharmacist shall ensure that the following information is recorded on the back of a prescription order when it is refilled:

1. Date refilled,
2. Quantity dispensed,
3. Name or approved abbreviation of the manufacturer or distributor if the prescription order is written generically or a substitution is made, and
4. The name or initials of the dispensing pharmacist.

**C.** A pharmacist may furnish a copy of a prescription order to the patient for whom it is prescribed or to the authorized representative of the patient if the copy is clearly marked "COPY FOR REFERENCE PURPOSES ONLY" or other similar statement. A copy of a prescription order is not a valid prescription order and a pharmacist shall not dispense a drug or device from the information on a copy.

**D.** Transfer of prescription order information. For a transfer of prescription order information to be valid, a pharmacy permittee or pharmacist-in-charge shall ensure that:

1. Both the original and the transferred prescription order are maintained for seven years after the last dispensing date;
2. The original prescription order information for a Schedule III, IV, or V controlled substance is transferred only as specified in 21 CFR 1306.25, published April 1, 2008, and no future amendments or editions, incorporated by reference, and on file with the Board, and available from the U.S. Government Printing Office, U.S. Superintendent of Documents, Washington, DC 20402-0001;
3. The original prescription order information for a non-controlled substance drug is transferred without limitation only up to the number of originally authorized refills;
4. For a transfer within Arizona:
  - a. The transfer of original prescription order information for a non-controlled substance drug meets the following conditions:
    - i. The transfer of information is communicated directly between:
      - (1) Two licensed pharmacists,
      - (2) A licensed pharmacist and a licensed pharmacy or graduate intern, or
      - (3) Two licensed pharmacy or graduate interns;
    - ii. The following information is recorded by the transferring pharmacist or pharmacy or graduate intern:
      - (1) The word "void" is written on the face of the invalidated original prescription unless it is an electronic or oral transfer and the transferred prescription order information is invalidated in the transferring pharmacy's computer system; and
      - (2) The name and identification code, number, or address and telephone number of the pharmacy to which the prescription is transferred, the name of the receiving pharmacist or pharmacy or graduate intern, the date of transfer, and the name of the transferring pharmacist or pharmacy or graduate intern is written on the back of the prescription or entered into the transferring pharmacy's computer system; and

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- iii. The following information is recorded by the receiving pharmacist or pharmacy or graduate intern on the transferred prescription order:
  - (1) The word "transfer;"
  - (2) Date of issuance of the original prescription order;
  - (3) Original number of refills authorized on the original prescription order;
  - (4) Date of original dispensing;
  - (5) Number of valid refills remaining and the date of the last refill;
  - (6) Name and identification code, number, or address, telephone number, and original prescription number of the pharmacy from which the prescription is transferred;
  - (7) Name of the transferring pharmacist or pharmacy or graduate intern; and
  - (8) Name of the receiving pharmacist or pharmacy or graduate intern;
- b. The transfer of original prescription order information for a Schedule III, IV, or controlled substance meets the following conditions:
  - i. The transfer of information is communicated directly between two licensed pharmacists;
  - ii. The following information is recorded by the transferring pharmacist:
    - (1) The word "void" is written on the face of the invalidated original prescription order unless it is an electronic or oral transfer and the transferred prescription order information is invalidated in the transferring pharmacy's computer system; and
    - (2) The name, address, and DEA number of the pharmacy to which the prescription is transferred, the name of the receiving pharmacist, the date of transfer, and the name of the transferring pharmacist is written on the back of the prescription order or entered into the transferring pharmacy's computer system; and
  - iii. The following information is recorded by the receiving pharmacist on the transferred prescription order:
    - (1) The word "transfer;"
    - (2) Date of issuance of original prescription order;
    - (3) Original number of refills authorized on the original prescription order;
    - (4) Date of original dispensing;
    - (5) Number of valid refills remaining and the date of the last refill;
    - (6) Name, address, DEA number, and original prescription number of the pharmacy from which the prescription is transferred;
    - (7) Name of the transferring pharmacist; and
    - (8) Name of the receiving pharmacist;
- 5. For a transfer from out-of-state:
  - a. The transfer of original prescription order information for a non-controlled substance drug meets the conditions in subsections (D)(4)(a)(i) and (D)(4)(a)(iii); and
  - b. The transfer of original prescription order information for a Schedule III, IV, or V controlled substance meets the conditions in subsections (D)(4)(b)(i) and (D)(4)(b)(iii); and
- 6. For an electronic transfer, the electronic transfer of original prescription order information meets the following conditions:
  - a. The electronic transfer is between pharmacies owned by the same company using a common or shared database;
  - b. The electronic transfer of original prescription order information for a non-controlled substance drug is performed by a pharmacist or a pharmacy or graduate intern, pharmacy technician trainee, or pharmacy technician under the supervision of a pharmacist;
  - c. The electronic transfer of original prescription order information for a controlled substance is performed between two licensed pharmacists;
  - d. The electronic transfer of original prescription order information for a non-controlled substance drug meets the following conditions:
    - i. The transferring pharmacy's computer system:
      - (1) Invalidates the transferred original prescription order information;
      - (2) Records the identification code, number, or address of the pharmacy to which the prescription order information is transferred;
      - (3) Records the name or identification code of the receiving pharmacist, pharmacy or graduate intern, pharmacy technician trainee, or pharmacy technician; and
      - (4) Records the date of transfer; and
    - ii. The receiving pharmacy's computer system:
      - (1) Records that a prescription transfer occurred;
      - (2) Records the date of issuance of the original prescription order;
      - (3) Records the original number of refills authorized on the original prescription order;
      - (4) Records the date of original dispensing;
      - (5) Records the number of valid refills remaining and the date of the last refill;
      - (6) Records the identification code, number, or address and original prescription number of the pharmacy from which the prescription is transferred;
      - (7) Records the name or identification code of the receiving pharmacist or pharmacy or graduate intern, pharmacy technician trainee, or pharmacy technician; and
      - (8) Records the date of transfer;
  - e. The electronic transfer of original prescription order information for a controlled substance meets the following conditions:
    - i. The transferring pharmacy's computer system:
      - (1) Invalidates the transferred original prescription order information;
      - (2) Records the identification code, number, or address, and DEA number of the pharmacy to which the prescription order information is transferred;
      - (3) Records the name or identification code of the receiving pharmacist;
      - (4) Records the date of transfer; and
      - (5) Records the name or identification code of the transferring pharmacist; and
    - ii. The electronic prescription order information received by the computer system of the receiving pharmacy:

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- ing pharmacy includes the information required in subsection (D)(4)(b)(iii); and
- f. In addition to electronic documentation of a transferred prescription order in the computer system, an original prescription order containing the requirements of this Section is filed in compliance with A.R.S. § 32-1964.
- E.** Transmission of a prescription order from a medical practitioner to a pharmacy by facsimile machine.
1. A medical practitioner or medical practitioner's agent may transmit a prescription order for a Schedule III, IV, or V controlled substance, prescription-only drug, or non-prescription drug to a pharmacy by facsimile under the following conditions:
    - a. The prescription order is faxed only to the pharmacy of the patient's choice;
    - b. The faxed prescription order:
      - i. Contains all the information required for a prescription order in A.R.S. §§ 32-1968 and 36-2525; and
      - ii. Is only faxed from the medical practitioner's practice location, except that a nurse in a hospital, long-term care facility, or inpatient hospice may send a facsimile of a prescription order for a patient of the facility; and
    - c. The faxed prescription order shall contain the following additional information:
      - i. The date the prescription order is faxed;
      - ii. The facsimile number of the prescribing medical practitioner or the facility from which the prescription order is faxed, and the telephone number of the facility; and
      - iii. The name of the person who transmits the facsimile, if other than the medical practitioner.
  2. A medical practitioner or medical practitioner's agent may fax a prescription order for a Schedule II controlled substance for information purposes only, unless the faxed prescription order meets the requirements of A.R.S. § 36-2525(F) and (G).
  3. A pharmacy may receive a faxed prescription order for a Schedule II controlled substance for information purposes only, except a faxed prescription order for a Schedule II controlled substance that meets the requirements of A.R.S. § 36-2525(F) and (G) may serve as the original written prescription order.
  4. To meet the seven-year record retention requirement of A.R.S. § 32-1964, a pharmacy shall receive a faxed prescription order on a plain paper facsimile machine, except a pharmacy that does not have a plain paper facsimile machine may make a Xerox copy of a faxed prescription order received on a non-plain paper facsimile machine.
  5. A medical practitioner or the medical practitioner's agent may fax refill authorizations to a pharmacy if the faxed authorization includes the medical practitioner's telephone number and facsimile number, the medical practitioner's signature or medical practitioner's agent's name, and date of authorization.
- F.** Electronic transmission of a prescription order from a medical practitioner to a pharmacy.
1. Unless otherwise prohibited by law, a medical practitioner or medical practitioner's agent may transmit a prescription order by electronic means, directly or through an intermediary, including an E-prescribing network, to the dispensing pharmacy as specified in A.R.S. § 32-1968.
  2. For electronic transmission of a Schedule II, III, IV, or V controlled substance prescription order, the medical practitioner and pharmacy shall ensure that the transmission complies with any security or other requirements of federal law.
  3. The medical practitioner and pharmacy shall ensure that all electronic transmissions comply with all the security requirements of state or federal law related to the privacy of protected health information.
  4. In addition to the information required to be included on a prescription order as specified in A.R.S. § 32-1968, an electronically transmitted prescription order shall include:
    - a. The date of transmission; and
    - b. If the individual transmitting the prescription is not the medical practitioner, the name of the medical practitioner's authorized agent who transmits the prescription order.
  5. A pharmacy receiving an electronically transmitted prescription order shall maintain the prescription order as specified in A.R.S. § 32-1964.
  6. A medical practitioner or medical practitioner's agent shall transmit an electronic prescription order only to the pharmacy of the patient's choice.

**Historical Note**

Adopted effective November 18, 1983 (Supp. 83-6). Amended by final rulemaking at 8 A.A.R. 1256, effective March 7, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 13 A.A.R. 440, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 3605, effective November 8, 2008 (Supp. 08-3).

**R4-23-407.1. Dispensing an Opioid Antagonist****A.** As used in this Section:

1. "Community member" means any person in position to assist an individual at risk of experiencing an opioid-related overdose. This includes emergency first responders, peace officers or other law enforcement personnel, fire department personnel, school district employees, and personnel of a facility or center that provides services to individuals at risk of experiencing an opioid-related overdose.
2. "Opioid antagonist" means any drug approved by the U.S. Food and Drug Administration that binds to opioid receptors, effectively blocking or inhibiting the receptor and preventing the body from responding to the opioid. Naloxone hydrochloride is an opioid antagonist.
3. "Opioid-related overdose" means an acute condition caused by excessive opioids. An opioid-related overdose can be identified by a triad of symptoms: decreased level of consciousness, pinpoint pupils, and respiratory depression. Other symptoms may include seizures, muscle spasms, and coma or death. An opioid-related overdose requires medical assistance.

**B.** Before allowing an opioid antagonist to be dispensed under A.R.S. § 32-1979, a pharmacy permit holder shall have written policies and procedures regarding:

1. Documentation of opioid antagonists dispensed under A.R.S. § 32-1979. The documentation shall:
  - a. Be maintained in a manner consistent with R4-23-407(A)(2);
  - b. Include the information required under R4-23-407(A)(1)(c), (d), (f), and (l); and
  - c. Include the following:

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- i. Quantity dispensed;
  - ii. Directions for use; and
  - iii. The patient's name, address, telephone number, and birth date; or
  - iv. Name, address, telephone number, and birth date of a family member in position to assist the individual at risk of an opioid-related overdose; or
  - v. Name, address, telephone number, and employer of a community member in position to assist an individual at risk of an opioid-related overdose; and
  - vi. Name of the individual providing the education required under subsection (B)(2);
2. Education to be provided to the individual to whom the opioid antagonist is dispensed. The education shall include:
    - a. How to prevent an opioid-related overdose;
    - b. How to recognize an opioid-related overdose;
    - c. How to administer an opioid antagonist safely to an individual experiencing an opioid-related overdose;
    - d. Precautions regarding:
      - i. Potential side effects, and
      - ii. Possible adverse events associated with administration of the opioid antagonist; and
    - e. Importance of seeking emergency medical assistance for the individual experiencing an opioid-related overdose before or after administering the opioid antagonist; and
  3. Confidentiality, security, and privileged nature of documentation of opioid antagonists dispensed under A.R.S. § 32-1979.
- C.** Before dispensing an opioid antagonist under A.R.S. § 32-1979(A), a licensed pharmacist shall:
1. Complete an opioid prevention and treatment training program that includes the following information:
    - a. How to recognize the symptoms of an opioid-related overdose,
    - b. How to respond to a suspected opioid-related overdose,
    - c. How to administer all preparations of an opioid antagonist, and
    - d. The information needed by an individual to whom an opioid antagonist is dispensed, and
  2. Comply fully with the policies and procedures developed under subsection (B).
- D.** A pharmacist who has completed an opioid prevention and treatment training program described in subsection (C):
1. May administer an opioid antagonist to an individual the pharmacist believes is experiencing an opioid-related overdose, and
  2. Is exempt from civil liability under the terms of A.R.S. § 36-2267(B).
- E.** Dispensing an opioid antagonist under A.R.S. § 32-1979 by invoice to a community member is not wholesale distribution as defined at A.R.S. § 32-1981.
- Historical Note**
- New Section made by emergency rulemaking at 23 A.A.R. 31, effective December 15, 2016 for 180 days (Supp. 16-4). New Section made by final rulemaking before emergency expired at 23 A.A.R. 967, effective June 3, 2017 (Supp. 17-2).
- R4-23-408. Computer Records**
- A.** Systems manual. A pharmacy permittee or pharmacist-in-charge shall:
1. Develop, implement, and comply with policies and procedures for the following operational aspects of a computer system:
    - a. Examples of all output documentation provided by the computer system that contains original or refill prescription order or patient profile information;
    - b. Steps a pharmacy employee follows when the computer system is not operational due to scheduled or unscheduled system interruption;
    - c. Regular and routine backup file procedure and file maintenance, including secure storage of backup files;
    - d. Audit procedures, personnel code assignments, and personnel responsibilities; and
    - e. Quality assurance mechanism for data entry validation;
  2. Review biennially and, if necessary, revise the policies and procedures required under this Section;
  3. Document the review required under subsection (A)(2);
  4. Assemble the policies and procedures as a written manual or by another method approved by the Board or its designee; and
  5. Make the policies and procedures available within the pharmacy for reference by pharmacy personnel and inspection by the Board or its designee.
- B.** Computer system data storage and retrieval. A pharmacy permittee or pharmacist-in-charge shall ensure that the computer system is capable of:
1. Producing sight-readable information on all original and refill prescription orders and patient profiles;
  2. Providing online retrieval (via CRT display or hard-copy printout) of original prescription order information required in A.R.S. § 32-1968(C), R4-23-402(A), and R4-23-407(A);
  3. Providing online retrieval (via CRT display or hard-copy printout) of patient profile information required in R4-23-402(A);
  4. Providing documentation identifying the pharmacist responsible for dispensing each original or refill prescription order, except a pharmacy permittee with a computer system that is in use before the effective date of this Section that cannot provide documentation identifying the dispensing pharmacist may continue to use the computer system by providing manual documentation identifying the dispensing pharmacist;
  5. Producing a printout of all prescription order information, including a single-drug usage report that contains:
    - a. The name of the prescribing medical practitioner;
    - b. The name and address of the patient;
    - c. The quantity dispensed on each original or refill prescription order;
    - d. The date of dispensing for each original or refill prescription order;
    - e. The name or identification code of the dispensing pharmacist; and
    - f. The serial number of each prescription order; and
  6. Providing a printout of requested prescription order information to an individual pharmacy within 72 hours of the request if prescription order information is maintained in a centralized computer record system.
- C.** A pharmacy permittee or pharmacist-in-charge of a pharmacy that uses a pharmacy computer system:
1. Shall notify the D.E.A. and the Board in writing that original and refill prescription information and patient profiles are stored in a pharmacy computer system;

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2. Shall comply with this Section if the pharmacy computer system's refill records are used as an alternative to the manual refill records required in R4-23-407(B);
  3. Is exempt from the manual refill recordkeeping requirements of R4-23-407(B), if the pharmacy computer system complies with the requirements of this Section; and
  4. Shall ensure that documentation of the accuracy of original and refill information entered into a computer system is provided by each pharmacist using the computer system and kept on file in the pharmacy for seven years from the date of the last refill. Documentation includes one of the following:
    - a. A hard-copy printout of each day's original and refill data that:
      - i. States original and refill data for prescriptions dispensed by each pharmacist is reviewed for accuracy;
      - ii. Includes the printed name of each dispensing pharmacist; and
      - iii. Is signed and initialed by each dispensing pharmacist; or
    - b. A log book or separate file of daily statements that:
      - i. States original and refill data for prescriptions dispensed by each pharmacist is reviewed for accuracy;
      - ii. Includes the printed name of each dispensing pharmacist; and
      - iii. Is signed and initialed by each dispensing pharmacist.
- D.** If a pharmacy computer system does not comply with the requirements of subsections (A), (B), and (F), the pharmacy permittee or pharmacist-in-charge shall bring the computer system into compliance within three months of a notice of noncompliance or violation letter. If the computer system is still noncompliant with subsection (A), (B), or (F) after three months, the pharmacy permittee or pharmacist-in-charge shall immediately comply with the manual recordkeeping requirements of R4-23-402 and R4-23-407.
- E.** If a pharmacy's personnel perform manual recordkeeping under subsection (D), the pharmacy's personnel shall continue manual recordkeeping until the pharmacist-in-charge sends proof, verified by a Board compliance officer, that the computer system complies with subsections (A), (B), and (F).
- F.** Security. To maintain the confidentiality of patient records, a pharmacy permittee or pharmacist-in-charge shall ensure that:
1. The computer system has security and systems safeguards designed to prevent and detect unauthorized access, modification, or manipulation of prescription order information and patient profiles; and
  2. After a prescription order is dispensed, any alteration of prescription order information is documented, including the identification of the pharmacist responsible for the alteration.
- G.** A computer system that does not comply with all the requirements of subsections (A), (B), and (F) may be used in a pharmacy if:
1. The computer system was in use in the pharmacy before July 11, 2001, and
  2. The pharmacy complies with the manual recordkeeping requirements of R4-23-402 and R4-23-407.
- H.** Prescription records and retention.
1. Instead of filing the original hard-copy prescription as required in A.R.S. § 32-1964, a pharmacy permittee or pharmacist-in-charge may use an electronic imaging recordkeeping system, if:
    - a. The system is capable of capturing, storing, and reproducing the exact image of a prescription, including the reverse side of the prescription if necessary;
    - b. Any notes of clarification of and alterations to a prescription are directly associated with the electronic image of the prescription;
    - c. The prescription image and any associated notes of clarification to or alterations to a prescription are retained for a period not less than seven years from the date the prescription is last dispensed;
    - d. The original hard-copy prescription is maintained for no less than 30 days after the date dispensed;
    - e. Policies and procedures for the use of an electronic imaging recordkeeping system are developed, implemented, reviewed, and revised in the same manner described in subsection (A) and complied with; and
    - f. The prescription is not for a schedule II controlled substance.
  2. If a pharmacy's computer system fields are automatically populated by an electronically transmitted prescription order, the automated record constitutes the original prescription and a hard-copy or electronic image is not required if the computer system is capable of maintaining, printing, and providing all the prescription information required in A.R.S. §§ 32-1968 and 36-2525 and R4-23-407(A) within 72 hours of a request by the Board, the Board's compliance officers, other authorized regulatory board agents, or authorized officers of the law.

**Historical Note**

Adopted effective November 18, 1983 (Supp. 83-6).  
 Amended by final rulemaking at 7 A.A.R. 646, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 9 A.A.R. 5030, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 11 A.A.R. 4270, effective December 6, 2005 (Supp. 05-4).  
 Amended by final rulemaking at 12 A.A.R. 274, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 13 A.A.R. 440, effective April 7, 2007 (Supp. 07-1).

**R4-23-409. Returning Drugs and Devices**

- A.** After a person for whom a drug is prescribed or the person's agent takes the drug from the premises where sold, distributed, or dispensed, a pharmacist or pharmacy permittee shall not accept the drug for return or exchange for the purpose of resale unless the pharmacist determines that:
1. The drug is in its original, manufacturer's, unopened container; and
  2. The drug or its container has not been subjected to contamination or deterioration.
- B.** The provisions of subsection (A) of this Section do not apply to a drug dispensed to:
1. A hospital inpatient as defined in R4-23-651; or
  2. A resident of a long-term care facility where a licensed health care professional administers the drug, and the pharmacist ensures and documents that the drug:
    - a. Has been stored in compliance with the requirements of the official compendium; and
    - b. Is not obviously contaminated or deteriorated.
- C.** After a person for whom a device is prescribed or the person's agent takes the device from the premises where sold, distributed, or dispensed, a pharmacist or pharmacy permittee shall

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not accept the device for return or exchange for the purpose of resale or reuse unless the pharmacist determines that:

1. The device is inspected and is free of defects;
2. The device is rendered incapable of transferring disease; and
3. The device, if resold or reused, is not claimed to be new or unused.

**Historical Note**

Adopted effective November 18, 1983 (Supp. 83-6).  
Amended by final rulemaking at 8 A.A.R. 1256, effective  
March 7, 2002 (Supp. 02-1).

**R4-23-410. Current Good Compounding Practices**

- A.** This Section establishes the current good compounding practices to be used by a pharmacist licensed by the Board, in a pharmacy permitted by the Board, and in compliance with applicable federal and state law governing the practice of pharmacy.
- B.** A pharmacy permittee shall ensure compliance with the provisions in this subsection.
1. All substances for compounding that are received, stored, or used by the pharmacy permittee:
    - a. Meet official compendium requirements;
    - b. Are of high quality, such as Chemically Pure (CP), Analytical Reagent (AR), certified American Chemical Society (ACS), or Food Chemical Codex (FCC) grade; or
    - c. Are obtained from a source that, in the professional judgment of the pharmacist, is acceptable and reliable.
  2. Before compounding a pharmaceutical product in excess of the quantity dispensed in anticipation of receiving valid prescriptions for the pharmaceutical product, a pharmacist, employed by the pharmacy permittee, shall establish a history of compounding valid prescriptions for the pharmaceutical product.
  3. Neither the pharmacy permittee nor a pharmacist employed by the pharmacy permittee provides a compounded pharmaceutical product to a pharmacy, medical practitioner, or other person for dispensing or distributing except that a compounded pharmaceutical product may be provided to a medical practitioner to administer to a patient of the medical practitioner if each container is accompanied by the written list required in subsection (I)(5) and has a label that includes the following:
    - a. The pharmacy's name, address, and telephone number;
    - b. The pharmaceutical product's name and the information required in subsection (I)(4);
    - c. A lot or control number;
    - d. A beyond-use-date based upon the pharmacist's professional judgment, but not more than the maximum guidelines recommended in the Pharmacy Compounding Practices chapter of the official compendium unless there is published or unpublished stability test data that shows a longer period is appropriate;
    - e. The statement "Not For Dispensing;" and
    - f. The statement "For Office or Hospital Administration Only."
  4. A pharmacy or pharmacist may advertise or otherwise promote the fact that the pharmacy or pharmacist provides prescription compounding services.
- C.** A pharmacy permittee shall ensure compliance with the organization, training, and personnel issues in this subsection.
1. Before dispensing a compounded pharmaceutical product, a pharmacist:
    - a. Inspects and approves or rejects, or assumes responsibility for inspecting and approving or rejecting, components, pharmaceutical product containers and closures, in-process materials, and labeling;
    - b. Prepares or assumes responsibility for preparing all compounding records;
    - c. Reviews all compounding records to ensure that no errors occur in the compounding process;
    - d. Ensures the proper use, cleanliness, and maintenance of all compounding equipment; and
    - e. Documents by hand-written initials or signature in the compounding record the completion of the requirements of subsections (C)(1)(a), (b), (c), and (d).
  2. A pharmacist engaged in compounding:
    - a. Complies with the current good compounding practices and applicable state pharmacy laws;
    - b. Maintains compounding proficiency through current awareness, training, and continuing education; and
    - c. Ensures that personnel engaged in compounding wear:
      - i. Clean clothing appropriate to the work performed; and
      - ii. Protective apparel, such as coats, aprons, gowns, gloves or masks to protect the personnel from chemical exposure and prevent pharmaceutical product contamination.
- D.** A pharmacy permittee shall ensure the security, safety, and quality of a compounded pharmaceutical product by conforming with the following standards:
1. Implement procedures to exclude from direct contact with components, pharmaceutical product containers and closures, in-process materials, labeling, and pharmaceutical products, any person with an apparent illness or open lesion that may adversely affect the safety or quality of a compounded pharmaceutical product, until the illness or lesion, as determined by competent medical personnel, does not jeopardize the safety or quality of a compounded pharmaceutical product; and
  2. Require all personnel to inform a pharmacist of any health condition that may adversely affect a compounded pharmaceutical product.
- E.** A pharmacy permittee shall provide compounding facilities that conform with the standards in this subsection.
1. In addition to the minimum area requirements of R4-23-609, R4-23-655, or R4-23-673, the compounding area:
    - a. Complies with the requirements in R4-23-611; and
    - b. Has sufficient space to permit efficient pharmacy practice, free movement of personnel, and visual surveillance by a pharmacist.
  2. If sterile pharmaceutical product or radiopharmaceutical product compounding is performed, the compounding area complies with the requirements of R4-23-670, R4-23-681, and R4-23-682.
  3. A clean, dry, and temperature-controlled area and, if required, a refrigerated area, in which to store properly labeled containers of bulk drugs, chemicals, and materials used in compounding, that complies with state statutes and rules.
- F.** To protect pharmaceutical product safety, identity, strength, quality, and purity, a pharmacy permittee shall ensure that equipment and utensils used in pharmaceutical product compounding are:

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1. Of appropriate design, adequate size, and suitably located for proper operation, cleaning, and maintenance;
  2. Made of material that is not reactive, additive, or absorptive when exposed to components, in-process materials, or pharmaceutical products;
  3. Cleaned and protected from contamination before use;
  4. Inspected and determined suitable for use before initiation of compounding operations; and
  5. Routinely inspected, calibrated, or checked to make proper performance certain.
- G.** A pharmacy permittee shall ensure that the pharmacist-in-charge establishes, implements, and complies with procedures to prevent cross-contamination when pharmaceutical products that require special precautions to prevent cross-contamination, such as penicillin, are used in a compounding procedure. The procedures shall include either the dedication of equipment or the meticulous cleaning of contaminated equipment before its use in compounding other pharmaceutical products.
- H.** A pharmacy permittee shall ensure that the pharmacist-in-charge establishes, implements, and complies with control procedures for components and pharmaceutical product containers and closures, either written or electronically stored with printable documentation, that conform with the standards in this subsection.
1. Components and pharmaceutical product containers and closures are:
    - a. Stored off the floor,
    - b. Handled and stored to prevent contamination, and
    - c. Rotated so the oldest approved stock is used first.
  2. Container closure systems comply with official compendium standards.
  3. Pharmaceutical product containers and closures are clean and made of material that is not reactive, additive, or absorptive.
- I.** A pharmacy permittee shall ensure that the pharmacist-in-charge establishes, implements, and complies with pharmaceutical product compounding controls that conform with the standards in this subsection.
1. Pharmaceutical product compounding procedures are available in either written form or electronically stored with printable documentation:
    - a. To ensure that a finished pharmaceutical product has the identity, strength, quality, and purity it is purported or represented to possess, the procedures include, for each pharmaceutical product compounded, a description of:
      - i. The components, their manufacturer, lot number, expiration date, and amounts, the order of component addition, if applicable, and the compounding process;
      - ii. The equipment and utensils used; and
      - iii. The pharmaceutical product container and closure system proper for the sterility and stability of the pharmaceutical product as it is intended to be used.
    - b. To test the pharmaceutical product being compounded, the procedures monitor the output and validate the performance of compounding processes that may cause variability in the final pharmaceutical product, including assessing:
      - i. Dosage form weight variation;
      - ii. Adequacy of mixing to ensure uniformity and homogeneity; and
      - iii. Clarity, completeness, and pH of solutions, if applicable.
- 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 Pharmacy or Graduate Intern-administered Immunizations**

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- A.** Certification 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 a pharmacy or graduate 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:
- Both the pharmacist and pharmacy or graduate intern meet the qualifications and standards specified by A.R.S. § 32-1974 and this Section;
  - The Board certifies both the pharmacist and pharmacy or graduate intern as specified in subsection (D);
  - For an eligible adult patient, the immunization or vaccine is:
    - Recommended for adults by the United States Centers for Disease Control and Prevention; or
    - Recommended by the United States Centers for Disease Control and Prevention’s Health Information for International Travel;
  - 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);
  - 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
  - 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 a pharmacy or graduate 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:
- Both the pharmacist and pharmacy or graduate intern meet the qualifications and standards specified by A.R.S. § 32-1974 and this Section; and
  - The Board certifies both the pharmacist and pharmacy or graduate intern as specified in subsection (D).
- C.** A pharmacist or pharmacy or graduate intern who is certified to administer immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient shall:
- Not delegate the authority to any other pharmacist, pharmacy or graduate intern, or employee; and
  - Maintain their current certificate for inspection by the Board or its designee or review by the public.
- D.** Qualifications for certification 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 issue a certificate authorizing the administration of immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient to a pharmacist or pharmacy or graduate intern who meets the following qualifications:
- Has a current license to practice pharmacy in this state,
  - Successfully completes a training program specified in subsection (E), and
  - Has a current certificate in basic cardiopulmonary resuscitation.
- E.** Immunizations training program requirements. A training program for pharmacists or pharmacy or graduate interns to administer immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient shall include the following courses of study:
- Basic immunology and the human immune response;
  - Mechanics of immunity, adverse effects, dose, and administration schedule of available vaccines;
  - 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;
  - Administration of intramuscular injections;
  - Other immunization administration methods; and
  - Recordkeeping and reporting requirements specified in subsection (F).
- F.** Recordkeeping and reporting requirements.
- A pharmacist or pharmacy or graduate intern certified 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:
    - The name, address, and date of birth of the patient;
    - The date of administration and site of injection;
    - The name, dose, manufacturer’s lot number, and expiration date of the vaccine, immunization, or emergency medication;
    - The name and address of the patient’s identified primary-care provider or physician;
    - The name of the pharmacist or pharmacy or graduate intern administering the immunization, vaccine, or emergency medication;
    - A record of the pharmacist’s or pharmacy or graduate intern’s consultation with the patient determining that the patient is an eligible patient as defined in R4-23-110;
    - The date and time that the written report specified in subsection (F)(2) was sent to the patient’s primary-care provider or physician;
    - Consultation or other professional information provided to the patient by the pharmacist or pharmacy or graduate intern;
    - The name and date of the immunization or vaccine information sheet provided to the patient; and
    - For an immunization or vaccine given to an eligible minor patient, a consent form signed by the minor’s parent or guardian.
  - The pharmacist or pharmacy or graduate intern shall provide a written report to the patient’s primary-care provider or physician containing the documentation required in subsection (F)(1)(a) through (d) within 48 hours after the immunization or vaccination. The pharmacy shall make the required records specified in subsection (F)(1) and a record of compliance with this subsection available in the pharmacy for inspection by the Board or its designee.
  - A pharmacy’s pharmacist-in-charge shall maintain the records required in subsection (F)(1) in the pharmacy for a minimum of seven years from the administration date.
- G.** Confidentiality of records. A pharmacist, pharmacy or graduate intern, pharmacy permittee, or pharmacist-in-charge shall comply with applicable state and federal privacy statutes and rules when releasing patient health information.

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- H.** Renewal of a certificate for pharmacist-administered immunizations. A certificate authorizing a pharmacist to administer immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient expires after five years. A pharmacist who wishes to continue administering immunizations, vaccines, and emergency medications shall renew the certification by submitting a renewal request to the Board within the 30 days before the certificate's expiration date and provide to the Board proof of the following:
1. Current certification in basic cardiopulmonary resuscitation, and
  2. Completion of a minimum of five contact hours (0.5 CEU) of continuing education related to immunizations during the five-year renewal period. A pharmacist may use the continuing education hours required in this subsection as part of the total continuing education hours required for pharmacist license renewal.
- I.** Pharmacist-administered or pharmacy or graduate intern-administered adult immunizations that require a prescription order. A pharmacist or pharmacy or graduate intern certified 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 or graduate 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).

**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 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 that a declared state of emergency exists under A.R.S. § 32-1910(A) or (B) if both of the following apply:
    - a. The pharmacy technician or pharmacy intern provides proof of current licensure or registration in another state, and
    - b. The pharmacy technician or pharmacy intern is engaged in a relief effort during a state of emergency.
- B.** The recognition of nonresident licensure or registration shall end with the termination of the declared state of emergency.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4400, effective January 3, 2009 (Supp. 08-4).

**R4-23-414. Reserved****R4-23-415. Impaired Licensees – Treatment and Rehabilitation**

- A.** The Board may contract with qualified organizations to operate a program for the treatment and rehabilitation of licensees impaired as the result of alcohol or other drug abuse, pursuant to A.R.S. § 32-1932.01.
- B.** Participants in the program are either "confidential" or "known." Confidential participants are self-referred and may remain unidentified to the Board, subject to maintaining compliance with their program contract. Known participants are under Board order to complete a minimum tenure in the program. After a known participant completes the minimum tenure, the Board may terminate the Board order and reinstate the participant's license to practice pharmacy.
- C.** The program contract with a qualified organization shall include as a minimum the following:
1. Duties and responsibilities of each party.
  2. Duration, not to exceed two years, of contract and terms of compensation.
  3. Quarterly reports from the program administrator to the Board indicating:
    - a. Identity of participants;
      - i. By name, if a known participant; or
      - ii. By case number, if a confidential participant;
    - b. Status of each participant, including;
      - i. Clinical findings;
      - ii. Diagnosis and treatment recommendations;
      - iii. Program activities; and

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- iv. General recovery and rehabilitation program information.
- 4. The program administrator shall report immediately to the Board the name of any impaired licensee who poses a danger to self or others.
- 5. The program administrator shall report to the Board, as soon as possible, the name of any impaired licensee:
  - a. Who refuses to submit to treatment,
  - b. Whose impairment is not substantially alleviated through treatment, or
  - c. Who violates the terms of their contract.
- 6. The program administrator shall periodically provide informational programs to the profession, including approved continuing education programs on the topic of drug and chemical impairment, treatment, and rehabilitation.
- D. Under A.R.S. § 32-1903(F), the Board may publish the names of participants under current Board orders.
- E. The Board or its executive director may request the treatment records for any participant. The program administrator shall provide treatment records within 10 working days of receiving a written request from the Board or its executive director for such records. Upon request of the program administrator or the Board or its executive director, a program participant shall authorize a drug and alcohol treatment facility or program or a private practitioner or treatment program to release the participant's records to the program administrator or the Board or its executive director.
- F. On the recommendation of the program administrator or a Board member and by mutual consent, the program administrator, Board member, Board staff, and program participant may meet informally to discuss program compliance.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 467, effective January 4, 2000 (Supp. 00-1). Amended by final rulemaking at 14 A.A.R. 3611, effective November 8, 2008 (Supp. 08-3).

- R4-23-416. **Reserved through**
- R4-23-420. **Reserved**
- R4-23-421. **Repealed**

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

- R4-23-422. **Repealed**

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

- R4-23-423. **Repealed**

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

- R4-23-424. **Repealed**

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

- R4-23-425. **Repealed**

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

- R4-23-426. **Repealed**

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

- R4-23-427. **Repealed**

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

- R4-23-428. **Repealed**

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

- R4-23-429. **Repealed**

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

## ARTICLE 5. CONTROLLED SUBSTANCES PRESCRIPTION MONITORING PROGRAM

*New Article 5, consisting of Sections R4-23-501 through R4-23-505, made effective August 2, 2014 (Supp. 14-2).*

*Article 5, consisting of Sections R4-23-501 through R4-23-505, expired effective August 30, 2013 (Supp. 14-1).*

*Article 5, consisting of Sections R4-23-501 and R4-23-502, recodified to Article 8 at 9 A.A.R. 4011, effective August 18, 2003 (Supp. 03-3).*

*New Article 5, consisting of Sections R4-23-501 through R4-23-505, made by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3).*

### R4-23-501. Controlled Substances Prescription Monitoring (CSPMP) Program Registration and Database Access

- A. Under A.R.S. § 36-2606, a medical practitioner who is issued a license under A.R.S. Title 32, Chapter 7, 11, 13, 14, 15, 16, 17, 21, 25, or 29 and possesses a current DEA registration under the Federal Controlled Substances Act shall have a current CSPMP registration issued by the Board.
- B. Application.
  - 1. An applicant for CSPMP registration shall:

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- a. Submit a completed application for CSPMP registration electronically or manually on a form furnished by the Board, and
  - b. Submit with the application form the documents specified in the application form.
2. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.
- C. Registration. Within seven business days of receipt of a completed application specified in subsection (B), the Board office shall determine whether an application is complete. If the application is complete, the Board office shall issue a registration number and provide a current registration certificate to the applicant by mail or electronic transmission. If the application is incomplete, the Board office shall issue a written notice of incompleteness. An applicant with an incomplete application shall comply with the requirements of R4-23-202(F).
- D. Registration renewal. As specified in A.R.S. § 36-2606(C), the Board shall automatically suspend the registration of any registrant that fails to renew the registration on or before May 1 of the year in which the renewal is due. The Board shall vacate a suspension if the registrant submits a renewal application. A suspended registrant with CSPMP database access credentials is prohibited from accessing information in the prescription monitoring program database.
- E. CSPMP database access.
1. A medical practitioner that chooses to use the CSPMP database shall request access from the CSPMP Director by completing an access user registration form electronically. Upon receipt of the access user registration form, the CSPMP Director or designee shall issue access credentials provided the medical practitioner is in compliance with the registration requirements of this Section.
  2. A pharmacist that chooses to use the CSPMP database shall request access from the CSPMP Director by completing an access user registration form electronically. Upon receipt of the access user registration form, the CSPMP Director or designee shall issue access credentials provided the pharmacist has a current active pharmacist license.
  3. A medical practitioner or pharmacist who is not licensed in Arizona may request access from the CSPMP Director by:
    - a. Completing an access user registration form electronically;
    - b. Printing the access user registration form;
    - c. Having the access user registration form signed and notarized; and
    - d. Mailing the notarized access user form along with a current copy of the applicant's nonresident state license and driver's license. Upon receipt of the notarized access user registration form and other required documents, the CSPMP Director or designee shall issue access credentials provided the nonresident licensed medical practitioner or pharmacist credentials show an current active license in another state.

**Historical Note**

Former Rule 5.2110; Amended effective August 9, 1983 (Supp. 83-4). Amended by final rulemaking at 8 A.A.R. 4898, effective January 5, 2003 (Supp. 02-4). Recodified to R4-23-801 at 9 A.A.R. 4011, effective August 18, 2003 (Supp. 03-3). New Section made by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 94, effective March 10, 2013 (Supp. 13-1). Section expired

under A.R.S. § 41-1056(J) at 20 A.A.R. 133, effective August 30, 2013 (Supp. 14-1). New Section made by final rulemaking at 20 A.A.R. 1359, effective August 2, 2014 (Supp. 14-2).

**R4-23-502. Requirements for Data Format and Transmission**

- A. Each dispenser shall submit to the Board or its designee by electronic means information regarding each prescription dispensed for a controlled substance listed in Schedules II, III, and IV of A.R.S. Title 36, Chapter 27, the Arizona Uniform Controlled Substances Act. The information reported shall conform to the August 31, 2005 Version 003, Release 000 ASAP Rules-based Standard Implementation Guide for Prescription Monitoring Programs published by the American Society for Automation in Pharmacy as specified in A.R.S. § 36-2608(B). The information submitted for each prescription shall include:
1. The name, address, telephone number, prescription number, and DEA registration number of the dispenser;
  2. The name, address, gender, date of birth, and telephone number of the person or, if for an animal, the owner of the animal for whom the prescription is written;
  3. The name, address, telephone number, and DEA registration number of the prescribing medical practitioner;
  4. The quantity and National Drug Code (NDC) number of the Schedule II, III, or IV controlled substance dispensed;
  5. The date the prescription was dispensed;
  6. The number of refills, if any, authorized by the medical practitioner;
  7. The date the prescription was issued;
  8. The method of payment identified as cash or third party; and
  9. Whether the prescription is new or a refill.
- B. A dispenser shall submit the required information electronically unless the Board or its designee approves a waiver as specified in subsection (D).
- C. A dispenser's electronic data transfer equipment including hardware, software, and internet connections shall meet the privacy and security standards of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as amended, and A.R.S. § 12-2292, in addition to common internet industry standards for privacy and security. A dispenser shall ensure that each electronic transmission meets the following data protection requirements:
1. Data shall be at least 128-bit encryption in transmission and at rest; and
  2. Data shall be transmitted via secure e-mail, telephone modem, diskette, CD-ROM, tape, secure File Transfer Protocol(FTP), Virtual Private Network (VPN), or other Board-approved media.
- D. A dispenser who does not have an automated recordkeeping system capable of producing an electronic report in the Board established format may request a waiver from electronic reporting by submitting a written request to the Board or its designee. The Board or its designee shall grant the request if the dispenser agrees in writing to report the data by submitting a completed universal claim form supplied by the Board or its designee.
- E. Unless otherwise approved by the Board, a dispenser shall report by the close of business on each Friday the required information for the previous week, Sunday through Saturday. If a Friday falls on a state holiday, the dispenser shall report the information on the following business day. The Board or its designee may approve a less frequent reporting period if a dispenser makes a showing that a less frequent reporting period will not reduce the effectiveness of the system or jeopardize the public health.

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**Historical Note**

Former Rule 5.2510. Amended by final rulemaking at 8 A.A.R. 4898, effective January 5, 2003 (Supp. 02-4). Recodified to R4-23-802 at 9 A.A.R. 4011, effective August 18, 2003 (Supp. 03-3). New Section made by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 133, effective August 30, 2013 (Supp. 14-1). New Section made by final rulemaking at 20 A.A.R. 1359, effective August 2, 2014 (Supp. 14-2).

**R4-23-503. Access to Controlled Substances Prescription Monitoring Program Data**

- A. Except as provided in A.R.S. § 36-2604(B) and (C) and this Section, prescription information submitted to the Board or its designee is confidential and is not subject to public inspection.
- B. The Board or its designee shall review the prescription information collected under A.R.S. Title 36, Chapter 28 and R4-23-502. If the Board or its designee has reason to believe an act of unprofessional or illegal conduct has occurred, the Board or its designee shall notify the appropriate professional licensing board or law enforcement or criminal justice agency and provide the prescription information required for an investigation.
- C. The Board or its designee is authorized to release data collected by the program to the following:
  1. A person who is authorized to prescribe or dispense a controlled substance to assist that person to provide medical or pharmaceutical care to a patient or to evaluate a patient;
  2. An individual who requests the individual's own controlled substance prescription information under A.R.S. § 12-2293;
  3. A professional licensing board established under A.R.S. Title 32, Chapter 7, 11, 13, 14, 15, 16, 17, 18, 21, 25, or 29. Except as required under subsection (B), the Board or its designee shall provide this information only if the requesting board states in writing that the information is necessary for an open investigation or complaint;
  4. A local, state, or federal law enforcement or criminal justice agency. Except as required under subsection (B), the Board or its designee shall provide this information only if the requesting agency states in writing that the information is necessary for an open investigation or complaint;
  5. The Arizona Health Care Cost Containment System Administration regarding individuals who are receiving services under A.R.S. Title 36, Chapter 29. Except as required under subsection (B), the Board or its designee shall provide this information only if the Administration states in writing that the information is necessary for an open investigation or complaint;
  6. A person serving a lawful order of a court of competent jurisdiction;
  7. A person who is authorized to prescribe or dispense a controlled substance and who performs an evaluation on an individual under A.R.S. § 23-1026; and
  8. The Board staff for purposes of administration and enforcement of A.R.S. Title 36, Chapter 28 and this Article.
- D. The Board or its designee may provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used to identify individual patients or persons who received prescriptions from dispensers.

**Historical Note**

Former Rules 5.3500, 5.3520, 5.3540, 5.3550, 5.3560, 5.3570, 5.3580, 5.3590, 5.4110, and 5.6110; Repealed

effective August 2, 1982 (Supp. 82-4). New Section made by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 133, effective August 30, 2013 (Supp. 14-1). New Section made by final rulemaking at 20 A.A.R. 1359, effective August 2, 2014 (Supp. 14-2).

**R4-23-504. Computerized Central Database Tracking System Task Force**

- A. The Board shall appoint a task force to help it administer the computerized central database tracking system as specified in A.R.S. § 36-2603.
- B. The Task Force shall meet at least once each year and at the call of the chairperson to establish the procedures and conditions relating to the release of prescription information specified in A.R.S. § 36-2604 and R4-23-503.
- C. The Task Force shall determine:
  1. The information to be screened;
  2. The frequency and thresholds for screening; and
  3. The parameters for using the information to notify medical practitioners, patients, and pharmacies to educate and provide for patient management and treatment options.
- D. The Board shall review and approve the procedures and conditions established by the Task Force as needed but at least once every calendar year.

**Historical Note**

Former Rule 5.7010; Amended effective August 10, 1978 (Supp. 78-4). Repealed effective August 2, 1982 (Supp. 82-4). New Section made by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 133, effective August 30, 2013 (Supp. 14-1). New Section made by final rulemaking at 20 A.A.R. 1359, effective August 2, 2014 (Supp. 14-2).

**R4-23-505. Reports**

- A. Before releasing prescription monitoring program data, the Board or its designee shall receive a written or electronic request for controlled substance prescription information.
- B. A person authorized to access CSPMP data under R4-23-503(C)(1) through (7) shall submit a written or electronic request that:
  1. Specifies the information requested for the report;
  2. For a medical practitioner, provides a statement that the report's purpose is to provide medical or pharmaceutical care to a patient or to evaluate a patient;
  3. For an individual obtaining the individual's own controlled substance prescription information, provides a form of non-expired government-issued photo identification;
  4. For a professional licensing board, states that the information is necessary for an open investigation or complaint;
  5. For a local, state, or federal law enforcement or criminal justice agency, states that the information is necessary for an open investigation or complaint;
  6. For the AHCCCS Administration, states that the information is necessary for an open investigation or complaint; and
  7. For a person serving a lawful order of a court of competent jurisdiction, provides a copy of the court order.
- C. The Board or its designee may provide reports through U.S. mail, other common carrier, facsimile, or secured electronic media or may allow reports to be picked up in-person at the Board office.

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**Historical Note**

Former Rules 5.7100, 5.8100, 5.8500, 5.9100, and 5.9500; Amended effective August 10, 1978 (Supp. 78-4). Repealed effective August 2, 1982 (Supp. 82-4). New Section made by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 133, effective August 30, 2013 (Supp. 14-1). New Section made by final rulemaking at 20 A.A.R. 1359, effective August 2, 2014 (Supp. 14-2).

**R4-23-506. Repealed****Historical Note**

Adopted effective December 3, 1974 (Supp. 75-1).  
Repealed effective August 24, 1992 (Supp. 92-3).

**ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS****R4-23-601. General Provisions**

- A.** Permit required to sell a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical. A person shall have a current Board permit to:
1. Sell a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical in Arizona; or
  2. Sell a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical from outside Arizona and ship the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical into Arizona.
- B.** A medical practitioner is exempt from subsection (A) to administer a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical for the emergency needs of a patient.
- C.** Permit fee. Permits are issued biennially on an odd- and even-year expiration based on the assigned permit number. The fee, specified in R4-23-205, is not refundable under any circumstances except the Board's failure to comply with the permit time-frames established in R4-23-602.
- D.** Record of receipt and disposal of narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals.
1. Every person manufacturing a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, including repackaging or relabeling, shall prepare and retain for not less than three years the manufacturing, repackaging, or relabeling date for each narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical.
  2. Every person receiving, selling, delivering, or disposing of a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical shall record and retain for not less than three years the following information:
    - a. The name, strength, dosage form, and quantity of each narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical received, sold, delivered, or disposed;
    - b. The name, address, and license or permit number, if applicable, of the person from whom each narcotic or other controlled substance, prescription-only drug

or device, nonprescription drug, precursor chemical, or regulated chemical is received;

- c. The name, address, and license or permit number, if applicable, of the person to whom each narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is sold or delivered, or of the person who disposes of each narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
  - d. The receipt, sale, deliver, or disposal date of each narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical.
3. The record required in this subsection shall be available for inspection by the Board or its compliance officer during regular business hours.
  4. If the record required in this subsection is stored in a centralized recordkeeping system and not immediately available for inspection, a permittee, manager, or pharmacist-in-charge shall provide the record within four working days of the Board's or its compliance officer's request.
- E.** Narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals damaged by water, fire, or from human or animal consumption or use. No person shall sell or offer to sell any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical damaged by water, fire, or from human or animal consumption or use.

**Historical Note**

Former Rules 6.1100, 6.1200, 6.1300, 6.1400, and 6.1500. Amended effective August 10, 1978 (Supp. 78-4). Amended subsection (C) effective August 9, 1983 (Supp. 83-4). Amended subsection (C) effective August 12, 1988 (Supp. 88-3). Amended by final rulemaking at 6 A.A.R. 4656, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 1912, effective July 1, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 3670, effective November 8, 2008 (Supp. 08-3).

**R4-23-602. Permit Application Process and Time-frames**

- A.** A person applying for a permit shall:
1. Submit a completed application for the desired permit electronically or manually on a form furnished by the Board, and
  2. Submit with the application form:
    - a. The documents specified in the application form, and
    - b. The permit fee specified in R4-23-205(D).
- B.** The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.
- C.** Time-frames for permits.
1. The Board office shall finish an administrative completeness review within 60 days from the date the application form is received.
    - a. The Board office shall issue a written notice of administrative completeness to the applicant if no deficiencies are found in the application form.
    - b. If the application form is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 60-day time-frame for the

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- Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
- c. If the Board office does not provide the applicant with written notice regarding administrative completeness, the application form shall be deemed complete 60 days after receipt by the Board office.
2. An applicant with an incomplete application form shall submit to the Board office all of the missing information within 90 days of service of the notice of incompleteness.
    - a. If an applicant cannot submit all missing information within 90 days of service of the notice of incompleteness, the applicant may send a written request for an extension to the Board office postmarked or delivered no later than 90 days from service of the notice of incompleteness;
    - b. The written request for an extension shall document the reasons the applicant is unable to meet the 90-day deadline; and
    - c. The Board office shall review the request for an extension of the 90-day deadline and grant the request if the Board office determines that an extension of the 90-day deadline will enable the applicant to assemble and submit the missing information. An extension shall be for no more than 30 days. The Board office shall notify the applicant in writing of its decision to grant or deny the request for an extension.
  3. If an applicant fails to submit a complete application form within the time allowed, the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a permit shall submit a new application and fee as specified in subsection (A).
  4. For a nonprescription drug permit applicant, a compressed medical gas distributor permit applicant, and a durable medical equipment and compressed medical gas supplier permit applicant, the Board office shall issue a permit on the day that the Board office determines an administratively complete application form is received.
  5. Except as described in subsection (C)(4), from the date on which the administrative completeness review of an application form is finished, the Board office shall complete a substantive review of the applicant's qualifications in no more than 120 days.
    - a. If an applicant is found to be ineligible, the Board office shall issue a written notice of denial to the applicant.
    - b. If an applicant is found to be eligible, the Board office shall recommend to the Board that the applicant be issued a permit. Upon receipt of the Board office's recommendation, the Board shall either issue a permit to the applicant or if the Board determines the applicant does not meet eligibility requirements, return the matter to the Board office.
    - c. If the Board office finds deficiencies during the substantive review of the application form, the Board office shall issue a written request to the applicant for additional documentation.
    - d. The 120-day time-frame for a substantive review for the issuance or denial of a permit is suspended from the date of the written request for additional documentation until the date that all documentation is received. The applicant shall submit the additional documentation according to subsection (C)(2).
  - e. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 45 days.
6. For the purpose of A.R.S. § 41-1072 et seq., the Board establishes the following time-frames for permits:
    - a. Administrative completeness review time-frame: 60 days.
    - b. Substantive review time-frame:
      - i. Nonprescription drug permit, compressed medical gas distributor permit, and durable medical equipment and compressed medical gas supplier permit: none.
      - ii. Except as described in subsection (C)(6)(b)(i): 120 days.
    - c. Overall time-frame:
      - i. Nonprescription drug permit, compressed medical gas distributor permit, and durable medical equipment and compressed medical gas supplier permit: 60 days.
      - ii. Except as described in subsection (C)(6)(c)(i): 180 days.
- D. Permit renewal.**
1. To renew a permit, a permittee shall submit a completed application for permit renewal electronically or manually on a form furnished by the Board with the biennial renewal fee specified in R4-23-205(D).
  2. If the biennial renewal fee is not paid by November 1 of the renewal year specified in A.R.S. § 32-1931, the permit is suspended. The permittee shall pay a penalty fee as provided in A.R.S. § 32-1931 and R4-23-205(G)(2) to vacate the suspension.
  3. Time-frames for permit renewals. The Board office shall follow the time-frames established in subsection (C).
- E. Display of permit.** A permittee shall conspicuously display the permit in the location to which it applies.
- Historical Note**
- Former Rules 6.2100, 6.2200, 6.2300, 6.2400, 6.2500, 6.2600, 6.2610, 6.2620, 6.2630, 6.2640, and 6.2650. Amended effective August 10, 1978 (Supp. 78-4). Amended effective August 9, 1983 (Supp. 83-4). Repealed effective August 12, 1988 (Supp. 88-3). New Section adopted effective August 5, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 4589, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 20 A.A.R. 1364, effective August 2, 2014 (Supp. 14-2).
- R4-23-603. Resident-Nonprescription Drugs, Retail**
- A. Permit.** A person, including the following, shall not sell or distribute a nonprescription drug without a current Board-issued permit:
    1. A grocer;
    2. Other non-pharmacy retail outlet; or
    3. Mobile or non-fixed location retailer, such as a swap-meet vendor.
  - B.** A medical practitioner licensed under A.R.S. Title 32 is exempt from the requirements of subsection (A).
  - C. Application.** To obtain a permit to sell a nonprescription drug, a person shall submit:
    1. A completed application form and fee as specified in R4-23-602; and
    2. Documentation of compliance with local zoning laws, if required by the Board.
  - D. Drug sales.** A nonprescription drug permittee:

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1. Shall sell a drug only in the original container packaged and labeled by the manufacturer; and
  2. Shall not package, repackage, label, or relabel any drug.
- E.** Inspection. A nonprescription drug permittee shall consent to inspection during business hours by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
- F.** Quality control. A nonprescription drug permittee shall:
1. Ensure that all drugs stocked, sold, or offered for sale are:
    - a. Kept clean;
    - b. Protected from contamination, excessive heat, cold, sunlight, and other deteriorating factors;
    - c. In compliance with federal law; and
    - d. Received from a supplier with a current Board-issued permit as specified in R4-23-601(A).
  2. Develop and implement a program to ensure that:
    - a. Any expiration-dated drug is reviewed regularly;
    - b. Any drug, that exceeds its expiration date, is deteriorated or damaged, or does not comply with federal law, is moved to a quarantine area and not sold or distributed; and
    - c. Any quarantined drug is destroyed or returned to its source of supply.
- G.** Notification. A nonprescription drug permittee shall provide written notice by mail, facsimile, or e-mail to the Board office within ten days of changes involving the telephone number, facsimile number, e-mail address, mailing address, or name of business.
- H.** Change of ownership. No less than 14 days before a change of ownership occurs that involves changes of stock ownership of 30% or more of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit a completed application form and fee as specified in subsection (C).
- I.** Relocation. No less than 30 days before an existing nonprescription drug permittee relocates, the permittee shall submit a completed application for relocation electronically or manually on a form furnished by the Board, and the documentation required in subsection (C).
- J.** Records. A nonprescription drug permittee shall:
1. Retain records of the receipt and disposal of nonprescription drugs as required in R4-23-601(D), and
  2. Comply with the requirements of A.R.S. § 32-1977 and federal law for the retail sale of methamphetamine precursors.
- K.** Permit renewal. Permit renewal shall be as specified in R4-23-602(D).
- L.** Nonprescription drug vending machine outlet. In addition to the requirements of R4-23-601, R4-23-602, and subsections (A) through (K), a person selling or distributing a nonprescription drug in a vending machine shall comply with the following requirements:
1. Each individual vending machine is considered an outlet and shall have a Board-issued nonprescription drug permit;
  2. Each nonprescription-drug-permitted vending machine shall display in public view an identification seal, furnished by the Board, containing the permit number, vending machine's serial number, owner's name, and telephone contact number;
  3. Each nonprescription-drug-permitted vending machine is assigned a specific location that is within a weather-tight structure, protected from direct sunlight, and maintained at a temperature not less than 59° F and not greater than 86° F;
  4. Each nonprescription drug sold in a vending machine is packaged and labeled in the manufacturer's original FDA-approved container;
  5. A nonprescription-drug-permitted vending machine is subject to inspection by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5) as follows:
    - a. The owner, manager, or other staff of the nonprescription drug permittee shall provide access to the contents of the vending machine within 24 hours of a request from a Board compliance officer or other authorized officer of the law; or
    - b. The Board compliance staff shall have independent access to the vending machine;
  6. Before relocating or retiring a nonprescription-drug-permitted vending machine, the owner or manager shall notify the Board in writing. The notice shall include:
    - a. Permit number;
    - b. Vending machine's serial number;
    - c. Action planned (relocate or retire); and
    - d. If retiring a vending machine, the disposition of the nonprescription drug contents of the vending machine;
  7. The sale or distribution of a precursor chemical or regulated chemical in a vending machine is prohibited; and
  8. Under no circumstance may expired drugs be sold or distributed.

**Historical Note**

Adopted effective August 10, 1978 (Supp. 78-4).  
 Amended subsection (D) paragraph (1) and added subsection (G) effective April 20, 1982 (Supp. 82-2).  
 Amended effective August 12, 1988 (Supp. 88-3).  
 Amended effective February 8, 1991 (Supp. 91-1).  
 Amended effective August 5, 1997 (Supp. 97-3).  
 Amended by final rulemaking at 6 A.A.R. 4589, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 20 A.A.R. 1364, effective August 2, 2014 (Supp. 14-2).

**R4-23-604. Resident Drug Manufacturer**

- A.** Permit. A person shall not manufacture, package, repackage, label, or relabel any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical without a current Board-issued drug manufacturer permit.
- B.** Application. To obtain a permit to operate a drug manufacturing firm in Arizona, a person shall submit a completed application, on a form furnished by the Board, that includes:
1. Business name, address, mailing address, if different, telephone number, and facsimile number;
  2. Owner's name, if corporation or partnership, officers or partners, including address and title, and any other trade or business names used;
  3. Whether the owner, corporation, or partnership has conducted a similar business in any other jurisdiction and if so, indicate under what name and location;
  4. Whether the owner, any officer, or active partner has ever been convicted of an offense involving moral turpitude, a felony offense, or any drug-related offense or has any currently pending felony or drug-related charges, and if so, indicate charge, conviction date, jurisdiction, and location;
  5. Whether the owner, any officer, or active partner has ever been denied a drug manufacturer permit in this state or any other jurisdiction, and if so, indicate where and when;
  6. A copy of the drug list required by the FDA;

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7. Plans or construction drawings showing facility size and security for the proposed business;
  8. Applicant's and manager's name, address, emergency telephone number, and resumé indicating educational or experiential qualifications related to drug manufacturer operation;
  9. The applicant's current FDA drug manufacturer or repackager registration number and expiration date;
  10. Documentation of compliance with local zoning laws;
  11. For an application submitted because of ownership change, the former owner's name and business name, if different;
  12. Date signed, and applicant's, corporate officer's, partner's, or manager's verified signature and title; and
  13. Fee specified in R4-23-205.
- C.** Before issuing a drug manufacturer permit, the Board shall:
1. Receive and approve a completed permit application;
  2. Interview the applicant and manager, if different from the applicant, at a Board meeting; and
  3. Receive a satisfactory compliance inspection report on the facility from a Board compliance officer.
- D.** Notification. A resident drug manufacturer permittee shall notify the Board of changes involving the drug list, ownership, address, telephone number, name of business, or manager, including manager's telephone number. The resident drug manufacturer permittee shall submit a written notice via mail, fax, or e-mail to the Executive Director within 24 hours of the change, except any change of ownership requires that the resident drug manufacturer permittee comply with subsection (E).
- E.** Change of ownership. Before a change of ownership occurs that involves changes of stock ownership of more than 30% of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit the application packet described under subsection R4-23-604(B).
- F.** Before an existing resident drug manufacturer permittee relocates, the drug manufacturer permittee shall submit the application packet described in subsection R4-23-604(B), excluding the fee. The facility at the new location shall pass a final inspection by a Board compliance officer before operations begin.
- G.** A resident drug manufacturer permittee shall submit the application packet described under subsection R4-23-604(B) for any change of officers in a corporation, excluding the fee and final inspection.
- H.** Manufacturing and distribution.
1. A drug manufacturer permittee shall manufacture and distribute a drug only:
    - a. To a pharmacy, drug manufacturer, or full-service or nonprescription drug wholesaler currently permitted by the Board;
    - b. To a medical practitioner currently licensed as a medical practitioner as defined in A.R.S. § 32-1901; or
    - c. To a properly permitted, registered, licensed, or certified person or firm of another jurisdiction.
  2. Before manufacturing and distributing a drug that is not listed on a drug manufacturer's permit application, the drug manufacturer permittee shall send to the Board office a written request to amend the permit application, including documentation of FDA approval to manufacture the drug not listed on the original permit application. If a request to amend a permit application includes the documentation required in this subsection, the Board or its designee shall approve the request to amend within 30 days of receipt.
- I.** A drug manufacturer permit is subject to denial, suspension, probation, or revocation under A.R.S. § 32-1927.02.
- J.** Current Good Manufacturing Practice. A drug manufacturer permittee shall comply with the current good manufacturing practice requirements of 21 CFR 210 through 211, (Revised April 1, 2011, incorporated by reference and on file with the Board and available at [www.gpo.gov](http://www.gpo.gov). This incorporated material includes no future editions or amendments.)
- K.** Records. A drug manufacturer permittee shall:
1. Establish and implement written procedures for maintaining records pertaining to production, process control, labeling, packaging, quality control, distribution, complaints, and any information required by federal or state law;
  2. Retain the records required by this Article and 21 CFR 210 through 211 as incorporated in subsection (J) for at least two years after distribution of a drug or one year after the expiration date of a drug, whichever is longer; and
  3. Make the records required by this Article and 21 CFR 210 through 211 as incorporated in subsection (J) available within 48 hours for review by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
- L.** Inspections. A drug manufacturer permittee shall make the drug manufacturer's facility available for inspection by the Board or its compliance officer under A.R.S. § 32-1904.
- M.** Nonresident drug manufacturer. A nonresident drug manufacturer shall comply with the requirements of R4-23-607.
- N.** Manufacturing radiopharmaceuticals. Before manufacturing a radiopharmaceutical, a drug manufacturer permittee shall:
1. Comply with the regulatory requirements of the Arizona Radiation Regulatory Agency, the U.S. Nuclear Regulatory Commission, the FDA, and this Section; and
  2. Hold a current Arizona Radiation Regulatory Agency Radioactive Materials License. If a drug manufacturer permittee who manufactures radiopharmaceuticals fails to maintain a current Arizona Radiation Regulatory Agency Radioactive Materials License, the permittee's drug manufacturer permit shall be immediately suspended pending a hearing by the Board.

**Historical Note**

Former Rules 6.4001, 6.4002, 6.4003, 6.4004, 6.4005, 6.4006, 6.4007, 6.4008, 6.4009, 6.4100, 6.4110, 6.4111, 6.4115, 6.4116, 6.4120, 6.4122, 6.4190, 6.4191, 6.4200, 6.4250, 6.4300, 6.4350, 6.4355, 6.4360, 6.4400, 6.4401, 6.4403, 6.4410, 6.4430, 6.4450, 6.4500, 6.4510, 6.4530, 6.4533, 6.4600, 6.4610, 6.4640, 6.4660, 6.4700, 6.4710, and 6.4750. Adopted effective December 3, 1974 (Supp. 75-1). Amended effective August 10, 1978 (Supp. 78-4). Amended subsection (B) paragraph (2) effective April 20, 1982 (Supp. 82-2). Amended subsections (B), (G), (K) and (L) effective August 12, 1988 (Supp. 88-3). Amended effective August 24, 1992 (Supp. 92-3). Amended effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 3815, effective August 9, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 1105, effective April 30, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 702, effective June 1, 2013 (Supp. 13-2).

**R4-23-605. Resident Drug Wholesaler Permit**

- A.** Permit. A person shall not operate a business or firm for the wholesale distribution of any drug, device, precursor chemi-

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cal, or regulated chemical without a current Board-issued full-service or nonprescription drug wholesale permit.

**B. Application.**

1. To obtain a permit to operate a full-service or nonprescription drug wholesale firm in Arizona, a person shall submit a completed application on a form furnished by the Board that includes:
    - a. Whether the application is for a full-service or nonprescription drug wholesale permit;
    - b. Business name, address, mailing address, if different, telephone number, and facsimile number;
    - c. Owner's name, if corporation or partnership, officers or partners, including address and title, and any other trade or business names used;
    - d. Whether the owner, corporation, or partnership has conducted a similar business in any other jurisdiction and if so, indicate under what name and location;
    - e. Whether the owner, any officer or active partner has ever been convicted of an offense involving moral turpitude, a felony offense, or any drug-related offense or has any currently pending felony or drug-related charges, and if so, indicate charge, conviction date, jurisdiction, and location;
    - f. Whether the owner or any officer or active partner has ever been denied a drug wholesale permit in this state or any other jurisdiction, and if so, indicate where and when;
    - g. For a full-service drug wholesale firm:
      - i. The designated representative's name, address, and emergency telephone number;
      - ii. Documentation that the designated representative meets the requirements of A.R.S. § 32-1982(B) and the following as specified in A.R.S. § 32-1982(C):
        - (1) A full set of fingerprints from the designated representative; and
        - (2) The state and federal criminal history record check fee specified by and made payable to the Arizona State Department of Public Safety by money order, certified check, or bank draft; and
      - iii. A \$100,000 bond as specified in A.R.S. § 32-1982(D) submitted on a form supplied by the Board;
    - h. The type of drugs, whether nonprescription, prescription-only, controlled substances, human, or veterinary, the applicant will distribute;
    - i. Plans or construction drawings showing facility size and security for the proposed business;
    - j. Documentation of compliance with local zoning laws;
    - k. For a nonprescription drug wholesale firm, the manager's or designated representative's name, address, emergency telephone number, and resumé indicating educational or experiential qualifications related to drug wholesale operation;
  1. For an application submitted because of ownership change, the former owner's name and business name, if different;
  - m. Date signed, and applicant's, corporate officer's, partner's, manager's, or designated representative's verified signature and title; and
  - n. Fee specified in R4-23-205.
2. Before issuing a full-service or nonprescription drug wholesale permit, the Board shall:
  - a. Receive and approve a completed permit application;
  - b. Interview the applicant and the designated representative, if different from the applicant, at a Board meeting;
  - c. Receive a satisfactory compliance inspection report on the facility from a Board compliance officer; and
  - d. For a full-service drug wholesale permit, issue a fingerprint clearance to a qualified designated representative, as specified in subsection (L). If the fingerprint clearance of a designated representative for a full-service drug wholesale permit applicant is denied, the full-service drug wholesale permit applicant shall appoint another designated representative and submit the documentation, fingerprints, and fee required in subsection (B)(1)(g)(ii).
- C. Notification.** A resident full-service or nonprescription drug wholesale permittee shall notify the Board of changes involving the type of drugs sold or distributed, ownership, address, telephone number, name of business, or manager or designated representative, including the manager's or designated representative's telephone number.
1. The resident full-service or nonprescription drug wholesale permittee shall submit a written notice via mail, fax, or e-mail to the Executive Director within 10 days of the change, except any change of ownership requires that the resident full-service or nonprescription drug wholesale permittee comply with subsection (D).
  2. For a change of designated representative, a resident full-service drug wholesale permittee shall submit the documentation, fingerprints, and fee required in subsection (B)(1)(g)(ii). If the fingerprint clearance of a designated representative for a full-service drug wholesale permit applicant is denied, the full-service drug wholesale permit applicant shall appoint another designated representative and submit the documentation, fingerprints, and fee required in subsection (B)(1)(g)(ii).
- D. Change of ownership.** Before a change of ownership occurs that involves changes of stock ownership of more than 30% of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit the application packet described under subsection (B).
- E.** Before an existing resident full-service or nonprescription drug wholesaler permittee relocates, the resident full-service or nonprescription drug wholesale permittee shall submit the application packet described under subsection (B), excluding the fee. The facility at the new location shall pass a final inspection by a Board compliance officer before operations begin.
- F.** A resident full-service or nonprescription drug wholesale permittee shall submit the application packet described under subsection (B) for any change of officers in a corporation, excluding the fee and final inspection.
- G. Distribution restrictions.** In addition to the requirements of this subsection, a resident full-service wholesale permittee shall comply with the distribution restrictions specified in A.R.S. § 32-1983.
1. Records.
    - a. A full-service drug wholesale permittee shall:
      - i. Maintain records to ensure full accountability of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical including dates of receipt and sales, names, addresses, and DEA registration num-



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- scription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, to anyone except a person or firm that is properly permitted, registered, licensed, or certified in another jurisdiction;
- iv. Provide pedigree records upon request, if immediately available, or within two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5);
  - v. Maintain a copy of the current permit, registration, license, or certificate of each person or firm who buys, receives, or disposes of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
  - vi. Provide permit, registration, license, and certificate records upon request, if immediately available, or within two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5); and
- b. A nonprescription drug wholesale permittee shall:
- i. Not sell, distribute, give away, or dispose of any nonprescription drug, precursor chemical, or regulated chemical, except in the original container packaged and labeled by the manufacturer or repackager;
  - ii. Not package, repackage, label, or relabel any nonprescription drug, precursor chemical, or regulated chemical;
  - iii. Not sell or distribute any nonprescription drug, precursor chemical, or regulated chemical, to anyone except a person or firm that is properly permitted, registered, licensed, or certified in another jurisdiction;
  - iv. Maintain a record of the current permit, registration, license, or certificate of each person or firm who buys, receives, or disposes of any nonprescription drug, precursor chemical, or regulated chemical; and
  - v. Provide permit, registration, license, or certificate records upon request, if immediately available, or within two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
4. Cash-and-carry sales.
- a. A full-service drug wholesale permittee shall complete a cash-and-carry sale or distribution of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, only after:
    - i. Verifying the validity of the order;
    - ii. Verifying the identity of the pick-up person for each transaction by confirming that the person or firm represented placed the cash-and-carry order; and
    - iii. For a prescription-only drug order, verifying that the cash-and-carry sale or distribution is used only to meet the immediate needs of a particular patient of the person or firm who placed the cash-and-carry order; and
  - b. A nonprescription drug wholesale permittee shall complete a cash-and-carry sale or distribution of any nonprescription drug, precursor chemical, or regulated chemical, only after:
    - i. Verifying the validity of the order; and
    - ii. Verifying the identity of the pick-up person for each transaction by confirming that the person or firm represented placed the cash-and-carry order.
- H.** Prescription-only drug returns or exchanges. A full-service drug wholesale permittee shall ensure that any prescription-only drug returned or exchanged by a pharmacy or chain pharmacy warehouse under A.R.S. § 32-1983(A) meets the following criteria:
1. The prescription-only drug is not adulterated or counterfeited, except an adulterated or counterfeited prescription-only drug that is the subject of an FDA or manufacturer recall may be returned for destruction or subsequent return to the manufacturer;
  2. The quantity of prescription-only drug returned or exchanged does not exceed the quantity of prescription-only drug that the full-service drug wholesale permittee or a full-service drug wholesale permittee under common ownership sold to the pharmacy or chain pharmacy warehouse; and
  3. The pharmacy or chain pharmacy warehouse provides documentation that:
    - a. Lists the name, strength, and manufacturer of the prescription-only drug being returned or exchanged; and
    - b. States that the prescription-only drug was maintained in compliance with storage conditions prescribed on the drug label or manufacturer's package insert.
- I.** Returned, outdated, damaged, deteriorated, adulterated, misbranded, counterfeited, and contraband drugs.
1. Except as specified in subsection (H)(1) for a prescription-only drug, a full-service drug wholesale permittee shall ensure that the return of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical meets the following criteria.
    - a. Any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical that is outdated, damaged, deteriorated, adulterated, misbranded, counterfeited, or contraband or suspected of being adulterated, misbranded, counterfeited, or contraband, or otherwise deemed unfit for human or animal consumption shall be quarantined and physically separated from other narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals until the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA.
    - b. Any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical whose immediate or sealed outer or secondary containers or product labeling are misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband shall be quarantined and physically separated from other narcotics or other

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- controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals until the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA. When the immediate or sealed outer or secondary containers or product labeling are determined to be misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband, the full-service drug wholesale permittee shall provide notice of the misbranding, counterfeiting, or contrabandage or suspected misbranding, counterfeiting, or contrabandage within three business days of the determination to the Board, FDA, and manufacturer or wholesale distributor from which the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical was acquired.
- c. Any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical that has been opened or used, but is not adulterated, misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband, shall be identified as opened or used, or both, and quarantined and physically separated from other narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals until the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA.
  - d. If the conditions under which a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical has been returned cast doubt on the narcotic's or other controlled substance's, prescription-only drug's or device's, nonprescription drug's, precursor chemical's, or regulated chemical's safety, identity, strength, quality, or purity, the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical shall be quarantined and physically separated from other narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals until the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA, except as provided in subsection (I)(1)(d)(i).
    - i. If examination, testing, or other investigation proves that the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical meets appropriate standards of safety, identity, strength, quality, and purity, it does not have to be destroyed or returned to the manufacturer or wholesale distributor.
    - ii. In determining whether the conditions under which a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical has been returned cast doubt on the narcotic's or other controlled substance's, prescription-only drug's or device's, nonprescription drug's, precursor chemical's, or regulated chemical's safety, identity, strength, quality, or purity, the full-service drug wholesale permittee shall consider, among other things, the conditions under which the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical has been held, stored, or shipped before or during its return and the condition of the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical and the condition of its container, carton, or product labeling as a result of storage or shipping.
  - e. For any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical identified under subsections (I)(1)(a) or (b), the full-service drug wholesale permittee shall ensure that the identified item or items and other evidence of criminal activity, and accompanying documentation is retained and not destroyed until its disposition is authorized by the Board and the FDA.
2. A nonprescription drug wholesale permittee shall ensure that the return of any nonprescription drug, precursor chemical, or regulated chemical meets the following criteria.
    - a. Any nonprescription drug, precursor chemical, or regulated chemical that is outdated, damaged, deteriorated, adulterated, misbranded, counterfeited, or contraband or suspected of being adulterated, misbranded, counterfeited, or contraband, or otherwise deemed unfit for human or animal consumption shall be quarantined and physically separated from other nonprescription drugs, precursor chemicals, or regulated chemicals until the nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA.
    - b. Any nonprescription drug, precursor chemical, or regulated chemical whose immediate or sealed outer or secondary containers or product labeling are misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband shall be quarantined and physically separated from other nonprescription drugs, precursor chemicals, or regulated chemicals until the nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA. When the immediate or sealed outer or secondary containers or product labeling are determined to be misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband, the non-

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- prescription drug wholesale permittee shall provide notice of the misbranding, counterfeiting, or contrabandage or suspected misbranding, counterfeiting, or contrabandage within three business days of the determination to the Board, FDA, and manufacturer or wholesale distributor from which the nonprescription drug, precursor chemical, or regulated chemical was acquired.
- c. Any nonprescription drug, precursor chemical, or regulated chemical that has been opened or used, but is not adulterated, misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband, shall be identified as opened or used, or both, and quarantined and physically separated from other nonprescription drugs, precursor chemicals, or regulated chemicals until the nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA.
  - d. If the conditions under which a nonprescription drug, precursor chemical, or regulated chemical has been returned cast doubt on the nonprescription drug's, precursor chemical's, or regulated chemical's safety, identity, strength, quality, or purity, the nonprescription drug, precursor chemical, or regulated chemical shall be quarantined and physically separated from other nonprescription drugs, precursor chemicals, or regulated chemicals until the nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA, except as provided in subsection (I)(2)(d)(i).
    - i. If examination, testing, or other investigation proves that the nonprescription drug, precursor chemical, or regulated chemical meets appropriate standards of safety, identity, strength, quality, and purity, it does not need to be destroyed or returned to the manufacturer or wholesale distributor.
    - ii. In determining whether the conditions under which a nonprescription drug, precursor chemical, or regulated chemical has been returned cast doubt on the nonprescription drug's, precursor chemical's, or regulated chemical's safety, identity, strength, quality, or purity, the nonprescription drug wholesale permittee shall consider, among other things, the conditions under which the nonprescription drug, precursor chemical, or regulated chemical has been held, stored, or shipped before or during its return and the condition of the nonprescription drug, precursor chemical, or regulated chemical and the condition of its container, carton, or product labeling as a result of storage or shipping.
  - e. For any nonprescription drug, precursor chemical, or regulated chemical identified under subsections (I)(2)(a) or (b), the nonprescription drug wholesale permittee shall ensure that the identified item or items and other evidence of criminal activity, and accompanying documentation is retained and not destroyed until its disposition is authorized by the Board and the FDA.
3. A full-service drug wholesale permittee and nonprescription drug wholesale permittee shall comply with the recordkeeping requirements of subsection (G) for all outdated, damaged, deteriorated, adulterated, misbranded, counterfeited and contraband narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals.
- J. Facility. A full-service or nonprescription drug wholesale permittee shall:
    1. Ensure that the facility occupied by the full-service or nonprescription drug wholesale permittee is of adequate size and construction, well-lighted inside and outside, adequately ventilated, and kept clean, uncluttered, and sanitary;
    2. Ensure that the permittee's warehouse facility:
      - a. Is secure from unauthorized entry; and
      - b. Has an operational security system designed to provide protection against theft;
    3. In a full-service drug wholesale facility, ensure that only authorized personnel may enter areas where any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is kept;
    4. In a nonprescription drug wholesale facility, ensure that only authorized personnel may enter areas where any nonprescription drug, precursor chemical, or regulated chemical is kept;
    5. In a full-service drug wholesale facility, ensure that any thermolabile narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is stored in an area where room temperature is maintained in compliance with storage conditions prescribed on the product label;
    6. In a nonprescription drug wholesale facility, ensure that any thermolabile nonprescription drug, precursor chemical, or regulated chemical is stored in an area where room temperature is maintained in compliance with storage conditions prescribed on the product label;
    7. Make the facility available for inspection by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5) during regular business hours;
    8. In a full-service drug wholesale facility, provide a quarantine area for storage of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical that is outdated, damaged, deteriorated, adulterated, misbranded, counterfeited, or contraband or suspected of being adulterated, misbranded, counterfeited, or contraband, otherwise deemed unfit for human or animal consumption, or that is in an open container; and
    9. In a nonprescription drug wholesale facility, provide a quarantine area for storage of any nonprescription drug, precursor chemical, or regulated chemical that is outdated, damaged, deteriorated, adulterated, misbranded, counterfeited, or contraband or suspected of being adulterated, misbranded, counterfeited, or contraband, otherwise deemed unfit for human or animal consumption, or that is in an open container.
  - K. Quality controls.
    1. A full-service drug wholesale permittee shall:
      - a. Ensure that any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated

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- chemical that meets the criteria specified in subsection (I)(1) is not sold, distributed, or delivered to any person for human or animal consumption;
- b. Ensure that a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is not manufactured, packaged, repackaged, labeled, or relabeled by any of its employees;
  - c. Ensure that any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical stocked, sold, offered for sale, or delivered is:
    - i. Kept clean,
    - ii. Protected from contamination and other deteriorating environmental factors, and
    - iii. Stored in a manner that complies with applicable federal and state law and official compendium storage requirements;
  - d. Maintain manual or automatic temperature and humidity recording devices or logs to document conditions in areas where any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is stored; and
  - e. Develop and implement a program to ensure that:
    - i. Any expiration-dated narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is reviewed regularly;
    - ii. Any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical that has less than 120 days remaining on the expiration date, or is deteriorated, damaged, or does not comply with federal law, is moved to a quarantine area and not sold or distributed; and
    - iii. Any quarantined narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired.
2. A nonprescription drug wholesale permittee shall:
    - a. Ensure that any nonprescription drug, precursor chemical, or regulated chemical that meets the criteria specified in subsection (I)(2) is not sold, distributed, or delivered to any person for human or animal consumption;
    - b. Ensure that a nonprescription drug, precursor chemical, or regulated chemical is not manufactured, packaged, repackaged, labeled, or relabeled by any of its employees;
    - c. Ensure that any nonprescription drug, precursor chemical, or regulated chemical stocked, sold, offered for sale, or delivered is:
      - i. Kept clean,
      - ii. Protected from contamination and other deteriorating environmental factors, and
      - iii. Stored in a manner that complies with applicable federal and state law and official compendium storage requirements;
    - d. Maintain manual or automatic temperature and humidity recording devices or logs to document conditions in areas where any nonprescription drug, precursor chemical, or regulated chemical is stored; and
    - e. Develop and implement a program to ensure that:
      - i. Any expiration-dated nonprescription drug, precursor chemical, or regulated chemical is reviewed regularly;
      - ii. Any nonprescription drug, precursor chemical, or regulated chemical that has less than 120 days remaining on the expiration date, or is deteriorated, damaged, or does not comply with federal law, is moved to a quarantine area and not sold or distributed; and
      - iii. Any quarantined nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired.
- L. Fingerprint clearance.
    1. After receiving the state and federal criminal history record of a designated representative, the Board shall compare the record with the list of criminal offenses that preclude a designated representative from receiving a fingerprint clearance. If the designated representative's criminal history record does not contain any of the offenses listed in subsection (L)(2), the Board shall issue the designated representative a fingerprint clearance.
    2. The Board shall not issue a fingerprint clearance to a designated representative who is awaiting trial for or who has been convicted of committing or attempting or conspiring to commit one or more of the following offenses in this state or the same or similar offenses in another state or jurisdiction:
      - a. Unlawfully administering intoxicating liquors, controlled substances, dangerous drugs, or prescription-only drugs;
      - b. Sale of peyote;
      - c. Possession, use, or sale of marijuana, dangerous drugs, prescription-only drugs, or controlled substances;
      - d. Manufacture or distribution of an imitation controlled substance;
      - e. Manufacture or distribution of an imitation prescription-only drug;
      - f. Possession or possession with intent to use an imitation controlled substance;
      - g. Possession or possession with intent to use an imitation prescription-only drug; or
      - h. A felony offense involving sale, distribution, or transportation of, offer to sell, transport, or distribute, or conspiracy to sell, transport, or distribute marijuana, dangerous drugs, prescription-only drugs, or controlled substances.
    3. If after conducting a state and federal criminal history record check the Board determines that it is not authorized to issue a fingerprint clearance, the Board shall notify the full-service drug wholesale applicant or permittee that employs the designated representative that the Board is not authorized to issue a fingerprint clearance. This notice shall include the criminal history information on which the denial was based. This criminal history information is subject to dissemination restrictions under A.R.S. § 41-1750 and federal law.
    4. The issuance of a fingerprint clearance does not entitle a person to employment.

**Historical Note**

Former Rules 6.5110, 6.5120, 6.5130, 6.5140, 6.5210,

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6.5220, 6.5230, 6.5240, 6.5310, 6.5320, 6.5410, and 6.5420. Amended effective August 10, 1978 (Supp. 78-4). Amended effective April 20, 1982 (Supp. 82-2).

Amended subsection (A) effective August 12, 1988 (Supp. 88-3). Amended effective February 8, 1991 (Supp. 91-1). Amended effective August 24, 1992 (Supp. 92-3). Amended by final rulemaking at 6 A.A.R. 4589, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 10 A.A.R. 232, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 1105, effective April 30, 2005 (Supp. 05-1). Amended by final rulemaking at 11 A.A.R. 4270, effective December 6, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 3477, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 702, effective June 1, 2013 (Supp. 13-2).

#### **R4-23-606. Resident-Pharmacy Permit: Community, Hospital, and Limited Service**

- A. Permit. A person shall not operate a pharmacy in Arizona without a current Board-issued pharmacy permit.
- B. Application.
  1. To obtain a permit to operate a pharmacy in Arizona, a person shall submit a completed application form and fee as specified in R4-23-602 that includes:
    - a. Documentation of compliance with local zoning laws, if required by the Board;
    - b. A detailed floor plan showing proposed pharmacy area including size and security;
    - c. A copy of the lease agreement, if applicable; and
    - d. A disclosure statement indicating whether a medical practitioner will receive compensation, either directly or indirectly, from the pharmacy.
  2. Before issuing a pharmacy permit, the Board shall:
    - a. Receive and approve a completed permit application; and
    - b. Receive a satisfactory compliance inspection report on the facility from a Board compliance officer.
  3. Before issuing a pharmacy permit, the Board may interview the applicant and the pharmacist-in-charge, if different from the applicant, at a Board meeting based on the need for additional information.
- C. Notification. A pharmacy permittee shall notify the Board office within ten days of changes involving the type of pharmacy operated, telephone number, facsimile number, e-mail address, mailing address, name of business, or staff pharmacist. A pharmacy permittee shall provide the Board office immediate notice of a change of the pharmacist-in-charge.
- D. If any nonprescription drugs are sold outside the pharmacy area when the pharmacy area is closed, the pharmacy permittee shall ensure that the business has a current, Board-issued nonprescription drug permit as required in Section R4-23-603.
- E. Change of ownership. No less than 14 days before a change of ownership occurs that involves changes of stock ownership of 30% or more of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit a completed application form and fee as specified in subsection (B).
- F. Relocation or remodel.
  1. No less than 30 days before the relocation or remodel of an existing pharmacy, the pharmacy permittee shall submit a completed application for remodel or relocation electronically or manually on a form furnished by the Board.
    - a. An application for relocation shall include the documents required by subsections (B)(1)(a) through (d).

- b. An application for remodel shall include the document required by subsection (B)(1)(b).
  2. The new or remodeled facility shall pass a final inspection by a Board compliance officer before operations begin.
- G. Permit renewal. Permit renewal shall be as specified in R4-23-602(D).

#### **Historical Note**

Former Rules 6.6010, 6.6020, 6.6030, 6.6040, 6.6050, 6.6060, 6.6071, 6.6072, 6.6073, 6.6074, 6.6075, and 6.6076. Amended effective August 10, 1978 (Supp. 78-4). Amended subsections (G) and (H) effective April 20, 1982 (Supp. 82-2). Amended subsection (L) effective July 2, 1982 (Supp. 82-4). Amended subsections (G) and (H) effective August 12, 1988 (Supp. 88-3). Amended effective November 1, 1993 (Supp. 93-4). Section heading amended effective April 5, 1996 (Supp. 96-2). Amended by final rulemaking at 7 A.A.R. 3825, effective August 9, 2001 (Supp. 01-3). Amended by final rulemaking at 20 A.A.R. 1364, effective August 2, 2014 (Supp. 14-2).

#### **R4-23-607. Nonresident Permits**

- A. Permit. A person who is not a resident of Arizona shall not sell or distribute any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical into Arizona without:
  1. Processing a current Board-issued nonresident pharmacy permit, nonresident manufacturer permit, nonresident full-service or nonprescription drug wholesale permit, or nonresident nonprescription drug permit;
  2. Possessing a current equivalent license or permit issued by the licensing authority in the jurisdiction where the person or firm resides;
  3. For a nonresident pharmacy, employing a pharmacist who is designated as the pharmacist-in-charge and who possesses a current Arizona Board-issued pharmacist license; and
  4. For a nonresident pharmacy permit issued before April 7, 2007, complying with subsection (A)(3) and submitting to the Board the pharmacist-in-charge's name, current Arizona Board-issued pharmacist license number, and telephone number by November 1, 2007.
- B. Application. To obtain a nonresident pharmacy, nonresident manufacturer, nonresident full-service or nonprescription drug wholesale, or nonprescription drug permit, a person shall submit a completed application, on a form furnished by the Board, that includes:
  1. Business name, address, mailing address, if different, telephone number, and facsimile number;
  2. Owner's name, if corporation or partnership, officers or partners, including address and title, and any other trade or business names used;
  3. Whether the owner, corporation, or partnership has conducted a similar business in any other jurisdiction and if so, indicate under what name and location;
  4. Whether the owner, any officer, or active partner has ever been convicted of an offense involving moral turpitude, a felony offense, or any drug-related offense or has any currently pending felony or drug-related charges, and if so, indicate charge, conviction date, jurisdiction, and location;
  5. A copy of the applicant's current equivalent license or permit, issued by the licensing authority in the jurisdiction where the person or firm resides and required by subsection (A)(2);

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6. For an application submitted because of ownership change, the former owner's name and business name, if different;
  7. Date signed, and applicant's, corporate officer's, partner's, manager's, administrator's, pharmacist-in-charge's, or designated representative's verified signature and title; and
  8. Fee specified in R4-23-205.
- C. In addition to the requirements of subsection (B), the following information is required on the application:
1. Nonresident pharmacy.
    - a. The type of pharmacy;
    - b. Whether the owner, any officer, or active partner has ever been denied a pharmacy permit in this state or any other jurisdiction, and if so, indicate where and when;
    - c. If applying for a hospital pharmacy permit, the number of beds, manager's or administrator's name, and a copy of the hospital's current equivalent license or permit issued by the licensing authority in the jurisdiction where the person or firm resides;
    - d. Pharmacist-in-charge's name, current Arizona Board-issued pharmacist license number, and telephone number; and
    - e. For an application submitted because of ownership change, the former pharmacy's name, address, and permit number; and
  2. Nonresident manufacturer.
    - a. Whether the owner, any officer, or active partner has ever been denied a drug manufacturer permit in this state or any other jurisdiction, and if so, indicate where and when;
    - b. A copy of the drug list required by the FDA;
    - c. Manager's or responsible person's name, address, and emergency telephone number; and
    - d. The firm's current FDA drug manufacturer or repackager registration number and expiration date; and
  3. Nonresident full-service drug wholesaler.
    - a. The designated representative's name, address, and emergency telephone number;
    - b. Documentation that the designated representative meets the requirements of A.R.S. § 32-1982(B) and the following as specified in A.R.S. § 32-1982(C):
      - i. A full set of fingerprints from the designated representative; and
      - ii. The state and federal criminal history record check fee specified by and made payable to the Arizona State Department of Public Safety by money order, certified check, or bank draft; and
    - c. A \$100,000 bond as specified in A.R.S. § 32-1982(D) submitted on a form supplied by the Board; and
  4. Nonresident full-service or nonprescription drug wholesaler.
    - a. The type of drug wholesale permit;
    - b. Whether the owner, any officer, or active partner has ever been denied a drug wholesale permit in this state or any other jurisdiction, and if so, indicate where and when;
    - c. The types of drugs, nonprescription, prescription-only, controlled substances, human, or veterinary, the applicant will distribute;
    - d. Manager's or designated representative's name, address, emergency telephone number, and resumé indicating educational or experiential qualifications related to drug wholesale operation; and
5. Nonresident nonprescription drug retailer.
    - a. Whether applying for Category I or Category II permit;
    - b. Date business started or planned opening date; and
    - c. Type of business, such as convenience, drug, grocery, or health food store, swap-meet vendor, or vending machine.
- D. Before issuing a nonresident full-service drug wholesale permit, the Board shall:
1. Receive and approve a completed permit application; and
  2. Issue a fingerprint clearance to a qualified designated representative, as specified in R4-23-605(L). If a nonresident full-service drug wholesale permit applicant's designated representative's fingerprint clearance is denied, the nonresident full-service drug wholesale permit applicant shall appoint another designated representative and submit the documentation, fingerprints, and fee required in subsection (C)(3)(b).
- E. Notification. A permittee shall submit any notification of change required in this subsection as a written notice via mail, fax, or e-mail to the Executive Director within 10 days of the change, except any change of ownership requires that the nonresident permittee comply with subsection (F).
1. Nonresident pharmacy. A nonresident pharmacy permittee shall notify the Board of changes involving the type of pharmacy operated, ownership, address, telephone number, name of business, or pharmacist-in-charge.
  2. Nonresident manufacturer. A nonresident manufacturer permittee shall notify the Board of changes involving listed drugs, ownership, address, telephone number, name of business, or manager, including manager's telephone number.
  3. Nonresident drug wholesaler. A nonresident full-service or nonprescription drug wholesale permittee shall notify the Board of changes involving the types of drugs sold or distributed, ownership, address, telephone number, name of business, or manager or designated representative, including the manager's or designated representative's telephone number. For a change of designated representative, a nonresident full-service drug wholesale permittee shall submit the documentation, fingerprints, and fee required in subsection (C)(3)(b). If a nonresident full-service drug wholesale permit applicant's designated representative's fingerprint clearance is denied, the nonresident full-service drug wholesale permittee shall appoint another designated representative and submit the documentation, fingerprints, and fee required in subsection (C)(3)(b).
  4. Nonresident nonprescription drug retailer. A nonresident nonprescription drug permittee shall notify the Board of changes involving permit category, ownership, address, telephone number, name of business, or manager, including manager's telephone number.
- F. Change of ownership. Before a change of ownership occurs that involves changes of stock ownership of more than 30% of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit the appropriate application packet described under subsections (B) and (C).
- G. Drug sales.
1. Nonresident pharmacy. A nonresident pharmacy permittee shall:

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- a. Not sell, distribute, give away, or dispose of any narcotic or other controlled substance or prescription-only drug or device, to anyone in Arizona except:
    - i. A pharmacy, drug manufacturer, or full-service drug wholesaler currently permitted by the Board;
    - ii. A medical practitioner currently licensed under A.R.S. Title 32; or
    - iii. An Arizona resident upon receipt of a valid prescription order for the resident;
  - b. Not sell, distribute, give away, or dispose of any nonprescription drug, precursor chemical, or regulated chemical, to anyone in Arizona except:
    - i. A pharmacy, drug manufacturer, full-service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board;
    - ii. A medical practitioner currently licensed under A.R.S. Title 32; or
    - iii. An Arizona resident either upon receipt of a valid prescription order for the resident or in the original container packaged and labeled by the manufacturer;
  - c. Except for a drug sale that results from the receipt and dispensing of a valid prescription order for an Arizona resident, maintain a copy of the current permit or license of each person or firm in Arizona who buys, receives, or disposes of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
  - d. Provide permit and license records upon request, if immediately available, or in no less than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
2. Nonresident manufacturer. A nonresident manufacturer permittee shall:
    - a. Not sell, distribute, give away, or dispose of any narcotic or other controlled substance or prescription-only drug or device, to anyone in Arizona except, a pharmacy, drug manufacturer, or full-service drug wholesaler currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
    - b. Not sell, distribute, give away, or dispose of any nonprescription drug, precursor chemical, or regulated chemical, to anyone in Arizona except, a pharmacy, drug manufacturer, full-service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
    - c. Maintain a copy of the current permit or license of each person or firm in Arizona who buys, receives, or disposes of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
    - d. Provide permit and license records upon request, if immediately available, or in no less than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
  3. Nonresident full-service drug wholesaler. In addition to complying with the distributions restrictions specified in A.R.S. § 32-1983, a nonresident full-service drug wholesaler permittee shall:
    - a. Not sell, distribute, give away, or dispose of, any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical to anyone in Arizona, except in the original container, packaged and labeled by the manufacturer or repackager;
    - b. Not package, repackage, label, or relabel any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical for shipment or delivery to anyone in Arizona;
    - c. Provide pedigree records upon request, if immediately available, or in no less than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5);
    - d. Not sell, distribute, give away, or dispose of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical to anyone in Arizona except a pharmacy, drug manufacturer, or full-service drug wholesaler currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
    - e. Not sell, distribute, give away, or dispose of, any nonprescription drug, precursor chemical, or regulated chemical, to anyone in Arizona except, a pharmacy, drug manufacturer, full-service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
    - f. Maintain a copy of the current permit or license of each person or firm in Arizona who buys, receives, or disposes of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
    - g. Provide permit and license records upon request, if immediately available, or in no less than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
  4. Nonresident nonprescription drug wholesaler. A nonresident nonprescription drug wholesaler permittee shall:
    - a. Not sell, distribute, give away, or dispose of any nonprescription drug, precursor chemical, or regulated chemical to anyone in Arizona, except in the original container, packaged and labeled by the manufacturer or repackager;
    - b. Not package, repackage, label, or relabel any nonprescription drug, precursor chemical, or regulated chemical for shipment or delivery to anyone in Arizona;
    - c. Not sell, distribute, give away, or dispose of, any nonprescription drug, precursor chemical, or regulated chemical, to anyone in Arizona except, a pharmacy, drug manufacturer, full-service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
    - d. Maintain a copy of the current permit or license of each person or firm in Arizona who buys, receives,

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or disposes of any nonprescription drug, precursor chemical, or regulated chemical; and

- e. Provide permit and license records upon request, if immediately available, or in no less than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
5. Nonresident nonprescription drug retailer. A nonresident nonprescription drug permittee shall not:
- a. Sell, distribute, give away, or dispose of a nonprescription drug, precursor chemical, or regulated chemical to anyone in Arizona except in the original container packaged and labeled by the manufacturer;
  - b. Package, repack, label, or relabel any drug, precursor chemical, or regulated chemical for shipment or delivery to anyone in Arizona; or
  - c. Sell, distribute, give away, or dispose of any drug, precursor chemical, or regulated chemical to anyone in Arizona that exceeds its expiration date, is contaminated or deteriorated from excessive heat, cold, sunlight, moisture, or other factors, or does not comply with federal law.
- H. When selling or distributing any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical into Arizona, a nonresident pharmacy, nonresident manufacturer, nonresident full-service or nonprescription drug wholesale, or nonprescription drug permittee shall comply with federal law, the permittee's resident state drug law, and this Section.

**Historical Note**

Former Rules 6.6110, 6.6120, and 6.6130; Amended effective August 10, 1978 (Supp. 78-4). Repealed effective July 24, 1985 (Supp. 85-4). New Section adopted by final rulemaking at 6 A.A.R. 4589, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 7 A.A.R. 3825, effective August 9, 2001 (Supp. 01-3). Amended by final rulemaking at 10 A.A.R. 232, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 13 A.A.R. 520, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3477, effective December 1, 2007 (Supp. 07-4).

**R4-23-608. Change of Personnel and Responsibility**

- A. A community, hospital, or limited-service pharmacy permittee shall give the Board:
1. Notice by mail, facsimile, or electronic mail within ten days of employing or terminating a pharmacist; and
  2. Immediate notice of designating or terminating a pharmacist-in-charge.
- B. Responsibility of ownership and management. The owner and management of a pharmacy shall:
1. Ensure that pharmacists, interns, and other pharmacy employees comply with state and federal laws and administrative rules; and
  2. Not overrule a pharmacist in matters of pharmacy ethics and interpreting laws pertaining to the practice of pharmacy or the distribution of drugs and devices.
- C. The Board may suspend or revoke a pharmacy permit if the owner or management of a pharmacy violates subsection (B).

**Historical Note**

Former Rules 6.6140 and 6.6150; Amended subsection (A) effective August 9, 1983 (Supp. 83-4). Amended effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 4253, effective September

11, 2001 (Supp. 01-3).

**R4-23-609. Pharmacy Area of Community Pharmacy**

- A. Minimum area of community pharmacy. The minimum area of a community pharmacy, the actual area primarily devoted to stocking drugs restricted to pharmacists, and to the compounding and dispensing of prescription medication, exclusive of office area or other support function area, shall not be less than 300 square feet. A maximum of three pharmacy personnel may practice or work simultaneously in the minimum area. The pharmacy permittee shall provide an additional 60 square feet of floor area for each additional pharmacist, graduate intern, pharmacy intern, pharmacy technician, pharmacy technician trainee, or support personnel who may practice or work simultaneously. All of the allotted square footage area, including adequate shelving, shall lend itself to efficient pharmaceutical practice and permit free movement and visual surveillance of personnel by the pharmacist.
- B. Compounding and dispensing counter. On or after January 6, 2004, a pharmacy permit applicant or remodel or relocation applicant shall provide a compounding and dispensing counter that provides a minimum of three square feet of pharmacy counter working area of not less than 16 inches in depth and 24 inches in length for the practice of one pharmacist, graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee. For each additional pharmacist, graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee practicing simultaneously, there shall be an additional three square feet of pharmacy counter working area of not less than 16 inches in depth and 24 inches in length. The Board shall determine a pharmacy's total required compounding and dispensing counter area by multiplying the maximum number of personnel allowed in the pharmacy area using the requirements specified in subsection (A) by three square feet per person. A pharmacy permittee or pharmacist-in-charge may operate the pharmacy with a total pharmacy counter working area specified in subsection (A) that is equal to the actual maximum number of pharmacists, graduate interns, pharmacy interns, pharmacy technicians, and pharmacy technician trainees, working simultaneously in the pharmacy area times three square feet per person.
- C. Working area for compounding and dispensing counter. The aisle floor area used by the pharmacist, graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee at the compounding and dispensing counter shall extend the full length of the counter and be clear and continuous for a minimum of 36 inches from any counter, fixture, or structure.
- D. Area for patient counseling. On or after April 1, 1995, a pharmacy permit applicant or remodel or relocation applicant shall provide a separate and distinct patient counseling area that provides patient privacy. This subsection does not apply to a pharmacy exempt from the requirements of R4-23-402(B).
- E. Narcotic cabinet or safe. To prevent diversion, narcotics and other controlled substances may be:
1. Kept in a separate locked cabinet or safe, or
  2. Dispersed throughout the pharmacy's prescription-only drug stock.
- F. Building security standard of community pharmacy area. The pharmacy area shall be enclosed by a permanent barrier or partition from floor or counter to structural ceiling or roof, with entry doors that can be securely locked. The barrier shall be designed so that only a pharmacist can access the area where prescription-only drugs, narcotics, and other controlled substances are stored, compounded and dispensed. The permanent barrier may be constructed of other than a solid material. If constructed of a material other than a solid, the openings or

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interstices of the material shall not be large enough to permit removal of items in the pharmacy area through the barrier. Any material used in the construction of the permanent barrier must be of sufficient strength and thickness that it cannot be readily or easily removed, penetrated, or bent. The pharmacy permittee shall submit plans and specifications of the permanent barrier to the Board for approval.

**G. Drug storage and security.**

1. The pharmacy permittee shall ensure that drugs and devices are stored in a dry, well-lit, ventilated, and clean and orderly area. The pharmacy permittee shall maintain the drug storage area at temperatures that ensure the integrity of the drugs before dispensing as stated in the official compendium defined in A.R.S. § 32-1901(55) or the manufacturer's or distributor's labeling.
2. If the pharmacy permittee needs additional storage area for drugs that are restricted to sale by a pharmacist, the pharmacy permittee shall ensure that the area is contained by a permanent barrier from floor or counter to structural ceiling or roof. The pharmacy permittee shall lock all doors and gates to the drug storage area. Only a pharmacist with a key is permitted to enter the storage area, except in an extreme emergency.

**H. A pharmacy permittee or pharmacist-in-charge shall ensure that the pharmacy working counter area is protected from unauthorized access while the pharmacy is open for business by a barrier not less than 66 inches in height or another method approved by the Board or its designee.****Historical Note**

Former Rules 6.6210, 6.6220, 6.6230, 6.6240, 6.6250, 6.6310, 6.6320, and 6.6330; Amended effective August 10, 1978 (Supp. 78-4). Amended effective August 9, 1983 (Supp. 83-4). Amended effective November 1, 1993 (Supp. 93-4). Amended effective April 1, 1995; filed with the Secretary of State January 31, 1995 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 5030, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 19 A.A.R. 97, effective March 10, 2013 (Supp. 13-1).

**R4-23-610. Community Pharmacy Personnel and Security Procedures**

- A.** Every pharmacy shall have a pharmacist designated as the "pharmacist-in-charge."
1. The pharmacist-in-charge shall ensure the communication and compliance of Board directives to the management, other pharmacists, interns, and technicians of the pharmacy.
  2. The pharmacist-in-charge shall:
    - a. Ensure that all pharmacy policies and procedures required under 4 A.A.C. 23 are prepared, implemented, and complied with;
    - b. Review biennially and, if necessary, revise all pharmacy policies and procedures required under 4 A.A.C. 23;
    - c. Document the review required under subsection (A)(2)(b);
    - d. Ensure that all pharmacy policies and procedures required under 4 A.A.C. 23 are assembled as a written or electronic manual; and
    - e. Make all pharmacy policies and procedures required under 4 A.A.C. 23 available in the pharmacy for employee reference and inspection by the Board or its staff.
- B.** Personnel permitted in the pharmacy area of a community pharmacy include pharmacists, graduate interns, pharmacy

interns, compliance officers, drug inspectors, peace officers acting in their official capacity, other persons authorized by law, pharmacy technicians, pharmacy technician trainees, support personnel, and other designated personnel. Pharmacy interns, graduate interns, pharmacy technicians, pharmacy technician trainees, support personnel, and other designated personnel shall be permitted in the pharmacy area only when a pharmacist is on duty, except in an extreme emergency as defined in R4-23-110.

1. The pharmacist-in-charge shall comply with the minimum area requirements as described in R4-23-609 for a community pharmacy and for compounding and dispensing counter area.
2. A pharmacist employed by a pharmacy shall ensure that the pharmacy is physically secure while the pharmacist is on duty.

**C. In a community pharmacy, a pharmacist shall ensure that the pharmacy area, and any additional storage area for drugs that is restricted to access only by a pharmacist is locked when a pharmacist is not present, except in an extreme emergency.****D. A pharmacist is the only person permitted by the Board to unlock the pharmacy area or any additional storage area for drugs restricted to access only by a pharmacist, except in an extreme emergency.****E. A pharmacy permittee or pharmacist-in-charge shall ensure that any prescription-only drugs and controlled substances received in an area outside the pharmacy area are immediately transferred unopened to the pharmacy area. The pharmacist-in-charge shall ensure that any prescription-only drug and controlled substance shipments are opened and marked by pharmacy personnel in the pharmacy area under the supervision of a pharmacist, graduate intern, or pharmacy intern.****F. A pharmacy permittee or pharmacist-in-charge may provide a small opening or slot through which a written prescription order or prescription medication container to be refilled may be left in the prescription area when the pharmacist is not present.****G. A pharmacist shall ensure that prescription medication is not left outside the prescription area or picked up by the patient when the pharmacist is not present by either:**

1. Delivering the prescription medication to the patient, or
2. Securing the prescription medication inside the locked pharmacy, except when using an automated storage and distribution system that complies with the requirements of R4-23-614.

**Historical Note**

Former Rules 6.6410, 6.6420, 6.6430, 6.6440, 6.6450, 6.6460, 6.6470, 6.6480, and 6.6490; Amended subsection (F), deleted subsection (I) effective August 9, 1983 (Supp. 83-4). Amended effective May 16, 1990 (Supp. 90-2). Amended effective November 1, 1993 (Supp. 93-4). Amended effective April 1, 1995; filed with the Secretary of State January 31, 1995 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 4441, effective November 2, 1999 (Supp. 99-4). Amended by final rulemaking at 10 A.A.R. 4453, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 13 A.A.R. 2631, effective September 8, 2007 (Supp. 07-3).

**R4-23-611. Pharmacy Facilities**

- A.** Facilities. A pharmacy permittee or pharmacist-in-charge shall ensure that:
1. A pharmacy's facilities are constructed according to state and local laws and ordinances;

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2. A pharmacy facility's:
    - a. Walls, ceilings, windows, floors, shelves, and equipment are clean and in good repair and order; and
    - b. Counters, shelves, aisles, and open spaces are not cluttered;
  3. Adequate trash receptacles are provided and emptied periodically during the day;
  4. A pharmacy facility of any pharmacy permit issued or pharmacy remodeled after February 1, 2014 provides access to toilet facilities either:
    - a. Within the pharmacy area, or
    - b. No further than a walking distance of 100 feet from the pharmacy area or an alternative distance approved by the Board or its designee;
  5. The toilet facilities are maintained in a sanitary condition and in good repair;
  6. All professional personnel and staff of the pharmacy keep themselves and their apparel clean while in the pharmacy area;
  7. No animals, except licensed assistant animals and guard animals, are allowed in the pharmacy;
  8. The pharmacy facility is kept free of insects and rodents; and
  9. There is a sink with hot and cold running water, other than a sink in a toilet facility, within the pharmacy area for use in preparing drug products.
- B. Supply of drugs and chemicals. A pharmacy permittee or pharmacist-in-charge shall ensure that:**
1. A pharmacy maintains a stock of drugs and chemicals that:
    - a. Are sufficient to meet the normal demands of the trading area or patient base the pharmacy serves; and
    - b. Meet all standards of strength and purity as established by the official compendiums;
  2. All stock, materials, drugs, and chemicals held for ultimate sale or supply to the consumer are not contaminated;
  3. Policies and procedures are developed, implemented, and complied with to prevent the sale or use of a drug or chemical:
    - a. That exceeds its expiration date;
    - b. That is deteriorated or damaged by reason of age, heat, light, cold, moisture, crystallization, chemical reaction, rupture of coating, disintegration, solidification, separation, discoloration, change of odor, precipitation, or other change as determined by organoleptic examination or by other means;
    - c. That is improperly labeled;
    - d. Whose container is defective; or
    - e. That does not comply with federal law; and
  4. The policies and procedures described in subsection (B)(3):
    - a. Are made available in the pharmacy for employee reference and inspection by the Board or its designee; and
    - b. Provide the following:
      - i. Any expiration-dated drug or chemical is reviewed regularly;
      - ii. Any drug or chemical that exceeds its expiration date, is deteriorated or damaged, improperly labeled, has a defective container, or does not comply with federal law, is moved to a quarantine area and not sold or distributed; and
      - iii. Any quarantined drug or chemical is properly destroyed or returned to its source of supply.

**Historical Note**

Former Rules 6.6510, 6.6520, 6.6530, 6.6540, 6.6550, 6.6560, 6.6570, 6.6580, 6.6600, 6.6610, 6.6620, 6.6630, 6.6640, 6.6650, and 6.6660; Amended subsection (B) effective August 9, 1983 (Supp. 83-4). Amended effective April 1, 1995; filed with the Secretary of State January 31, 1995 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4253, effective September 11, 2001 (Supp. 01-3). 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. 4165, effective February 1, 2014 (Supp. 13-4).

**R4-23-612. Equipment**

A pharmacy permittee or pharmacist-in-charge shall ensure that a pharmacy has the necessary equipment to allow a pharmacist to practice the profession of pharmacy, including the following:

1. Adequate refrigeration equipment dedicated to the storage of drugs and biologicals;
2. A C-V controlled substance register, if C-V controlled substances are sold without an order of a medical practitioner;
3. Graduates in assorted sizes;
4. One mortar and pestle, not required if the pharmacy permittee states in the application that compounding will not be performed in the pharmacy;
5. Spatulas of assorted sizes including one nonmetallic;
6. Prescription balance, Class A with weights or an electronic balance of equal or greater accuracy, not required if the pharmacy permittee states in the application that compounding will not be performed in the pharmacy;
7. One ointment tile or equivalent, not required if the pharmacy permittee states in the application that compounding will not be performed in the pharmacy;
8. A current hard-copy or access to a current electronic copy of the Arizona Pharmacy Act and administrative rules and Arizona Controlled Substance Act;
9. A professional reference library consisting of a minimum of one current reference or text, in hard-copy or electronic media, addressing the following subject areas:
  - a. Pharmacology or toxicology,
  - b. Therapeutics,
  - c. Drug compatibility, and
  - d. Drug product equivalency;
10. An assortment of labels, including prescription labels, transfer labels for controlled substances, and cautionary and warning labels;
11. A red C stamp as defined in R4-23-110, if C-III, C-IV, and C-V controlled substance invoices are not filed separately from other invoices;
12. Current antidote and drug interaction information; and
13. Regional poison control phone number prominently displayed in the pharmacy area.

**Historical Note**

Former Rule 6.6670; Former Section R4-23-612 repealed, new Section R4-23-612 adopted effective August 10, 1978 (Supp. 78-4). Amended effective August 9, 1983 (Supp. 83-4). Amended effective April 5, 1996 (Supp. 96-2). Amended by final rulemaking at 7 A.A.R. 4253, effective September 11, 2001 (Supp. 01-3). Amended by final rulemaking at 19 A.A.R. 4165, effective February 1, 2014 (Supp. 13-4).

**R4-23-613. Procedure for Discontinuing a Pharmacy**

**A.** A pharmacy permittee or pharmacist-in-charge shall provide written notice to the Board and the Drug Enforcement Administration (D.E.A.) at least 14 days before discontinuing opera-

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tion of the pharmacy. The notice shall contain the following information:

1. Name, address, pharmacy permit number, and D.E.A. registration number of the pharmacy discontinuing business;
  2. Name, address, pharmacy permit number (if applicable), and D.E.A. registration number (if applicable) of the licensee, permittee, or registrant to whom any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical will be sold or transferred;
  3. Name and address of the location where the discontinuing pharmacy's records of purchase and disbursement of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical will be kept and the person responsible for the records. These records shall be kept for a minimum of three years from the date the pharmacy is discontinued;
  4. Name and address of the location where the discontinuing pharmacy's prescription files and patient profiles will be kept and the person responsible for the files and profiles. These records shall be kept for a minimum of seven years from the date the last original or refill prescription was dispensed; and
  5. The proposed date of discontinuing business operations.
- B.** The pharmacy permittee shall ensure that all pharmacy signs and symbols are removed from both the inside and outside of the premises.
- C.** The pharmacy permittee or pharmacist-in-charge shall ensure that all state permits and certificates of registration are returned to the Board office and that D.E.A. registration certificates and unused D.E.A. Schedule II order forms are returned to the D.E.A. Regional Office in Phoenix.
- D.** The pharmacist-in-charge of the pharmacy discontinuing business shall ensure that:
1. Only a pharmacist has access to the prescription-only drugs and controlled substances until they are transferred to the licensee, permittee, or registrant listed in subsection (A)(2);
  2. All narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals are removed from the premises on or before the date the pharmacy is discontinued; and
  3. All controlled substances are transferred as follows:
    - a. Take an inventory of all controlled substances that are transferred using the procedures in R4-23-1003;
    - b. Include a copy of the inventory with the controlled substances that are transferred;
    - c. Keep the original of the inventory with the discontinued pharmacy's records of narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical purchase and disbursement for a minimum of three years from the date the pharmacy is discontinued;
    - d. Use a D.E.A. form 222 to transfer any Schedule II controlled substances; and
    - e. Transfer controlled substances that need destruction in the same manner as all other controlled substances.
- E.** Upon receipt of outdated or damaged controlled substances from a discontinued pharmacy, the licensee, permittee, or registrant described in subsection (A)(2) shall contact a D.E.A. registered reverse distributor for proper destruction of outdated or damaged controlled substances. If there are controlled substances a reverse distributor will not accept, the licensee, permittee, or registrant shall then contact the Board office and request an inspection for the purpose of drug destruction.
- F.** During the three-year record retention period specified in subsection (A)(3), the person described in subsection (A)(3) shall provide to the Board upon its request a discontinued pharmacy's records of the purchase and disbursement of narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals.
- G.** During the seven-year record retention period specified in subsection (A)(4), the person described in subsection (A)(4) shall provide to the Board upon its request a discontinued pharmacy's records of prescription files and patient profiles.

**Historical Note**

New Section made by final rulemaking at 7 A.A.R. 3825, effective August 9, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 1105, effective April 30, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 1912, effective July 1, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 3670, effective November 8, 2008 (Supp. 08-3).

**R4-23-614. Automated Storage and Distribution System**

- A.** Before using an automated storage and distribution system, a pharmacy permittee or pharmacist-in-charge shall:
1. Ensure that the automated storage and distribution system and the policies and procedures comply with subsection (B); and
  2. Notify the Board in writing of the intent to use an automated storage and distribution system, including the type or name of the system.
- B.** A pharmacy permittee or pharmacist-in-charge shall establish policies and procedures for appropriate performance and use of the automated storage and distribution system that:
1. Ensure that the automated storage and distribution system is in good working order while maintaining appropriate recordkeeping and security safeguards;
  2. Ensure that an automated storage and distribution system used by the pharmacy that allows access to drugs or devices by a patient:
    - a. Only contains prescriptions that:
      - i. Do not require oral consultation as specified in R4-23-402(B); and
      - ii. Are properly labeled and verified by a pharmacist before placement into the automated storage and distribution system and subsequent release to patients;
    - b. Allows a patient to choose whether or not to use the system;
    - c. Is located either in a wall of a properly permitted pharmacy or within 20 feet of a properly permitted pharmacy if the automated storage and distribution system is secured against the wall or floor in such a manner that prevents the automated storage and distribution system's unauthorized removal;
    - d. Provides a method to identify the patient and only release that patient's prescriptions;
    - e. Is secure from access and removal of drugs or devices by unauthorized individuals;
    - f. Provides a method for a patient to obtain a consultation with a pharmacist if requested by the patient; and
    - g. Does not allow the system to dispense refilled prescriptions if a pharmacist determines that the patient

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- requires oral counseling as specified in R4-23-402(B);
3. Ensure that an automated storage and distribution system used by the pharmacy that allows access to drugs or devices only by authorized licensed personnel for the purposes of administration based on a valid prescription order or medication order:
    - a. Provides for adequate security to prevent unauthorized individuals from accessing or obtaining drugs or devices; and
    - b. Provides for the filling, stocking, or restocking of all drugs or devices in the system only by a Board licensee or other authorized licensed personnel; and
  4. Implement an ongoing quality assurance program that monitors compliance with the established policies and procedures of the automated storage and distribution system and federal and state law.
- C.** A pharmacy permittee or pharmacist-in-charge shall:
1. Ensure that the policies and procedures required under subsection (B) are prepared, implemented, and complied with;
  2. Review biennially and, if necessary, revise the policies and procedures required under subsection (B);
  3. Document the review required under subsection (C)(2);
  4. Assemble the policies and procedures as a written or electronic manual; and
  5. Make the policies and procedures available for employee reference and inspection by the Board or its staff within the pharmacy and at any location outside the pharmacy where the automated storage and distribution system is used.
- D.** The Board may prohibit a pharmacy permittee or pharmacist-in-charge from using an automated storage and distribution system if the pharmacy permittee or the pharmacy permittee's employees do not comply with the requirements of subsections (A), (B), or (C).
- Historical Note**
- New Section made by final rulemaking at 13 A.A.R. 616, effective April 7, 2007 (Supp. 07-1).
- R4-23-615. Mechanical Storage and Counting Device for a Drug in Solid, Oral Dosage Form**
- A.** A pharmacy permittee or pharmacist-in-charge shall ensure that a mechanical storage and counting device for a drug in a solid, oral dosage form that is used by a pharmacist or a pharmacy intern, graduate intern, pharmacy technician, or pharmacy technician trainee under the supervision of a pharmacist complies with the following method to identify the contents of the device:
1. The drug name and strength are affixed to the front of each cell or cassette of the device;
  2. A paper or electronic log is kept for each cell or cassette that contains:
    - a. An identification of the cell or cassette by the drug name and strength or the number of the cell or cassette;
    - b. The drug's manufacturer or National Drug Code (NDC) number;
    - c. The expiration date and lot number from the manufacturer's stock bottle that is used to fill the cell or cassette. If multiple lot numbers of the same drug are added to a cell or cassette, each lot number and expiration date shall be documented, and the earliest expiration date shall become the expiration date of the mixed lot of drug in the cell or cassette;
    - d. The date the cell or cassette is filled;
  - e. Documentation of the identity of the licensee who placed the drug into the cell or cassette; and
  - f. If the licensee who filled the cell or cassette is not a pharmacist, documentation of the identity of the pharmacist who supervised the non-pharmacist licensee who filled the cell or cassette; and
3. The paper or electronic log is available in the pharmacy for inspection by the Board or its designee for not less than two years.
- B.** A pharmacy permittee or pharmacist-in-charge shall ensure that any drug previously counted by a mechanical storage and counting device for a drug in a solid, oral dosage form that has not left the pharmacy is not returned to the drug's cell, cassette, or stock bottle, unless the drug return method is approved by the Board or its designee as specified in subsection (G). This subsection does not prevent a pharmacy permittee or pharmacist-in-charge from using a manual or mechanical counting device to count and dispense a previously counted drug that has not left the pharmacy if the previously counted drug is dispensed before its beyond-use-date.
- C.** A pharmacy permittee or pharmacist-in-charge shall ensure the accuracy of any mechanical storage and counting device for a drug in a solid, oral dosage form that is used by a pharmacist or a pharmacy intern, graduate intern, pharmacy technician, or pharmacy technician trainee under the supervision of a pharmacist by documenting completion of the following:
1. Training in the maintenance, calibration, and use of the mechanical storage and counting device for each employee who uses the mechanical storage and counting device;
  2. Maintenance and calibration of the mechanical storage and counting device as recommended by the device's manufacturer; and
  3. Routine quality assurance and accuracy validation testing for each mechanical storage and counting device.
- D.** A pharmacy permittee or pharmacist-in-charge shall ensure that the documentation required in subsection (C) is available for inspection by the Board or its designee.
- E.** A pharmacy permittee or pharmacist-in-charge shall:
1. Ensure that policies and procedures for the performance and use of a mechanical storage and counting device for a drug in a solid, oral dosage form are prepared, implemented, and complied with;
  2. Review biennially and, if necessary, revise the policies and procedures required under subsection (E)(1);
  3. Document the review required under subsection (E)(2);
  4. Assemble the policies and procedures as a written or electronic manual; and
  5. Make the policies and procedures available within the pharmacy for employee reference and inspection by the Board or its staff.
- F.** The Board may prohibit a pharmacy permittee or pharmacist-in-charge from using a mechanical storage and counting device for a drug in a solid, oral dosage form if the pharmacy permittee or the pharmacy permittee's employees do not comply with the requirements of subsections (A), (B), (C), (D), or (E).
- G.** Returning a drug previously counted by a mechanical storage and counting device for a drug in a solid, oral dosage form that has not left the pharmacy to the drug's cell or cassette.
1. Before returning a drug previously counted by a mechanical storage and counting device that has not left the pharmacy to the drug's cell or cassette, a pharmacy permittee or pharmacist-in-charge shall:

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- a. Apply for approval from the Board or its designee for the drug return method to be used in returning the drug;
  - b. Develop a drug return method that uses technology, such as bar coding, to prevent drug return errors;
  - c. Provide documentation depicting the drug return method;
  - d. Demonstrate the drug return method for a Board Compliance Officer; and
  - e. Receive approval from the Board or its designee for the drug return method to be used in returning the drug.
2. Before approving a request to waive the drug return prohibition in subsection (B), the Board or its designee shall:
    - a. Receive a request in writing from the pharmacy permittee or pharmacist-in-charge;
    - b. Review the documentation of the drug return method; and
    - c. Receive a satisfactory inspection report from a Board Compliance Officer that the drug return method uses technology to prevent drug return errors.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 616, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 3677, effective November 8, 2008 (Supp. 08-3).

**R4-23-616. Mechanical Counting Device for a Drug in Solid, Oral Dosage Form**

- A. A pharmacy permittee or pharmacist-in-charge shall ensure the accuracy of any mechanical counting device for a drug in a solid, oral dosage form that is used by a pharmacist or a pharmacy intern, graduate intern, pharmacy technician, or pharmacy technician trainee under the supervision of a pharmacist by documenting completion of the following:
  1. Training in the maintenance, calibration, and use of the mechanical counting device for each employee who uses the mechanical counting device;
  2. Maintenance and calibration of the mechanical counting device as recommended by the device's manufacturer; and
  3. Routine quality assurance and accuracy validation testing for each mechanical counting device.
- B. A pharmacy permittee or pharmacist-in-charge shall ensure that the documentation required in subsection (A) is available for inspection by the Board or its designee.
- C. A pharmacy permittee or pharmacist-in-charge shall:
  1. Ensure that policies and procedures for the performance and use of a mechanical counting device for a drug in a solid, oral dosage form are prepared, implemented, and complied with;
  2. Review biennially and, if necessary, revise the policies and procedures required under subsection (C)(1);
  3. Document the review required under subsection (C)(2);
  4. Assemble the policies and procedures as a written or electronic manual; and
  5. Make the policies and procedures available within the pharmacy for employee reference and inspection by the Board or its staff.
- D. The Board may prohibit a pharmacy permittee or pharmacist-in-charge from using a mechanical counting device for a drug in a solid, oral dosage form if the pharmacy permittee or the pharmacy permittee's employees do not comply with the requirements of subsections (A), (B), or (C).

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 616, effective April 7, 2007 (Supp. 07-1).

**R4-23-617. Temporary Pharmacy Facilities or Mobile Pharmacies**

- A. Pharmacies located in declared disaster areas, nonresident pharmacies, and pharmacies licensed or permitted in another state but not licensed or permitted in this state, if necessary to provide pharmacy services during a declared state of emergency, may arrange to temporarily locate to a temporary pharmacy facility or mobile pharmacy or relocate to a temporary pharmacy facility or mobile pharmacy if the pharmacist-in-charge of the temporary pharmacy facility or mobile pharmacy ensures that:
  1. The pharmacy is under the control and management of the pharmacist-in-charge or a supervising pharmacist designated by the pharmacist-in-charge;
  2. The pharmacy is located within or adjacent to the declared disaster area;
  3. The Board is notified of the pharmacy's location;
  4. The pharmacy is properly secured to prevent theft and diversion of drugs;
  5. The pharmacy's records are maintained in accordance with Arizona statutes and rules; and
  6. The pharmacy stops providing pharmacy services when the declared state of emergency ends, unless it possesses a current resident pharmacy permit issued by the Board under A.R.S. §§ 32-1929, 32-1930, and 32-1931.
- B. The Board shall have the authority to approve or deny temporary pharmacy facilities, mobile pharmacies, and shall make arrangements for appropriate monitoring and inspection of the temporary pharmacy facilities and mobile pharmacies on a case-by-case basis.
- C. A temporary pharmacy facility wishing to permanently operate at its temporary site shall apply for and have received a permit issued under A.R.S. §§ 32-1929, 32-1930, and 32-1931 by following the application process under R4-23-606.
- D. A mobile pharmacy, placed in operation during a declared state of emergency, shall not operate permanently.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4400, effective January 3, 2009 (Supp. 08-4).

**R4-23-618. Reserved****R4-23-619. Reserved****R4-23-620. Continuous Quality Assurance Program**

- A. Each pharmacy permittee shall implement or participate in a continuous quality assurance (CQA) program. A pharmacy permittee meets the requirements of this Section if it holds a current general, special or rural general hospital license from the Arizona 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 Healthcare Organizations; or
  3. Accredited by the American Osteopathic Association.
- B. A pharmacy permittee or the pharmacist-in-charge shall ensure that:
  1. The pharmacy develops, implements, and utilizes a CQ program consistent with the requirements of this Section and A.R.S. § 32-1973;

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2. The medication error data generated by the CQA program is utilized and reviewed on a regular basis, as required by subsection (D); and
  3. Training records, policies and procedures, and other program records or documents, other than medication error data, are maintained for a minimum of two years in the pharmacy or in a readily retrievable manner.
- C.** A pharmacy permittee or pharmacist-in-charge shall:
1. Ensure that policies and procedures for the operation and management of the pharmacy's CQA program are prepared, implemented, and complied with;
  2. Review biennially and, if necessary, revise the policies and procedures required under subsection (C)(1);
  3. Document the review required under subsection (C)(2);
  4. Assemble the policies and procedures as a written or electronic manual; and
  5. Make the policies and procedures available within the pharmacy for employee reference and inspection by the Board or its staff.
- D.** The policies and procedures shall address a planned process to:
1. Train all pharmacy personnel in relevant phases of the CQA program;
  2. Identify and document medication errors;
  3. Record, measure, and analyze data collected to:
    - a. Assess the causes and any contributing factors relating to medication errors, and
    - b. Improve the quality of patient care;
  4. Utilize the findings from subsections (D)(2) and (3) to develop pharmacy systems and workflow processes designed to prevent or reduce medication errors; and
  5. Communicate periodically, and at least annually, with pharmacy personnel to review CQA program findings and inform pharmacy personnel of any changes made to pharmacy policies, procedures, systems, or processes as a result of CQA program findings.
- E.** The Board's regulatory oversight activities regarding a pharmacy's CQA program are limited to inspection of the pharmacy's CQA policies and procedures and enforcing the pharmacy's compliance with those policies and procedures.
- F.** A pharmacy's compliance with this Section shall be considered by the Board as a mitigating factor in the investigation and evaluation of a medication error.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 2603, effective December 2, 2012 (Supp. 12-4).

**R4-23-621. Shared Services**

- A.** Before participating in shared services, a pharmacy shall have either a current resident or non-resident pharmacy permit issued by the Board.
- B.** A pharmacy may provide or utilize shared services functions only if the pharmacies involved:
1. Have the same owner, or
  2. Have a written contract or agreement that outlines the services provided and the shared responsibilities of each party in complying with federal and state pharmacy statutes and rules, and
  3. Share a common electronic file or technology that allows access to information necessary or required to perform shared services in conformance with the pharmacy act and the Board's rules.
- C.** Notifications to patients.
1. Before using shared services provided by another pharmacy, a pharmacy permittee shall:
    - a. Notify patients that their orders may be processed or filled by another pharmacy; and
    - b. Provide the name of that pharmacy or, if the pharmacy is part of a network of pharmacies under common ownership and any of the network pharmacies may process or fill the order, notify the patient of this fact. The notification may be provided through a one-time written notice to the patient or through use of a sign in the pharmacy.
2. If an order is delivered directly to the patient by a filling pharmacy and not returned to the requesting pharmacy, the filling pharmacy permittee shall ensure that the following is placed on the prescription container or on a separate sheet delivered with the prescription container:
- a. The local, and if applicable, the toll-free telephone number of the pharmacy utilizing shared services that has access to the patient's records; and
  - b. A statement that conveys to the patient or patient's care-giver the following information: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions at (insert the local and toll-free telephone numbers of the pharmacy utilizing shared services that has access to the patient's records)."
3. The provisions of subsection (C) do not apply to orders delivered to patients in facilities where a licensed health care professional is responsible for administering the prescription medication to the patient.
- D.** A pharmacy permittee engaged in shared services shall:
1. Maintain manual or electronic records that identify, individually for each order processed, the name, initials, or identification code of each pharmacist, graduate intern, pharmacy intern, pharmacy technician, and pharmacy technician trainee who took part in the order interpretation, order entry verification, drug utilization review, drug compatibility and drug allergy review, final order verification, therapeutic intervention, or refill authorization functions performed at that pharmacy;
  2. Maintain manual or electronic records that identify, individually for each order filled or dispensed, the name, initials, or identification code of each pharmacist, graduate intern, pharmacy intern, pharmacy technician, and pharmacy technician trainee who took part in the filling, dispensing, and counseling functions performed at that pharmacy;
  3. Report to the Board as soon as practical the results of any disciplinary action taken by another state's pharmacy regulatory agency involving shared services;
  4. Maintain a mechanism for tracking the order during each step of the processing and filling procedures performed at the pharmacy;
  5. Provide for adequate security to protect the confidentiality and integrity of patient information; and
  6. Provide for inspection of any required record or information within 72 hours of any request by the Board or its designee.
- E.** Each pharmacy permittee that provides or utilizes shared services shall develop, implement, review, revise, and comply with joint policies and procedures for shared services in the manner described in R4-23-610(A)(2). Each pharmacy permittee is required to maintain only those portions of the joint policies and procedures that relate to that pharmacy's operations. The policies and procedures shall:

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1. Outline the responsibilities of each of the pharmacies;
  2. Include a list of the name, address, telephone numbers, and all license and permit numbers of the pharmacies involved in shared services; and
  3. Include policies and procedures for:
    - a. Notifying patients that their orders may be processed or filled by another pharmacy and providing the name of that pharmacy;
    - b. Protecting the confidentiality and integrity of patient information;
    - c. Dispensing orders when the filled order is not received or the patient comes in before the order is received;
    - d. Maintaining required manual or electronic records to identify the name, initials, or identification code and specific activity or activities of each pharmacist, graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee who performed any shared services;
    - e. Complying with federal and state laws; and
    - f. Operating a continuous quality improvement program for shared services, designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems.
- F. Nothing in this Section shall prohibit an individual pharmacist licensed in Arizona, who is an employee of or under contract with a pharmacy, or an Arizona-licensed graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee, working under the supervision of the pharmacist, from accessing that pharmacy's electronic database from inside or outside the pharmacy and performing the order processing functions permitted by the pharmacy act, if both of the following conditions are met:
1. The pharmacy establishes controls to protect the confidentiality and integrity of patient information; and
  2. None of the database is duplicated, downloaded, or removed from the pharmacy's electronic database.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 520, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 97, effective March 10, 2013 (Supp. 13-1).

**R4-23-622. Reserved**

**through**

**R4-23-650. Reserved**

**R4-23-651. Definitions**

The following definitions apply to R4-23-651 through R4-23-659:

“Administration” means the giving of a dose of medication to a patient as a result of an order of a medical practitioner.

“Direct copy” means an electronic, facsimile or carbonized copy.

“Dispensing for hospital inpatients” means the interpreting, evaluating, and implementing a medication order including preparing for delivery a drug or device to an inpatient or inpatient's agent in a suitable container appropriately labeled for subsequent administration to, or use by, an inpatient (hereafter referred to as “dispensing”).

“Drug distribution” means the delivery of drugs other than “administering” or “dispensing.”

“Emergency medical situation” means a condition of emergency in which immediate drug therapy is required for the preservation of health, life, or limb of a person or persons.

“Floor stock” means a supply of essential drugs not labeled for a specific patient and maintained and controlled by the pharmacy at a patient care area for the purpose of timely administration to a patient of the hospital.

“Formulary” means a continually revised compilation of pharmaceuticals (including ancillary information) that reflects the current clinical judgment of the medical staff.

“Hospital pharmacy” means a pharmacy, as defined in A.R.S. § 32-1901, that holds a current permit issued by the Board pursuant to A.R.S. § 32-1931, and is located in a hospital as defined in A.R.S. § 32-1901.

“Inpatient” means any patient who receives non-self-administered drugs from a hospital pharmacy for use while within a facility owned by the hospital.

“Intravenous admixture” means a sterile parenteral solution to which one or more additional drug products have been added.

“Medication order” means a written, electronic, or verbal order from a medical practitioner or a medical practitioner's authorized agent for administration of a drug or device.

“On-call” means a pharmacist is available to:

Consult or provide drug information regarding drug therapy or related issues; or

Dispense a medication order and review a patient's medication order for pharmaceutical and therapeutic feasibility under R4-23-653(E)(2) before any drug is administered to a patient, except as specified in R4-23-653(E)(1).

“Patient care area” means any area for the primary purpose of providing a physical environment that is owned by or operated in conjunction with a hospital, for a patient to obtain health care services, except those areas where a physician, dentist, veterinarian, osteopath, or other medical practitioner engages primarily in private practice.

“Repackaged drug” means a drug product that is transferred by pharmacy personnel from an original manufacturer's container to another container properly labeled for subsequent dispensing.

“Satellite pharmacy” means a work area in a hospital setting under the direction of a pharmacist that is a remote extension of a centrally licensed hospital pharmacy and owned by and dependent upon the centrally licensed hospital pharmacy for administrative control, staffing, and drug procurement.

“Single unit” means a package of medication that contains one discrete pharmaceutical dosage form.

“Supervision” means the process by which a pharmacist directs the activities of hospital pharmacy personnel to a sufficient degree to ensure that all activities are performed accurately, safely, and without risk of harm to patients.

**Historical Note**

Former Rules 6.7110, 6.7120, and 6.7130; Amended effective August 10, 1978 (Supp. 78-4). Amended subsection (B) effective April 20, 1982 (Supp. 82-2). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Amended effective November 1, 1993 (Supp. 93-4). Amended effective April 5, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 4902,

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effective January 5, 2003 (Supp. 02-4).

**R4-23-652. Hospital Pharmacy Permit**

- A. The following rules are applicable to all hospitals as defined by A.R.S. § 32-1901 and hospital pharmacies as defined by R4-23-651.
- B. Before opening a hospital pharmacy, a person shall obtain a pharmacy permit as specified in R4-23-602 and R4-23-606.
- C. Discontinued hospitals. If a hospital license is discontinued by the state Department of Health Services, the pharmacy permittee or pharmacist-in-charge shall follow the procedures described in R4-23-613 for discontinuing a pharmacy.

**Historical Note**

Former Rules 6.7210, 6.7220, 6.7230, 6.7231, 6.7232, and 6.7233. Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

**R4-23-653. Personnel: Professional or Technician**

- A. Each hospital pharmacy shall be directed by a pharmacist who is licensed to engage in the practice of pharmacy in Arizona and is referred to as the Director of Pharmacy. The Director of Pharmacy shall be the pharmacist-in-charge, as defined in A.R.S. § 32-1901 or shall appoint a pharmacist-in-charge. The Director of Pharmacy and the pharmacist-in-charge, if a different individual, shall:
  1. Be responsible for all the activities of the hospital pharmacy and for meeting the requirements of the Arizona Pharmacy Act and these rules;
  2. Ensure that the policies and procedures required by these rules are prepared, implemented, and complied with;
  3. Review biennially and, if necessary, revise the policies and procedures required under these rules;
  4. Document the review required under subsection (A)(3);
  5. Assemble the policies and procedures as a written manual or by another method approved by the Board or its designee; and
  6. Make the policies and procedures available within the pharmacy for employee reference and inspection by the Board or its designee.
- B. In all hospitals, a pharmacist shall be in the hospital during the time the pharmacy is open for pharmacy services, except for an extreme emergency as defined in R4-23-110. Pharmacy services shall be provided for a minimum of 40 hours per week, unless an exception for less than the minimum hours is made upon written request by the hospital and with express permission of the Board or its designee.
- C. In a hospital where the pharmacy is not open 24 hours per day for pharmacy services, a pharmacist shall be "on-call" as defined in R4-23-651 when the pharmacy is closed.
- D. The Director of Pharmacy may be assisted by other personnel approved by the Director of Pharmacy in order to operate the pharmacy competently, safely, and adequately to meet the needs of the hospital's patients.
- E. Pharmacists. A pharmacist or a pharmacy intern or graduate intern under the supervision of a pharmacist shall perform the following professional practices:
  1. Verify a patient's medication order before administration of a drug to the patient, except:
    - a. In an emergency medical situation; or
    - b. In a hospital where the pharmacy is open less than 24 hours a day for pharmacy services, a pharmacist shall verify a patient's medication order within four hours of the time the pharmacy opens for pharmacy services;
  2. Verify a medication order's pharmaceutical and therapeutic feasibility based upon:
    - a. The patient's medical condition,
    - b. The patient's allergies,
    - c. The pharmaceutical and therapeutic incompatibilities, and
    - d. The recommended dosage limits;
  3. Measure, count, pour, or otherwise prepare and package a drug needed for dispensing, except a pharmacy technician or pharmacy technician trainee may measure, count, pour, or otherwise prepare and package a drug needed for dispensing under the supervision of a pharmacist according to written policies and procedures approved by the Board or its designee;
  4. Compound, admix, combine, or otherwise prepare and package a drug needed for dispensing, except a pharmacy technician may compound, admix, combine, or otherwise prepare and package a drug needed for dispensing under the supervision of a pharmacist according to written policies and procedures approved by the Board or its designee;
  5. Verify the accuracy, correct procedure, compounding, admixing, combining, measuring, counting, pouring, preparing, packaging, and safety of a drug prepared and packaged by a pharmacy technician or pharmacy technician trainee according to subsections (E)(3) and (4) and according to the policies and procedures in subsection (G);
  6. Supervise drug repackaging and check the completed repackaged product as specified in R4-23-402(A);
  7. Supervise training and education in aseptic technique and drug incompatibilities for all personnel involved in the admixture of parenteral products within the hospital pharmacy;
  8. Consult with the medical practitioner regarding the patient's drug therapy or medical condition;
  9. When requested by a medical practitioner, patient, patient's agent, or when the pharmacist deems it necessary, provide consultation with a patient regarding the medication order, patient's profile, or overall drug therapy;
  10. Monitor a patient's drug therapy for safety and effectiveness;
  11. Provide drug information to patients and health care professionals;
  12. Manage the activities of pharmacy technicians, pharmacy technician trainees, other personnel, and systems to ensure that all activities are performed accurately, safely, and without risk of harm to patients;
  13. Verify the accuracy of all aspects of the original, completed medication order; and
  14. Ensure compliance by pharmacy personnel with a quality assurance program developed by the hospital.
- F. Pharmacy technicians and pharmacy technician trainees. Before working as a pharmacy technician or pharmacy technician trainee, an individual shall meet the eligibility and licensure requirements prescribed in 4 A.A.C. 23, Article 11.
- G. Pharmacy technician policies and procedures. Before employing a pharmacy technician or pharmacy technician trainee, a Director of Pharmacy or pharmacist-in-charge shall develop the policies and procedures required under R4-23-1104.
- H. Pharmacy technician training program.
  1. A Director of Pharmacy or pharmacist-in-charge shall comply with the training program requirements of R4-23-1105 based on the needs of the hospital pharmacy;

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2. A pharmacy technician or pharmacy technician trainee shall:
  - a. Perform only those tasks for which training and competency have been demonstrated; and
  - b. Not perform professional practices reserved for a pharmacist, graduate intern, or pharmacy intern in subsection (E), except as specified in subsections (E)(3) and (4).
- I. Supervision. A hospital pharmacy's Director of Pharmacy and the pharmacist-in-charge, if a different individual, shall supervise all of the activities and operations of a hospital pharmacy. A pharmacist shall supervise all functions and activities of pharmacy technicians, pharmacy technician trainees, and other hospital pharmacy personnel to ensure that all functions and activities are performed competently, safely, and without risk of harm to patients.
  - a. Access is delegated to only one supervisory nurse in each shift;
  - b. The policy and name of supervisory nurse is communicated in writing to the medical staff of the hospital;
  - c. Access is delegated only to a nurse who has received training from the Director of Pharmacy, pharmacist-in-charge, or Director's designee in the procedures required for proper access, drug removal, and recordkeeping; and
  - d. Access is delegated by the supervisory nurse to another nurse only in an emergency.
2. If a nurse to whom authority is delegated to access the hospital pharmacy removes a drug from the hospital pharmacy, the nurse shall:
  - a. Record the following information on a form or by another method approved by the Board or its designee:
    - i. Patient's name;
    - ii. Drug name, strength, and dosage form;
    - iii. Quantity of drug removed; and
    - iv. Date and time of removal;
  - b. Sign or initial, if a corresponding signature is on file in the hospital pharmacy, the form recording the drug removal;
  - c. Attach the original or a direct copy of the medication order for the drug to the form recording the drug removal; and
  - d. Place the form recording the drug removal conspicuously in the hospital pharmacy.
3. Within four hours after a pharmacist returns from an absence, the pharmacist shall verify all records of drug removal that occurred during the pharmacist's absence according to R4-23-653(E).

**Historical Note**

Former Rules 6.7310 and 6.7320; Amended effective August 10, 1978 (Supp. 78-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Amended effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended 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).

**R4-23-654. Absence of Pharmacist**

- A. If a pharmacist will not be on duty in the hospital, the Director of Pharmacy or pharmacist-in-charge shall arrange, before the pharmacist's absence, for the medical staff and other authorized personnel of the hospital to have access to drugs in the remote drug storage area defined in R4-23-110 or in the hospital pharmacy if a drug is not available in a remote drug storage area and is required to treat the immediate needs of a patient. A pharmacist shall be on-call during all absences.
- B. If a pharmacist will not be on duty in the hospital pharmacy, the Director of Pharmacy or pharmacist-in-charge shall arrange, before the pharmacist's absence, for the medical staff and other authorized personnel of the hospital to have telephone access to an on-call pharmacist.
- C. The hospital pharmacy permittee shall ensure that the hospital pharmacy is not without a pharmacist on duty in the hospital for more than 72 consecutive hours.
- D. Remote drug storage area. The Director of Pharmacy or pharmacist-in-charge shall, in consultation with the appropriate committee of the hospital:
  1. Develop and maintain an inventory listing of the drugs to be included in a remote drug storage area; and
  2. Develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with policies and procedures that ensure proper storage, access, and accountability for drugs in a remote drug storage area.
- E. Access to hospital pharmacy. If a drug is not available from a remote drug storage area and the drug is required to treat the immediate needs of a patient whose health may be compromised, the drug may be obtained from the hospital pharmacy according to the requirements of this subsection.
  1. The Director of Pharmacy or pharmacist-in-charge shall, in consultation with the appropriate committee of the hospital, develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with policies and procedures to ensure that access to the hospital pharmacy during the pharmacist's absence conforms to the following requirements:

**Historical Note**

Former Rules 6.7410, 6.7420, 6.7430, 6.7440, 6.7450, and 6.7460; Amended subsection (A) effective Aug. 9, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended 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).

**R4-23-655. Physical Facility**

- A. General. A hospital pharmacy permittee shall ensure that the hospital pharmacy has sufficient equipment and physical facilities for proper compounding, dispensing, and storage of drugs, including parenteral preparations.
- B. Minimum area of hospital pharmacy. The minimum area of a hospital pharmacy depends on the type of hospital, the number of beds, and the pharmaceutical services provided. Any hospital pharmacy permit issued or hospital pharmacy remodeled after January 31, 2003 shall provide a minimum hospital pharmacy area, the actual area primarily devoted to drug dispensing and preparation functions, exclusive of bulk drug storage, satellite pharmacy, and office areas that is not less than 500 square feet. The minimum area requirement, not including unusable area, may be varied upon approval by the Board for out-of-the-ordinary conditions or for systems that require less space.
- C. The Board may also require that a hospital pharmacy permittee or applicant provide:

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1. More than the minimum area if equipment, inventory, personnel, or other factors cause crowding to a degree that interferes with safe pharmacy practice;
  2. Additional dispensing, preparation, or storage areas because of the increased number of specific drugs prescribed per day, the increased use of intravenous and irrigating solutions, and the increased use of disposable and prepackaged products;
  3. Additional dispensing, preparation, or storage areas to handle investigational drugs, emergency drug kits, chemotherapeutics, alcohol and other flammables, poisons, external preparations, and radioisotopes, and to accommodate quality control procedures; and
  4. Additional office space to provide for an increased number of personnel, a drug information library, a poison information library, research support, teaching and conferences, and a waiting area.
- D.** Hospital pharmacy area. A hospital pharmacy permittee shall ensure that the hospital pharmacy area is enclosed by a permanent barrier or partition from floor to ceiling with entry doors that can be securely locked, constructed according to R4-23-609(F).
- E.** Hospital pharmacy storage areas. The hospital pharmacy permittee, Director of Pharmacy, or pharmacist-in-charge shall ensure that all undispensed or undistributed drugs are stored in designated areas within the hospital pharmacy or other locked areas under the control of a pharmacist that ensure proper sanitation, temperature, light, ventilation, moisture control, segregation, and security.

**Historical Note**

Former Rules 6.7471, 6.7472, 6.7473, 6.7474, and 6.7490; Amended effective Aug. 9, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Correction to Table 1 ("square feet" changed to "square feet") (Supp. 91-1). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 11 A.A.R. 462, effective March 5, 2005 (Supp. 05-1).

**R4-23-656. Sanitation and Equipment**

A hospital pharmacy permittee or Director of Pharmacy shall ensure that a hospital pharmacy:

1. Has a professional reference library consisting of hard-copy or electronic media appropriate for the scope of pharmacy services provided by the hospital;
2. Has a sink, other than a sink in a toilet facility, that:
  - a. Has hot and cold running water;
  - b. Is within the hospital pharmacy area for use in preparing drug products; and
  - c. Is maintained in a sanitary condition and in good repair;
3. Maintains a room temperature within a range compatible with the proper storage of drugs;
4. Has a refrigerator and freezer with a temperature maintained within a range compatible with the proper storage of drugs requiring refrigeration or freezing; and
5. Has a designated area for a laminar air flow hood and other supplies required for the preparation of sterile products as specified in R4-23-670.

**Historical Note**

Former Rule 6.7480. Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

**R4-23-657. Security**

- A.** Personnel security standards. A Director of Pharmacy shall ensure that:
1. No one is permitted in the pharmacy unless a pharmacist is present except as provided in this Section and R4-23-654. If only one pharmacist is on duty in the pharmacy and that pharmacist must leave the pharmacy for an emergency or patient care duties, nonpharmacist personnel may remain in the pharmacy to perform duties as outlined in R4-23-653, provided that all C-II controlled substances are secured to prohibit access by other than a pharmacist, and that the pharmacist remains available in the hospital;
  2. All hospital pharmacy areas are kept locked by key or programmable lock to prevent access by unauthorized personnel; and
  3. Pharmacists, pharmacy or graduate interns, pharmacy technicians, pharmacy technician trainees, and other personnel working in the pharmacy wear identification badges, including name and position, whenever on duty.
- B.** Prescription blank security. The Director of Pharmacy shall develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with policies and procedures for the safe distribution and control of prescription blanks bearing identification of the hospital.

**Historical Note**

Former Rule 6.7500; Amended effective Aug. 9, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended 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).

**R4-23-658. Drug Distribution and Control**

- A.** General. The Director of Pharmacy or pharmacist-in-charge shall in consultation with the medical staff, develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with written policies and procedures for the effective operation of a drug distribution system that optimizes patient safety.
- B.** Responsibility. The Director of Pharmacy is responsible for the safe and efficient procurement, dispensing, distribution, administration, and control of drugs, including the following:
1. In consultation with the appropriate department personnel and medical staff committee, develop a medication formulary for the hospital;
  2. Proper handling, distribution, and recordkeeping of investigational drugs; and
  3. Regular inspections of drug storage and preparation areas within the hospital.
- C.** Physician orders. A Director of Pharmacy or pharmacist-in-charge shall ensure that:
1. Drugs are dispensed from the hospital pharmacy only upon a written order, direct copy or facsimile of a written order, or verbal order of an authorized medical practitioner; and
  2. A pharmacist reviews the original, direct or facsimile copy, or verbal order before an initial dose of medication is administered, except as specified in R4-23-653(E)(1).
- D.** Labeling. A Director of Pharmacy or pharmacist-in-charge shall ensure that all drugs distributed or dispensed by a hospital pharmacy are packaged in appropriate containers and labeled as follows:
1. For use inside the hospital.
    - a. Labels for all single unit packages contain at a minimum, the following information:

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- i. Drug name, strength, and dosage form;
      - ii. Lot number and beyond-use-date; and
      - iii. Appropriate auxiliary labels;
    - b. Labels for repackaged preparations contain at a minimum the following information:
      - i. Drug name, strength, and dosage form;
      - ii. Lot number and beyond-use-date;
      - iii. Appropriate auxiliary labels; and
      - iv. Mechanism to identify pharmacist accountable for repackaging;
    - c. Labels for all intravenous admixture preparations contain at a minimum the following information:
      - i. Patient's name and location;
      - ii. Name and quantity of the basic parenteral solution;
      - iii. Name and amount of drug added;
      - iv. Date of preparation;
      - v. Beyond-use-date and time;
      - vi. Guidelines for administration;
      - vii. Appropriate auxiliary label or precautionary statement; and
      - viii. Initials of pharmacist responsible for admixture preparation; and
  2. For use outside the hospital. Any drug dispensed to a patient by a hospital pharmacy that is intended for self-administration outside of the hospital is labeled as specified in A.R.S. §§ 32-1963.01(C) and 32-1968(D) and A.A.C. R4-23-402.
- E.** Controlled substance accountability. A Director of Pharmacy or pharmacist-in-charge shall ensure that effective policies and procedures are developed, implemented, reviewed, and revised in the same manner described in R4-23-653(A) and complied with regarding the use, accountability, and record-keeping of controlled substances in the hospital, including the use of locked storage areas when controlled substances are stored in patient care areas.
- F.** Emergency services dispensing. If a hospital permits dispensing of drugs from the emergency services department when the pharmacy is unable to provide this service, the Director of Pharmacy, in consultation with the appropriate department personnel and medical staff committee shall develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with written policies and procedures for dispensing drugs for outpatient use from the hospital's emergency services department. The policies and procedures shall include the following requirements:
1. Drugs are dispensed only to patients who have been admitted to the emergency services department;
  2. Drugs are dispensed only by an authorized medical practitioner, not a designee or agent;
  3. The nature and type of drugs available for dispensing are designed to meet the immediate needs of the patients treated within the hospital;
  4. Drugs are dispensed only in quantities sufficient to meet patient needs until outpatient pharmacy services are available;
  5. Drugs are prepackaged by a pharmacist or a pharmacy intern, graduate intern, pharmacy technician, or pharmacy technician trainee under the supervision of a pharmacist in suitable containers and appropriately prelabeled with the drug name, strength, dosage form, quantity, manufacturer, lot number, beyond-use-date, and any appropriate auxiliary labels;
  6. Upon dispensing, the authorized medical practitioner completes the label on the prescription container that complies with the requirements of R4-23-658(D); and
7. The hospital pharmacy maintains a dispensing log, hard-copy prescription, or electronic record, approved by the Board or its designee and includes the patient name and address, drug name, strength, dosage form, quantity, directions for use, medical practitioner's signature or identification code, and DEA registration number, if applicable.

**Historical Note**

Former Rules 6.7610, 6.7620, and 6.7710; Amended effective Aug. 9, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Correction to subsection (I)(5) ("unnecessary" changed to "necessary") (Supp. 91-1). Amended effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended 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).

**R4-23-659. Administration of Drugs**

- A.** Self-administration. A hospital shall not allow self-administration of medications by a patient unless the Director of Pharmacy or pharmacist-in-charge, in consultation with the appropriate department personnel and medical staff committee, develops, implements, reviews, and revises in the same manner described in R4-23-653(A) and complies with policies and procedures for self-administration of medications by a patient. The policies and procedures shall specify that self-administration of medications, if allowed, occurs only when:
1. Specifically ordered by a medical practitioner, and
  2. The patient is educated and trained in the proper manner of self-administration.
- B.** Drugs brought in by a patient. If a hospital allows a patient to bring a drug into the hospital and before a patient brings a drug into the hospital, the Director of Pharmacy or pharmacist-in-charge shall, in consultation with the appropriate department personnel and medical staff committee, develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with policies and procedures for a patient-owned drug brought into the hospital. The policies and procedures shall specify the following criteria for a patient-owned drug brought into the hospital:
1. When policy allows the administration of a patient-owned drug, the drug is not administered to the patient unless:
    - a. A pharmacist or medical practitioner identifies the drug, and
    - b. A medical practitioner writes a medication order specifying administration of the identified patient-owned drug; and
  2. If a patient-owned drug will not be used during the patient's hospitalization, the hospital pharmacy's personnel shall:
    - a. Package, seal, and give the drug to the patient's agent for removal from the hospital; or
    - b. Package, seal, and store the drug for return to the patient at the time of discharge from the hospital.
- C.** Drug samples. The Director of Pharmacy or pharmacist-in-charge is responsible for the receipt, storage, distribution, and accountability of drug samples within the hospital, including developing, implementing, reviewing, and revising in the same manner described in R4-23-653(A) and complying with specific policies and procedures regarding drug samples.

**Historical Note**

Former Rules 6.7720, 6.7730, 6.7740, 6.7760, 6.7770,

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6.7780, 6.7800, 6.7810, 6.7820, 6.7830, 6.7840, 6.7850, 6.7871, 6.7872, and 6.7873; Amended effective Aug. 9, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Correction to Section heading (“rules” changed to “roles”) (Supp. 91-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended 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).

**R4-23-660. Investigational Drugs**

The Director of Pharmacy or pharmacist-in-charge shall ensure that:

1. The following information concerning an investigational drug is available for use by hospital personnel:
  - a. Composition,
  - b. Pharmacology,
  - c. Adverse reactions,
  - d. Administration guidelines, and
  - e. All other available information concerning the drug, and
2. An investigational drug is:
  - a. Properly stored in, labeled, and dispensed from the pharmacy, and
  - b. Not dispensed before the drug is approved by the appropriate medical staff committee of the hospital.

**Historical Note**

Former Rules 6.7881, 6.7882, and 6.7883; Amended subsection (A) effective Aug. 9, 1983 (Supp. 83-4).

Repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

**R4-23-661. Repealed****Historical Note**

Former Rules 6.7910, 6.7920, 6.7930, 6.7940, and 6.7950. Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Section repealed by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

**R4-23-662. Repealed****Historical Note**

Adopted effective February 7, 1990 (Supp. 90-1). Section repealed by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

**R4-23-663. Repealed****Historical Note**

Adopted effective February 7, 1990 (Supp. 90-1). Amended effective November 1, 1993 (Supp. 93-4). Section repealed by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

**R4-23-664. Repealed****Historical Note**

Adopted effective February 7, 1990 (Supp. 90-1). Subsection label removed (Supp. 91-1). Section repealed by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

**R4-23-665. Reserved**

through

**R4-23-669. Reserved****R4-23-670. Sterile Pharmaceutical Products**

A. In addition to the minimum area requirement of R4-23-609(A) and R4-23-655(B) and before compounding a sterile pharmaceutical product, a pharmacy permittee, limited-service pharmacy permittee, or applicant shall provide a minimum sterile pharmaceutical product compounding area that is not less than 100 square feet of contiguous floor area, except any pharmacy permit issued or pharmacy remodeled before November 1, 2006 may continue to use a sterile pharmaceutical product compounding area that is not less than 60 square feet of contiguous floor area, until a pharmacy ownership change occurs that requires issuance of a new permit or the pharmacy is remodeled. The pharmacy permittee or the pharmacist-in-charge shall ensure that the sterile pharmaceutical product compounding area:

1. Is dedicated to the purpose of preparing and compounding sterile pharmaceutical products;
2. Is isolated from other pharmacy functions;
3. Restricts entry or access;
4. Is free from unnecessary disturbances in air flow;
5. Is made of non-porous and cleanable floor, wall, and ceiling material; and
6. Meets the minimum air cleanliness standards of an ISO Class 7 environment as defined in R4-23-110, except an ISO class 7 environment is not required if all sterile pharmaceutical product compounding occurs within an ISO class 5 environment isolator, such as a glove box, pharmaceutical isolator, barrier isolator, pharmacy isolator, or hospital pharmacy isolator.

B. In addition to the equipment requirements in R4-23-611 and R4-23-612 or R4-23-656 and before compounding a sterile pharmaceutical product, a pharmacy permittee, limited-service pharmacy permittee, or applicant shall ensure that a pharmacist who compounds a sterile pharmaceutical product has the following equipment:

1. Environmental control devices capable of maintaining a compounding area environment equivalent to an “ISO class 5 environment” as defined in R4-23-110. Devices capable of meeting these standards include: laminar air-flow hoods, hepa filtered zonal airflow devices, glove boxes, pharmaceutical isolators, barrier isolators, pharmacy isolators, hospital pharmacy isolators, and biological safety cabinets;
2. Disposal containers designed for needles, syringes, and other material used in compounding sterile pharmaceutical products and if applicable, separate containers to dispose of cytotoxic, chemotherapeutic, and infectious waste products;
3. Freezer storage units with thermostatic control and thermometer, if applicable;
4. Packaging or delivery containers capable of maintaining official compendial drug storage conditions;
5. Infusion devices and accessories, if applicable; and
6. In addition to the reference library requirements of R4-23-612, a current reference pertinent to the preparation of sterile pharmaceutical products.

C. Before compounding a sterile pharmaceutical product, the pharmacy permittee, limited-service pharmacy permittee, or pharmacist-in-charge shall:

1. Prepare, implement, and comply with policies and procedures for compounding and dispensing sterile pharmaceutical products,
2. Review biennially and if necessary revise the policies and procedures required under subsection (C)(1),
3. Document the review required under subsection (C)(2),

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4. Assemble the policies and procedures as a written manual or by another method approved by the Board or its designee, and
  5. Make the policies and procedures available in the pharmacy for employee reference and inspection by the Board or its designee.
- D.** The assembled policies and procedures shall include, where applicable, the following subjects:
1. Supervisory controls and verification procedures to ensure the quality and safety of sterile pharmaceutical products;
  2. Clinical services and drug monitoring procedures for:
    - a. Patient drug utilization reviews;
    - b. Inventory audits;
    - c. Patient outcome monitoring;
    - d. Drug information; and
    - e. Education of pharmacy and other health professionals;
  3. Controlled substances;
  4. Supervisory controls and verification procedures for:
    - a. Cytotoxics handling, storage, and disposal;
    - b. Disposal of unused supplies and pharmaceutical products; and
    - c. Handling and disposal of infectious wastes;
  5. Pharmaceutical product administration, including guidelines for the first dosing of a pharmaceutical product;
  6. Drug and component procurement;
  7. Pharmaceutical product compounding, dispensing, and storage;
  8. Duties and qualifications of professional and support staff;
  9. Equipment maintenance;
  10. Infusion devices and pharmaceutical product delivery systems;
  11. Investigational drugs and their protocols;
  12. Patient profiles;
  13. Patient education and safety;
  14. Quality management procedures for:
    - a. Adverse drug reactions;
    - b. Drug recalls;
    - c. Expired pharmaceutical products;
    - d. Beyond-use-dating for both standard-risk and substantial-risk sterile pharmaceutical products consistent with the requirements of R4-23-410(B)(3)(d);
    - e. Temperature and other environmental controls;
    - f. Documented process and product validation testing; and
    - g. Semi-annual certification of the laminar air flow hood or other ISO class 5 environment, other equipment, and the ISO class 7 environment, including documentation of routine cleaning and maintenance for each laminar air flow hood or other ISO class 5 environment, other equipment, and the ISO class 7 environment; and
  15. Sterile pharmaceutical product delivery requirements for:
    - a. Shipment to the patient;
    - b. Security; and
    - c. Maintaining official compendial storage conditions.
- E.** Standard-risk sterile pharmaceutical product compounding. Before compounding a standard-risk sterile pharmaceutical product, a pharmacy permittee or pharmacist-in-charge shall ensure compliance with the following minimum standards:
1. Compounding occurs only in an ISO class 5 environment within an ISO class 7 environment, and the ISO class 7 environment may have a specified prep area inside the environment;
  2. Compounding sterile pharmaceutical products from sterile commercial drugs or sterile pharmaceutical otic or ophthalmic products from non-sterile ingredients occurs using procedures that involve only a few closed-system, basic, simple aseptic transfers and manipulations;
  3. Each person who compounds wears adequate personnel protective clothing for sterile preparation that includes gown, gloves, head cover, and booties. Each person who compounds is not required to wear personnel protective clothing when all sterile pharmaceutical compounding occurs within an ISO class 5 environment isolator, and the ISO Class 5 environment isolator is not inside an ISO Class 7 environment; and
  4. Each person who compounds completes an annual media-fill test to validate proper aseptic technique.
- F.** Substantial-risk sterile pharmaceutical product compounding. Before compounding a substantial-risk sterile pharmaceutical product, a pharmacy permittee or pharmacist-in-charge shall ensure compliance with the following minimum standards:
1. Compounding parenteral or injectable sterile pharmaceutical products from non-sterile ingredients occurs only in an ISO class 5 environment within an ISO class 7 environment and the ISO class 7 environment shall not have a prep area inside the environment;
  2. Each person who compounds wears adequate personnel protective clothing for sterile preparation that includes gown, gloves, head cover, and booties. Each person who compounds is not required to wear personnel protective clothing when all sterile pharmaceutical compounding occurs within an ISO class 5 environment isolator, and the ISO Class 5 environment isolator is not inside an ISO Class 7 environment; and
  3. Each person who compounds completes a semi-annual media-fill test that simulates the most challenging or stressful conditions for compounding using dry non-sterile media to validate proper aseptic technique.

**Historical Note**

Adopted effective November 1, 1993 (Supp. 93-4). 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).

**R4-23-671. General Requirements for Limited-service Pharmacy**

- A.** Before opening a limited-service pharmacy, a person shall obtain a permit in compliance with A.R.S. §§ 32-1929, 32-1930, 32-1931, and R4-23-606.
- B.** The limited-service pharmacy permittee shall secure the limited-service pharmacy by conforming with the following standards:
1. Permit no one to be in the limited-service pharmacy unless the pharmacist-in-charge or a pharmacist authorized by the pharmacist-in-charge is present;
  2. Require the pharmacist-in-charge to designate in writing, by name, title, and specific area, those persons who will have access to particular areas of the limited-service pharmacy;
  3. Implement procedures to guard against theft or diversion of drugs, including controlled substances; and
  4. Require all persons working in the limited-service pharmacy to wear badges, with their names and titles, while on duty.
- C.** To obtain permission to deviate from the minimum area requirement set forth in R4-23-609, R4-23-673, or R4-23-682, a limited-service pharmacy permittee shall submit a written

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request to the Board and include documentation that the deviation will facilitate experimentation or technological advances in the practice of pharmacy as defined in A.R.S. § 32-1901. If the Board determines the requested deviation from the minimum area requirement will enhance the practice of pharmacy and benefit the public, the Board shall grant the requested deviation.

- D.** The Board shall require more than the minimum area in a limited-service pharmacy when the Board determines that equipment, personnel, or other factors in the limited-service pharmacy cause crowding that interferes with safe pharmacy practice.
- E.** Before dispensing from a limited-service pharmacy, the limited-service pharmacy permittee or pharmacist-in-charge shall:
1. Prepare, implement, and comply with written policies and procedures for pharmacy operations and drug dispensing and distribution,
  2. Review biennially and if necessary revise the policies and procedures required under subsection (E)(1),
  3. Document the review required under subsection (E)(2),
  4. Assemble the policies and procedures as a written manual or by another method approved by the Board or its designee, and
  5. Make the policies and procedures available in the pharmacy for employee reference and inspection by the Board or its designee.

**Historical Note**

Adopted effective April 5, 1996 (Supp. 96-2). Amended by final rulemaking at 9 A.A.R. 1064, effective May 4, 2003 (Supp. 03-1). 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. 3032, effective October 1, 2006 (Supp. 06-3).

**R4-23-672. Limited-service Correctional Pharmacy**

- A.** The limited-service pharmacy permittee shall ensure that the limited-service correctional pharmacy complies with the standards for area, personnel, security, sanitation, equipment, drug distribution and control, administration of drugs, drug source, quality assurance, investigational drugs, and inspections as set forth in R4-23-608, R4-23-609(A) through (D) and (F) through (H), R4-23-610(A), R4-23-611, R4-23-612, R4-23-653(E), R4-23-658(B) through (E), R4-23-659, and R4-23-660.
- B.** The pharmacist-in-charge of a limited-service correctional pharmacy shall authorize only pharmacists, interns, pharmacy technicians, pharmacy technician trainees, compliance officers, drug inspectors, peace officers, and correctional officers acting in their official capacities, other persons authorized by law, support personnel, and other designated personnel to be in the limited-service correctional pharmacy.
- C.** When no pharmacist will be on duty in the correctional facility, the pharmacist-in-charge shall arrange, before there is no pharmacist on duty, for the medical staff and other authorized personnel of the correctional facility to have access to drugs in remote drug storage areas or, if a drug is not available in a remote drug storage area and is required to treat the immediate needs of a patient, in the limited-service correctional pharmacy.
1. The pharmacist-in-charge shall, in consultation with the appropriate committee of the correctional facility, develop and implement procedures to ensure that remote drug storage areas:
    - a. Contain only properly labeled drugs that might reasonably be needed and can be administered safely during the pharmacist's absence,
    - b. Contain drugs packaged only in amounts sufficient for immediate therapeutic requirements,
    - c. Are accessible only with a physician's written order,
    - d. Provide a written record of each drug withdrawn,
    - e. Are inventoried at least once each week, and
    - f. Are audited for compliance with the requirements of this rule at least once each month.
- 2.** The pharmacist-in-charge shall, in consultation with the appropriate committee of the correctional facility, develop and implement procedures to ensure that access to the limited-service correctional pharmacy when no pharmacist is on duty conforms to the following requirements:
- a. Is delegated to only one nurse, who is in a supervisory position;
  - b. Is communicated in writing to medical staff of the correctional facility;
  - c. Is delegated only to a nurse who has received training from the pharmacist-in-charge in proper methods of access, removal of drugs, and recordkeeping procedures; and
  - d. Is delegated by the supervisory nurse to another nurse only in an emergency.
- 3.** When a nurse to whom authority to access the limited-service correctional pharmacy is delegated removes a drug from the limited-service correctional pharmacy, the nurse shall:
- a. Record the following information on a form:
    - i. Patient's name,
    - ii. Name of the drug and its strength and dosage form,
    - iii. Dose prescribed,
    - iv. Amount of drug removed, and
    - v. Date and time of removal;
  - b. Sign the form recording the drug removal;
  - c. Attach the original or a direct copy of a physician's written order for the drug to the form recording the drug removal; and
  - d. Place the form recording the drug removal conspicuously in the limited-service correctional pharmacy.
- 4.** Within four hours after a pharmacist in the limited-service correctional pharmacy returns to duty following an absence in which the limited-service correctional pharmacy was accessed by a nurse to whom authority had been delegated, the pharmacist shall verify all records of drug removal according to R4-23-402.
- D.** When no pharmacist will be on duty in the correctional facility, the pharmacist-in-charge shall arrange, before there is no pharmacist on duty, for the medical staff and other authorized personnel of the correctional facility to have telephone access to a pharmacist.
- E.** The limited-service pharmacy permittee shall ensure that the limited-service correctional pharmacy is not without a pharmacist on duty for more than 96 consecutive hours.
- F.** In addition to the requirements of R4-23-671, the limited-service pharmacy permittee shall secure the limited-service correctional pharmacy as follows:
1. Permit no one to be in the limited-service correctional pharmacy unless a pharmacist is on duty except:
    - a. As provided in subsection (C)(3) when a pharmacist is not on duty; or
    - b. A pharmacy technician or pharmacy technician trainee may remain to perform duties in R4-23-1104(A), when a pharmacist is on duty and available in the correctional facility but temporarily absent from the pharmacy, provided:

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- i. All controlled substances are secured in a manner that prohibits access by persons other than a pharmacist;
  - ii. Activities performed by a pharmacy technician or pharmacy technician trainee while the pharmacist is temporarily absent are verified by the pharmacist immediately upon returning to the pharmacy;
  - iii. Any drug measured, counted, poured, or otherwise prepared and packaged by a pharmacy technician or pharmacy technician trainee while the pharmacist is temporarily absent is verified by the pharmacist immediately upon returning to the pharmacy; and
  - iv. Any drug that has not been verified by a pharmacist for accuracy is not dispensed, supplied, or distributed while the pharmacist is temporarily absent from the pharmacy; and
2. Provide keyed or programmable locks to all areas of the limited-service correctional pharmacy.
- G.** The pharmacist-in-charge of a limited-service correctional pharmacy shall ensure that the written policies and procedures for pharmacy operations and drug distribution within the correctional facility include the following:
- 1. Physicians' orders, prescription orders, or both;
  - 2. Authorized abbreviations;
  - 3. Formulary system;
  - 4. Clinical services and drug utilization management including:
    - a. Participation in drug selection,
    - b. Drug utilization reviews,
    - c. Inventory audits,
    - d. Patient outcome monitoring,
    - e. Committee participation,
    - f. Drug information, and
    - g. Education of pharmacy and other health professionals;
  - 5. Duties and qualifications of professional and support staff;
  - 6. Products of abuse and contraband medications;
  - 7. Controlled substances;
  - 8. Drug administration;
  - 9. Drug product procurement;
  - 10. Drug compounding, dispensing, and storage;
  - 11. Stop orders;
  - 12. Pass or discharge medications;
  - 13. Investigational drugs and their protocols;
  - 14. Patient profiles;
  - 15. Quality management procedures for:
    - a. Adverse drug reactions;
    - b. Drug recalls;
    - c. Expired and beyond-use-date drugs;
    - d. Medication or dispensing errors;
    - e. Drug storage; and
    - f. Education of professional staff, support staff, and patients;
  - 16. Recordkeeping;
  - 17. Sanitation;
  - 18. Security;
  - 19. Access to remote drug storage areas by non-pharmacists; and
  - 20. Access to limited-service correctional pharmacy by non-pharmacists.

**Historical Note**

Adopted effective April 5, 1996 (Supp. 96-2). Amended by final rulemaking at 10 A.A.R. 4453, effective Decem-

ber 4, 2004 (Supp. 04-4).

**R4-23-673. Limited-service Mail-order Pharmacy**

- A.** The limited-service pharmacy permittee shall design and construct the limited-service mail-order pharmacy to conform with the following requirements:
- 1. A dispensing area devoted to stocking, compounding, and dispensing prescription medications, which is physically separate from a non-dispensing area devoted to non-dispensing pharmacy services;
  - 2. A dispensing area of at least 300 square feet if three or fewer persons work in the dispensing area simultaneously;
  - 3. A dispensing area that provides 300 square feet plus 60 square feet for each person in excess of three persons if more than three persons work in the dispensing area simultaneously;
  - 4. Space in the dispensing area permits efficient pharmaceutical practice, free movement of personnel, and visual surveillance by the pharmacist;
  - 5. A non-dispensing area of at least 30 square feet for each person working simultaneously in the non-dispensing area; and
  - 6. Space in the non-dispensing area permits free movement of personnel and visual surveillance by the pharmacist; or
- B.** The limited-service pharmacy permittee shall design and construct the limited-service mail-order pharmacy to conform with the following requirements:
- 1. A contiguous area in which both dispensing and non-dispensing pharmacy services are provided;
  - 2. A contiguous area of at least 300 square feet if three or fewer persons work in the area simultaneously;
  - 3. A contiguous area that provides 300 square feet plus 60 square feet for each person in excess of three persons if more than three persons work in the area simultaneously; and
  - 4. Space in the contiguous area permits efficient pharmaceutical practice, free movement of personnel, and visual surveillance by the pharmacist.
- C.** The limited-service pharmacy permittee shall ensure that the limited-service mail-order pharmacy complies with the standards for area, personnel, security, sanitation, and equipment set forth in R4-23-608, R4-23-609(B) through (H), R4-23-610 (A) and (C) through (F), R4-23-611, and R4-23-612.
- D.** The pharmacist-in-charge of a limited-service mail-order pharmacy shall authorize only pharmacists, interns, pharmacy technicians, pharmacy technician trainees, compliance officers, drug inspectors, peace officers acting in their official capacities, support personnel, other persons authorized by law, and other designated personnel to be in the limited-service mail-order pharmacy.
- E.** The pharmacist-in-charge of a limited-service mail-order pharmacy shall ensure that prescription medication is delivered to the patient or locked in the dispensing area when a pharmacist is not present in the pharmacy.
- F.** In addition to the delivery requirements of R4-23-402, the limited-service pharmacy permittee shall, during regular hours of operation but not less than five days and a minimum 40 hours per week, provide toll-free telephone service to facilitate communication between patients and a pharmacist who has access to patient records at the limited-service mail-order pharmacy. The limited-service pharmacy permittee shall disclose this toll-free number on a label affixed to each container of drugs dispensed from the limited-service mail-order pharmacy.
- G.** The pharmacist-in-charge of a limited-service mail-order pharmacy shall ensure that the written policies and procedures for

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pharmacy operations and drug distribution include the following:

1. Prescription orders;
2. Clinical services and drug utilization management for:
  - a. Drug utilization reviews,
  - b. Inventory audits,
  - c. Patient outcome monitoring,
  - d. Drug information, and
  - e. Education of pharmacy and other health professionals;
3. Duties and qualifications of professional and support staff;
4. Controlled substances;
5. Drug product procurement;
6. Drug compounding, dispensing, and storage;
7. Patient profiles;
8. Quality management procedures for:
  - a. Adverse drug reactions,
  - b. Drug recalls,
  - c. Expired and beyond-use-date drugs,
  - d. Medication or dispensing errors, and
  - e. Education of professional and support staff;
9. Recordkeeping;
10. Sanitation;
11. Security;
12. Drug delivery requirements for:
  - a. Transportation,
  - b. Security,
  - c. Temperature and other environmental controls,
  - d. Emergency provisions, and
13. Patient education.

**Historical Note**

Adopted effective April 5, 1996 (Supp. 96-2). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 4453, effective December 4, 2004 (Supp. 04-4).

**R4-23-674. Limited-service Long-term Care Pharmacy**

- A.** A limited-service pharmacy permittee shall ensure that the limited-service long-term care pharmacy complies with:
1. The general requirements of R4-23-671;
  2. The professional practice standards of Article 4 and Article 11; and
  3. The permits and drug distribution standards of R4-23-606 through R4-23-612, R4-23-670, and this Section.
- B.** If a limited-service long-term care pharmacy permittee contracts with a long-term care facility as a Provider Pharmacy, as defined in R4-23-110, the limited-service long-term care pharmacy permittee shall ensure that the long-term care consultant pharmacist and the pharmacist-in-charge of the limited-service long-term care pharmacy comply with R4-23-701, R4-23-701.01, R4-23-701.02, R4-23-701.03, R4-23-701.04, and this Section.
- C.** The limited-service long-term care pharmacy permittee or pharmacist-in-charge shall ensure that prescription medication is delivered to the patient's long-term care facility or locked in the dispensing area of the pharmacy when a pharmacist is not present in the pharmacy.
- D.** The pharmacist-in-charge of a limited-service long-term care pharmacy shall authorize only those individuals listed in R4-23-610(B) to be in the limited-service long-term care pharmacy.
- E.** In consultation with the long-term care facility's medical director and director of nursing, the long-term care consultant pharmacist and pharmacist-in-charge of the long-term care facility's provider pharmacy may develop, if necessary, a med-

ication formulary for the long-term care facility that ensures the safe and efficient procurement, dispensing, distribution, administration, and control of drugs in the long-term care facility.

- F.** The limited-service long-term care pharmacy permittee or pharmacist-in-charge shall ensure that the written policies and procedures required in R4-23-671(E) include the following:
1. Clinical services and drug utilization management for:
    - a. Drug utilization reviews,
    - b. Inventory audits,
    - c. Patient outcome monitoring,
    - d. Drug information, and
    - e. Education of pharmacy and other health professionals;
  2. Controlled substances;
  3. Drug compounding, dispensing, and storage;
  4. Drug delivery requirements for:
    - a. Transportation,
    - b. Security,
    - c. Temperature and other environmental controls, and
    - d. Emergency provisions;
  5. Drug product procurement;
  6. Duties and qualifications of professional and support staff;
  7. Emergency drug supply unit procedures;
  8. Formulary, including development, review, modification, use, and documentation, if applicable;
  9. Patient profiles;
  10. Patient education;
  11. Prescription orders, including:
    - a. Approved abbreviations,
    - b. Stop-order procedures, and
    - c. Leave-of-absence and discharge prescription order procedures;
  12. Quality management procedures for:
    - a. Adverse drug reactions,
    - b. Drug recalls,
    - c. Expired and beyond-use-date drugs,
    - d. Medication or dispensing errors, and
    - e. Education of professional and support staff;
  13. Recordkeeping;
  14. Sanitation; and
  15. Security.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1064, effective May 4, 2003 (Supp. 03-1). Amended 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. 2894, effective November 10, 2013 (Supp. 13-3).

**R4-23-675. Limited-service Sterile Pharmaceutical Products Pharmacy**

- A.** The limited-service pharmacy permittee or the pharmacist-in-charge shall ensure that the limited-service sterile pharmaceutical products pharmacy complies with the standards for area, personnel, security, sanitation, equipment, sterile pharmaceutical products, and limited-service pharmacies established in R4-23-608, R4-23-609, R4-23-610, R4-23-611, R4-23-612, R4-23-670, and R4-23-671.
- B.** The pharmacist-in-charge of a limited-service sterile pharmaceutical products pharmacy shall authorize only pharmacists, interns, compliance officers, peace officers acting in their official capacities, pharmacy technicians, pharmacy technician trainees, support personnel, and other designated personnel to be in the limited-service sterile pharmaceutical products pharmacy.

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- C. The pharmacist-in-charge of a limited-service sterile pharmaceutical products pharmacy shall ensure that prescription medication is delivered to the patient or locked in the dispensing area when a pharmacist is not present in the pharmacy.
- D. In addition to the delivery requirements of R4-23-402, the limited-service pharmacy permittee shall, during regular hours of operation, but not less than a minimum 40 hours per week, provide toll-free telephone service to facilitate communication between patients and a pharmacist who has access to patient records at the limited-service sterile pharmaceutical products pharmacy. The limited-service pharmacy permittee shall disclose this toll-free number on a label affixed to each container dispensed from the limited-service sterile pharmaceutical products pharmacy.
- E. The limited-service pharmacy permittee or the pharmacist-in-charge shall ensure development, implementation, review and revision in the same manner described in R4-23-671(E) and compliance with policies and procedures for pharmacy operations, including pharmaceutical product compounding, dispensing, and distribution, that comply with the requirements of R4-23-402, R4-23-410, R4-23-670, and R4-23-671.
- F. The non-dispensing roles of the pharmacist may include chart reviews, audits, drug therapy monitoring, committee participation, drug information, and in-service training of pharmacy and other health professionals.
- supervision of an authorized nuclear pharmacist in the following areas:
- i. Procuring radioactive materials;
  - ii. Compounding radiopharmaceuticals;
  - iii. Performing routine quality control procedures;
  - iv. Dispensing radiopharmaceuticals;
  - v. Distributing radiopharmaceuticals;
  - vi. Implementing basic radiation protection procedures; and
  - vii. Consulting and educating the nuclear medicine community, patients, pharmacists, other health professionals, and the general public; and
- d. Submit written certification, signed by a preceptor who is an authorized nuclear pharmacist, that the above training was satisfactorily completed.
- B. Radiopharmaceuticals are prescription-only drugs that require specialized techniques in their handling and testing, to obtain optimum results and minimize hazards.
1. A person shall not sell, barter, or otherwise dispose of, or be in possession of any radiopharmaceutical except under the conditions detailed in A.R.S. § 32-1929.
  2. A person shall not manufacture, compound, sell, or dispense any radiopharmaceutical unless the person is a pharmacist or a pharmacy intern acting under the direct supervision of a pharmacist in accordance with A.R.S. § 32-1961 and these rules, with the exception of the following, if the following are licensed by the Arizona Radiation Regulatory Agency to use radiopharmaceuticals in compliance with A.R.S. § 30-673;
    - a. A medical practitioner who administers a radiopharmaceutical to the medical practitioner's patient as provided in A.R.S. § 32-1921(A),
    - b. A hospital nuclear medicine department, and
    - c. A medical practitioner's office.
  3. The Board shall cooperate with the Arizona Radiation Regulatory Agency and other interested state and federal agencies, in the enforcement of these rules for the protection of the public. This cooperation may include exchange of licensing and other information, joint inspections, and other activities where indicated.

**Historical Note**

New Section made 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. 3032, effective October 1, 2006 (Supp. 06-3). This Section was not amended as originally stated in the historical note published in Supp. 13-3; therefore the reference to the amendment has been removed (Supp. 18-2).

**R4-23-676. Reserved**

through

**R4-23-680. Reserved**

**R4-23-681. General Requirements for Limited-service Nuclear Pharmacy**

- A. To be an authorized nuclear pharmacist, a pharmacist shall:
1. Hold a current pharmacist license issued by the Board; and
  2. Be certified as a nuclear pharmacist by:
    - a. The Board of Pharmaceutical Specialties, or
    - b. A similar group recognized by the Arizona State Board of Pharmacy; or
  3. Satisfy each of the following requirements:
    - a. Meet minimal standards of training for status as an authorized user of radioactive material, as specified by the Arizona Radiation Regulatory Agency and the United States Nuclear Regulatory Commission;
    - b. Submit certification of completion of a Board-approved nuclear pharmacy training program or other training program recognized by the Arizona Radiation Regulatory Agency, with 200 hours of didactic training in the following areas:
      - i. Radiation physics and instrumentation,
      - ii. Radiation protection,
      - iii. Mathematics pertaining to the use and measurement of radioactivity,
      - iv. Radiation biology, and
      - v. Radiopharmaceutical chemistry;
    - c. Submit evidence of a minimum of 500 hours of clinical/practical nuclear pharmacy training under the

- C. In addition to compliance with all the applicable federal and state laws and rules governing drugs, whether radioactive or not, a limited-service nuclear pharmacy permittee shall comply with all laws and rules of the Arizona Radiation Regulatory Agency and the U.S. Nuclear Regulatory Commission, including emergency and safety provisions.
- D. A limited-service nuclear pharmacy permittee shall comply with the education, experience, and licensing requirements of the Arizona Radiation Regulatory Agency.
- E. A limited-service nuclear pharmacy permittee shall ensure that radiopharmaceuticals are transferred only to a person or firm that holds a current Radioactive Materials License issued by the Arizona Radiation Regulatory Agency.

**Historical Note**

Adopted effective December 3, 1974 (Supp. 75-1). Amended subsections (A), (C) and (D) effective Aug. 12, 1988 (Supp. 88-3). Amended effective July 8, 1997 (Supp. 97-3).

**R4-23-682. Limited-service Nuclear Pharmacy**

- A. Before operating a limited-service nuclear pharmacy, a person shall obtain a permit in compliance with A.R.S. §§ 32-1929, 32-1930, and 32-1931, and R4-23-606.
- B. A permit to operate a limited-service nuclear pharmacy shall be issued only to a person who is or employs an authorized nuclear pharmacist and holds a current Arizona Radiation

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Regulatory Agency Radioactive Materials License. A limited-service nuclear pharmacy permittee that fails to maintain a current Arizona Radiation Regulatory Agency Radioactive Materials License shall be immediately suspended pending revocation by the Board. A limited-service nuclear pharmacy permittee shall have copies of Arizona Radiation Regulatory Agency inspection reports available upon request for Board inspection.

1. A limited-service nuclear pharmacy permittee shall designate an authorized nuclear pharmacist as the pharmacist-in-charge. The pharmacist-in-charge shall be responsible to the Board:
    - a. For the operations of the pharmacy related to the practice of pharmacy and distribution of drugs and devices;
    - b. For communicating Board directives to the management, pharmacists, interns, and other personnel of the pharmacy; and
    - c. For the pharmacy's compliance with all federal and state pharmacy laws and rules.
  2. An authorized nuclear pharmacist shall directly supervise all personnel performing tasks in the preparation and distribution of radiopharmaceuticals and ancillary drugs.
  3. An authorized nuclear pharmacist shall be present whenever the limited-service nuclear pharmacy is open for business.
- C.** A limited-service nuclear pharmacy permittee shall ensure that the limited-service nuclear pharmacy complies with the standards for personnel, area, security, sanitation, and general requirements in R4-23-608, R4-23-609, R4-23-610, R4-23-611, and R4-23-671.
1. A limited-service nuclear pharmacy shall contain separate areas for:
    - a. Preparing and dispensing radiopharmaceuticals,
    - b. Receiving and shipping radiopharmaceuticals,
    - c. Storing radiopharmaceuticals, and
    - d. Decaying radioactive waste.
  2. The Board may require more than the minimum area in instances where equipment, inventory, personnel, or other factors cause crowding to a degree that interferes with safe pharmacy practice.
- D.** The pharmacist-in-charge shall designate in writing, by title and specific area, the persons who may have access to particular pharmacy areas.
- E.** A limited-service nuclear pharmacy permittee shall maintain records of acquisition, inventory, and disposition of radiopharmaceuticals, other radioactive substances, and other drugs in accordance with federal and state statutes and rules.
1. A prescription order, in addition to the requirements in A.R.S. § 32-1968(C) and R4-23-407(A), shall contain:
    - a. The date and time of calibration of the radiopharmaceutical,
    - b. The name of the procedure for which the radiopharmaceutical is prescribed, and
    - c. The words "Physician's Use Only" instead of the name of the patient if the radiopharmaceutical is nontherapeutic or for a nonblood product.
  2. The lead container used to store and transport a radiopharmaceutical shall have a label that, in addition to the requirements in A.R.S. § 32-1968(D), includes:
    - a. The date and time of calibration of the radiopharmaceutical,
    - b. The name of the radiopharmaceutical,
    - c. The molybdenum 99 content to USP limits,
    - d. The name of the procedure for which the radiopharmaceutical is prescribed,
    - e. The words "Physician's Use Only" instead of the name of the patient if the radiopharmaceutical is nontherapeutic or for a nonblood product,
    - f. The words "Caution: Radioactive Material," and
    - g. The standard radiation symbol.
3. The radiopharmaceutical container shall have a label that includes:
- a. The date and time of calibration of the radiopharmaceutical;
  - b. The name of the patient, recorded before dispensing, if the radiopharmaceutical is therapeutic or for a blood product;
  - c. The words "Physician's Use Only" instead of the name of the patient if the radiopharmaceutical is nontherapeutic or for a nonblood product;
  - d. The name of the radiopharmaceutical;
  - e. The dose of radiopharmaceutical;
  - f. The serial number;
  - g. The words "Caution: Radioactive Material"; and
  - h. The standard radiation symbol.
- F.** The following minimum requirements are in addition to the requirements of the Arizona Radiation Regulatory Agency, the applicable U.S. Nuclear Regulatory Commission regulations, and the applicable regulations of the federal Food and Drug Administration. A limited-service nuclear pharmacy permittee shall provide:
1. In addition to the minimum pharmacy area requirements in R4-23-609:
    - a. An area for the storing, compounding, and dispensing of radiopharmaceuticals completely separate from pharmacy areas for nonradioactive drugs;
    - b. A minimum of 80 sq. ft. for a hot lab and storage area; and
    - c. A minimum of 300 sq. ft. of compounding and dispensing area;
  2. The following equipment:
    - a. Fume hood, approved by the Arizona Radiation Regulatory Agency;
    - b. Laminar flow hood;
    - c. Dose calibrator;
    - d. Refrigerator;
    - e. Prescription balance, Class A, and weights or an electronic balance of equal or greater accuracy;
    - f. Well scintillation counter;
    - g. Incubator oven;
    - h. Microscope;
    - i. An assortment of labels, including prescription labels and cautionary and warning labels;
    - j. Glassware necessary for compounding and dispensing radiopharmaceuticals as required by the Arizona Radiation Regulatory Agency;
    - k. Other equipment necessary for radiopharmaceutical quality control for products compounded or dispensed as required by the Arizona Radiation Regulatory Agency;
    - l. Current antidote and drug interaction information; and
    - m. Regional poison control phone number prominently displayed in the pharmacy area;
  3. Supplies necessary for compounding and dispensing radiopharmaceuticals as required by the Arizona Radiation Regulatory Agency;
  4. A professional reference library consisting of a minimum of one current reference or text addressing each of the following subject areas:
    - a. Therapeutics,

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- b. Nuclear pharmacy practice, and
- c. Imaging;
- 5. Current editions and supplements of:
  - a. A.R.S. §§ 30-651 through 30-696 pertaining to the Arizona Radiation Regulatory Agency,
  - b. Rules of the Arizona Radiation Regulatory Agency,
  - c. Regulations of the federal Food and Drug Administration pertaining to radioactive drugs,
  - d. Arizona Pharmacy Act and rules,
  - e. Arizona Uniform Controlled Substances Act, and
  - f. Radiological Health Handbook.
- G. The pharmacist-in-charge of a limited-service nuclear pharmacy shall prepare, implement, review, and revise in the same manner described in R4-23-671(E) and comply with written policies and procedures for pharmacy operations and drug distribution.
- H. The written policies and procedures of a limited-service nuclear pharmacy shall include the following:
  - 1. Prescription orders;
  - 2. Clinical services and drug utilization management including:
    - a. Drug utilization reviews,
    - b. Inventory audits,
    - c. Patient outcome monitoring,
    - d. Drug information, and
    - e. Education of pharmacy and other health professionals;
  - 3. Duties and qualifications of professional and support staff;
  - 4. Radioactive material handling, storage, and disposal;
  - 5. Drug product procurement;
  - 6. Drug compounding, dispensing, and storage;
  - 7. Investigational drugs and their protocols;
  - 8. Patient profiles;
  - 9. Quality management procedures for:
    - a. Adverse drug reaction reports;
    - b. Drug recall;
    - c. Expired and beyond-use-date drugs;
    - d. Medication or dispensing errors;
    - e. Radiopharmaceutical quality assurance;
    - f. Radiological health and safety;
    - g. Drug storage and disposition; and
    - h. Education of professional staff, support staff, and patients;
  - 10. Recordkeeping;
  - 11. Sanitation;
  - 12. Security;
  - 13. Drug delivery requirements for:
    - a. Transportation,
    - b. Security,
    - c. Radiological health and safety procedures,
    - d. Temperature and other environmental controls, and
    - e. Emergency provisions; and
  - 14. Patient education.

**Historical note**

Adopted effective July 8, 1997 (Supp. 97-3). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3).

**R4-23-683. Reserved**

**through**

**R4-23-690. Reserved**

**R4-23-691. Repealed**

**Historical Note**

Adopted effective Dec. 3, 1974 (Supp. 75-1). Amended effective Aug. 12, 1988 (Supp. 88-3). Amended effective November 1, 1993 (Supp. 93-4). Repealed effective July 8, 1997 (Supp. 97-3).

**R4-23-692. Compressed Medical Gas (CMG) Distributor-Resident or Nonresident**

- A. Permit.
  - 1. A person shall not manufacture, process, transfill, package, or label a compressed medical gas in Arizona, or manufacture, process, transfill, package, or label a compressed medical gas outside Arizona and ship into Arizona without a current Board-issued resident or nonresident compressed medical gas distributor permit.
  - 2. Before operating as a compressed medical gas distributor, a person shall register with the FDA as a medical gas manufacturer and comply with the drug listing requirements of the federal act.
- B. Application. To obtain a resident or nonresident CMG distributor permit, a person shall submit a completed application form and fee as specified in R4-23-602.
  - 1. A resident CMG distributor permit applicant shall include documentation of compliance with local zoning laws, if required by the Board.
  - 2. A nonresident CMG distributor permit applicant that resides in a jurisdiction that issues an equivalent license or permit shall include a copy of the equivalent license or permit.
- C. Notification. A resident or nonresident CMG distributor permittee shall provide written notice by mail, facsimile, or e-mail to the Board office within ten days of changes involving the telephone number, facsimile number, e-mail address, mailing address, or name of business.
- D. Change of ownership. No less than 14 days before a change of ownership occurs that involves changes of stock ownership of 30% or more of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit a completed application form and fee as specified in subsection (B).
- E. Relocation.
  - 1. No less than 30 days before an existing resident CMG distributor permittee relocates, the permittee shall submit a completed application for relocation electronically or manually on a form furnished by the Board, and the documentation required in subsection (B).
  - 2. A nonresident CMG distributor permittee shall provide written notice by mail, facsimile, or e-mail to the Board office no less than ten days before relocating.
- F. A resident or nonresident CMG distributor permittee shall sell or distribute a compressed medical gas pursuant to a compressed medical gas order only to durable medical equipment and compressed medical gas suppliers and other entities that are registered, licensed, or permitted to use, administer, or distribute compressed medical gases.
- G. Facility. A resident or nonresident CMG distributor permittee shall ensure the facility is clean, uncluttered, sanitary, temperature controlled, and secure from unauthorized access.
- H. Current Good Manufacturing Practice: A resident or nonresident CMG distributor permittee shall comply with the current good manufacturing practice requirements of 21 CFR parts 210 and 211, (Revised April 1, 2013, incorporated by reference and on file with the Board and available at [www.gpo.gov](http://www.gpo.gov). This incorporated material includes no future editions or amendments).

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- I. Records:** A resident or nonresident CMG distributor permittee shall establish and implement written procedures for maintaining records pertaining to production, transfilling, process control, labeling, packaging, quality control, distribution, returns, recalls, training of personnel, complaints, and any information required by federal or state law.
1. A permittee shall retain the records required by Section R4-23-601, this Section, and 21 CFR parts 210 and 211 for not less than three years or one year after the expiration date of the compressed medical gas, whichever is longer.
  2. A permittee shall make the records required by Section R4-23-601, this Section, and 21 CFR parts 210 and 211 available on inspection by the Board or its compliance officer, or if stored in a centralized recordkeeping system apart from the inspection location and not electronically retrievable, shall provide the records within four working days of a request by the Board or its compliance officer.
- J. Inspection.**
1. A resident CMG distributor permittee shall make the CMG distributor's facility available for inspection by the Board or its compliance officers under A.R.S. § 32-1904.
  2. Within ten days from the date of a request by the Board or its staff, a nonresident CMG distributor permittee shall provide a copy of the most recent inspection report completed by the permittee's resident licensing authority or the FDA, or a copy of the most recent inspection report completed by a third-party auditor approved by the permittee's resident licensing authority or the Board or its designee. The Board may inspect, or may employ a third-party auditor to inspect, a nonresident permittee as specified in A.R.S. § 32-1904.
- K. Permit renewal.** Permit renewal shall be as specified in R4-23-602(D).
- L. Nothing in this Section shall be construed to prohibit the emergency administration of oxygen by licensed health care personnel, emergency medical technicians, first responders, fire fighters, law enforcement officers, and other emergency personnel trained in the proper use of emergency oxygen.**

**Historical Note**

Adopted effective January 12, 1998 (Supp. 98-1).  
Amended by final rulemaking at 19 A.A.R. 97, effective March 10, 2013 (Supp. 13-1). Amended by final rulemaking at 20 A.A.R. 1364, effective August 2, 2014 (Supp. 14-2).

**R4-23-693. Durable Medical Equipment (DME) and Compressed Medical Gas (CMG) Supplier-Resident or Nonresident**

- A. Permit.** A person shall not sell, lease, or supply durable medical equipment or a compressed medical gas to a patient or consumer in Arizona for use in a home or residence without a current Board-issued resident or nonresident durable medical equipment and compressed medical gas supplier permit.
1. The permit requirements of this Section shall not apply to the following unless there is a separate business entity engaged in the business of providing durable medical equipment or a compressed medical gas to a patient or consumer for use in a home or residence:
    - a. A medical practitioner licensed under A.R.S. Title 32;
    - b. A hospital, long-term care facility, hospice, or other health care facility using durable medical equipment or a compressed medical gas in the normal course of treating a patient; and
    - c. A pharmacy.
2. Nothing in this Section shall be construed to prohibit a person with a current Board-issued nonprescription drug permit from the retail sale of nonprescription drugs or devices.
- B. Application.** To obtain a resident or nonresident DME and CMG supplier permit, a person shall submit a completed application form and fee as specified in R4-23-602.
1. A resident DME and CMG supplier permit applicant shall include documentation of compliance with local zoning laws, if required by the Board.
  2. A nonresident DME and CMG supplier permit applicant that resides in a jurisdiction that issues an equivalent license or permit shall include a copy of the equivalent license or permit.
- C. Notification.** A resident or nonresident DME and CMG supplier permittee shall provide written notice by mail, facsimile, or e-mail to the Board office within ten days of changes involving the telephone number, facsimile number, email address, mailing address, or name of business.
- D. Change of ownership.** No less than 14 days before a change of ownership occurs that involves changes of stock ownership of 30% or more of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit a completed application form and fee as specified in subsection (B).
- E. Relocation.**
1. No less than 30 days before an existing resident DME and CMG supplier permittee relocates, the permittee shall submit a completed application for relocation electronically or manually on a form furnished by the Board, and the documentation required in subsection (B).
  2. A nonresident DME and CMG supplier permittee shall provide written notice by mail, facsimile, or e-mail to the Board office no less than ten days before relocating.
- F. Orders.** A resident or nonresident DME and CMG supplier shall sell, lease, or provide:
1. Durable medical equipment that is a prescription-only device as defined in A.R.S. § 32-1901(75) only pursuant to a prescription order or medication order from a medical practitioner; and
  2. A compressed medical gas only pursuant to a compressed medical gas order from a medical practitioner.
- G. Restriction.** A DME and CMG supplier permit shall authorize the permittee to procure, possess, and provide a prescription-only device or compressed medical gas to a patient or consumer as specified in subsection (F). A DME and CMG supplier permit does not authorize the permittee to procure, possess, or provide narcotics or other controlled substances, prescription-only drugs other than compressed medical gases, precursor chemicals, or regulated chemicals.
- H. Facility.** A resident or nonresident DME and CMG supplier permittee shall ensure the facility is clean, uncluttered, sanitary, temperature controlled, and secure from unauthorized access. A permittee shall maintain separate and identified storage areas in the facility and in the delivery vehicles for clean, dirty, contaminated, or damaged durable medical equipment or compressed medical gases.
- I.** A resident or nonresident DME and CMG supplier permittee shall not manufacture, process, transfill, package, or label a compressed medical gas, except as set forth in subsection (J).
- J. Records.** A resident or nonresident DME and CMG supplier permittee shall establish and implement written procedures for maintaining records pertaining to acquisition, distribution, returns, recalls, training of personnel, maintenance, cleaning, and complaints. A permittee shall:

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1. Ensure that a prescription order, medication order, or compressed medical gas order is obtained as specified in subsection (F);
  2. Ensure that each compressed medical gas container supplied by the permittee contains a label bearing the name and address of the permittee;
  3. Ensure that all appropriate warning labels are present on the durable medical equipment or compressed medical gas;
  4. Retain the records required by Section R4-23-601 and this Section for not less than three years, or if supplying a compressed medical gas, one year after the expiration date of the compressed medical gas, whichever is longer; and
  5. Make the records required by Section R4-23-601 and this Section available on inspection by the Board or its compliance officer, or if stored in a centralized recordkeeping system apart from the inspection location and not electronically retrievable for inspection, shall provide the records within four working days of a request by the Board or its staff.
- K. Inspection.**
1. A resident DME and CMG supplier permittee shall make the DME and CMG supplier's facility available for inspection by the Board or its compliance officers under A.R.S. § 32-1904.
  2. Within ten days from the date of a request by the Board or its staff, a nonresident DME and CMG supplier permittee shall provide a copy of the most recent inspection report completed by the permittee's resident licensing authority, or a copy of the most recent inspection report completed by a third-party auditor approved by the permittee's resident licensing authority or the Board or its designee. The Board may inspect, or may employ a third-party auditor to inspect, a nonresident permittee as specified in A.R.S. § 32-1904.
- L. Permit renewal.** Permit renewal shall be as specified in R4-23-602(D).
- M.** Nothing in this Section shall be construed to prohibit the emergency administration of oxygen by licensed health care personnel, emergency medical technicians, first responders, fire fighters, law enforcement officers, and other emergency personnel trained in the proper use of emergency oxygen.
- Historical Note**  
Adopted effective January 12, 1998 (Supp. 98-1).  
Amended by final rulemaking at 20 A.A.R. 1364, effective August 2, 2014 (Supp. 14-2).
- ARTICLE 7. NON-PHARMACY LICENSED OUTLETS – GENERAL PROVISIONS**
- R4-23-701. Long-term Care Facilities Pharmacy Services: Consultant Pharmacist**
- A.** The long-term care consultant pharmacist as defined in R4-23-110 shall:
1. Possess a valid Arizona pharmacist license issued by the Board;
  2. Ensure the provision of pharmaceutical patient care services as defined in R4-23-110;
  3. Review the distribution and storage of drugs and devices and assist the facility in establishing policies and procedures for the distribution and storage of drugs and devices;
  4. Provide resident evaluation programs that relate to monitoring the therapeutic response and utilization of all drugs and devices prescribed or administered to residents, using as guidelines the most current indicators established by the Centers for Medicare and Medicaid Services, United States Department of Health and Human Services as required in 42 CFR 483.60 (revised October 1, 2010, incorporated by reference and on file with the Board. This incorporated material contains no future editions or amendments.).
- 5.** Serve as a resource for pharmacy-related education services within the facility;
- 6.** Participate in quality management of resident care in the facility; and
- 7.** Communicate with the provider pharmacy regarding areas of mutual concern and resolution.
- B.** A long-term care consultant pharmacist shall ensure that:
1. When a provider pharmacy is not open for business, arrangements are made in advance by the long-term care consultant pharmacist, in cooperation with the pharmacist-in-charge of the provider pharmacy and the director of nursing and medical staff of the long-term care facility, for providing emergency drugs for the licensed nursing staff to administer to the residents of the facility using an emergency drug supply unit located at the facility;
  2. The label and packaging of prescription-only and nonprescription drugs intended for use within a long-term care facility complies with state and federal law; and
  3. The long-term care facility:
    - a. Stores controlled substances listed in A.R.S. § 36-2513 in a separately locked and permanently affixed compartment, unless the facility uses a single-unit package medication distribution system; and
    - b. Maintains accurate records of controlled substance administration or ultimate disposition.
- C.** The long-term care consultant pharmacist shall:
1. Ensure availability of records and reports designed to provide the data necessary to evaluate the drug use of each long-term care facility resident that include the following:
    - a. Provider pharmacy patient profiles and long-term care facility medication administration records;
    - b. Reports of suspected adverse drug reactions;
    - c. Inspection reports of drug storage areas with emphasis on detecting outdated drugs; and
    - d. Accountability reports, that include:
      - i. Date and time of administration,
      - ii. Name of the person who administered the drug,
      - iii. Documentation and verification of any wasted or partial doses,
      - iv. Exception reports for refused doses, and
      - v. All drug destruction forms; and
  2. Identify and report drug irregularities and dispensing errors to the prescriber, the director of nursing of the facility, and the provider pharmacy.
- D.** A long-term care consultant pharmacist or pharmacist-in-charge of a provider pharmacy shall ensure that:
1. Discontinued or outdated drugs, including controlled substances, are destroyed or disposed of in a timely manner using methods consistent with federal, state, and local requirements and subject to review by the Board or its staff; and
  2. Drug containers with illegible or missing labels are:
    - a. Identified; and
    - b. Replaced or relabeled by a pharmacist employed by the pharmacy that dispensed the prescription medication.
- Historical Note**  
Former Rules 6.8110, 6.8120, 6.8130, 6.8140, 6.8150, 6.8160, and 6.8170; Amended effective Aug. 10, 1978

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(Supp. 78-4). Section repealed, new Section adopted effective December 18, 1992 (Supp. 92-4). Amended by final rulemaking at 9 A.A.R. 1064, effective May 4, 2003 (Supp. 03-1). 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. 2894, effective November 10, 2013 (Supp. 13-3).

**R4-23-701.01. Long-term Care Facilities Pharmacy Services: Provider Pharmacy**

The limited-service pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall ensure that:

1. A prescription medication is provided only by a valid prescription order for an individual long-term care facility resident, properly labeled for that resident, as specified in this subsection. Nothing in this Section shall prevent a provider pharmacy from supplying nonprescription drugs in a manufacturer's unopened container or emergency drugs using an emergency drug supply unit as specified in R4-23-701.02;
2. A prescription medication label for a long-term care facility resident complies with A.R.S. §§ 32-1968 and 36-2525 and contains:
  - a. The drug name, strength, dosage form, and quantity; and
  - b. The beyond-use-date;
3. Only a pharmacist employed by the pharmacy that dispensed the prescription medication may, through the exercise of professional judgment, relabel or alter a prescription medication label that is illegible or missing;
4. The provider pharmacy develops and implements drug recall policies and procedures that protect the health and safety of facility residents. The drug recall procedures shall include immediate discontinuation of any patient level recalled drug and notification of the prescriber and director of nursing of the facility; and
5. Drugs previously dispensed to a resident of the long-term care facility by another pharmacy, and drugs previously dispensed by the provider pharmacy, are not repackaged.

**Historical Note**

Adopted effective December 18, 1992 (Supp. 92-4). Amended by final rulemaking at 9 A.A.R. 1064, effective May 4, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 2894, effective November 10, 2013 (Supp. 13-3).

**R4-23-701.02. Long-term Care Facilities Pharmacy Services: Emergency Drugs**

- A. The limited-service pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall ensure that:
  1. An emergency drug supply unit is available within the long-term care facility,
  2. Drugs contained in an emergency drug supply unit remain the property of the provider pharmacy, and
  3. Controlled substance drugs contained in an emergency drug supply unit are included in all inventories required under A.R.S. § 36-2523(B) and R4-23-1003(A).
- B. An emergency drug supply unit shall meet the following criteria:
  1. The drugs are necessary to meet the immediate and emergency therapeutic needs of long-term care facility residents as determined by the provider pharmacy's pharmacist-in-charge in consultation with the long-term care facility's medical director and nursing director;
  2. The purpose of the emergency drug supply unit in a long-term care facility is not to relieve a provider pharmacy of the responsibility for timely provision of the resident's

routine drug needs, but to ensure that an emergency drug supply unit is available for facility residents in need of immediate and emergency therapeutic drugs; and

3. The drugs are provided in a manufacturer's unit of use package or are prepackaged and labeled to include the drug name, strength, dosage form, manufacturer, lot number, and expiration date and provider pharmacy's name, address, telephone number, and pharmacist's initials.
- C. The limited-service pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall ensure that an emergency drug supply unit:
  1. Is stored in an area that:
    - a. Is temperature controlled; and
    - b. Prevents unauthorized access;
  2. Contains on the exterior of the emergency drug supply unit a label to indicate that the contents are for emergency use only;
  3. Contains on the exterior of the emergency drug supply unit a complete list of the contents of the unit by drug name, strength, dosage form, and quantity and the provider pharmacy's name, address, and telephone number;
  4. Contains on the exterior of the emergency drug supply unit a label that indicates the date of the earliest drug expiration date;
  5. Contains on the exterior of the emergency drug supply unit a label that indicates the date of and pharmacist responsible for the last inspection of the emergency drug supply unit; and
  6. Is secured with a tamper-evident seal, or is locked and sealed in a manner that obviously reveals when the unit has been opened or tampered with.
- D. The limited-service pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall:
  1. Prepare, implement, review, and revise in the same manner described in R4-23-671(E) and comply with written policies and procedures for the storage and use of an emergency drug supply unit in a long-term care facility;
  2. Make the policies and procedures available in the provider pharmacy and long-term care facility for employee reference and inspection by the Board or its staff;
  3. Ensure that the written policies and procedures include the following:
    - a. Drug removal procedures that require:
      - i. The long-term care facility's personnel receive a valid prescription order for each drug removed from the emergency drug supply unit,
      - ii. The long-term care facility's personnel notify the provider pharmacy when a drug is removed from the emergency drug supply unit,
    - b. Outdated drug replacement procedures, and
    - c. Security and inspection procedures;
  4. Exchange or restock the emergency drug supply unit weekly, or more often as necessary, to ensure the availability of an adequate supply of emergency drugs within the long-term care facility. Restocking of the emergency drug supply unit at the facility shall be completed by an Arizona licensed pharmacist employed by the provider pharmacy, or by an Arizona licensed intern, graduate intern, technician or technician trainee under the direct onsite supervision of an Arizona licensed pharmacist; and
  5. Educate pharmacy and long-term care facility personnel in the storage and use of an emergency drug supply unit.
- E. In addition to the requirements of subsections (A) through (D), an automated emergency drug supply unit may be used provided:

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1. The pharmacy permittee or pharmacist-in-charge of the provider pharmacy notifies the Board or its staff in writing of the intent to use an automated emergency drug supply unit, including the name and type of unit;
  2. The provider pharmacy is notified electronically when the automated emergency drug supply unit has been accessed;
  3. All events involving the access of the automated emergency drug supply unit are recorded electronically and maintained for not less than two years;
  4. The provider pharmacy is capable of producing a report of all transactions of the automated emergency drug supply unit including a single drug usage report as required in R4-23-408(B)(5) on inspection by the Board or its staff;
  5. The provider pharmacy develops written policies and procedures for:
    - a. Accessing the automated emergency drug supply unit in the event of a system malfunction or downtime,
    - b. Authorizing and modifying user access,
    - c. An ongoing quality assurance program that includes:
      - i. Training in the use of the automated emergency drug supply unit for all authorized users,
      - ii. Maintenance and calibration of the automated emergency drug supply unit as recommended by the device manufacturer; and
  6. Documentation of the requirements of subsection (E)(5)(c)(ii) is maintained for inspection by the Board or its staff for not less than two years.
- F.** The Board may prohibit a pharmacy permittee or pharmacist-in-charge of a provider pharmacy from using an automated emergency drug supply unit if the pharmacy permittee or pharmacy permittee's employees do not comply with the requirements of subsections (A) through (E).

**Historical Note**

Adopted effective December 18, 1992 (Supp. 92-4).  
Amended by final rulemaking at 9 A.A.R. 1064, effective May 4, 2003 (Supp. 03-1). 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. 2894, effective November 10, 2013 (Supp. 13-3).

**R4-23-701.03. Long-term Care Facilities Pharmacy Services: Emergency Drug Prescription Order**

The limited-service pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall ensure that every emergency drug prescription order is evaluated according to the requirements of R4-23-402(A) by a pharmacist within 72 hours of the first dose of drug administered by long-term care facility personnel under the emergency drug prescription order.

**Historical Note**

Adopted effective December 18, 1992 (Supp. 92-4).  
Amended by final rulemaking at 9 A.A.R. 1064, effective May 4, 2003 (Supp. 03-1).

**R4-23-701.04. Long-term Care Facilities Pharmacy Services: Automated Dispensing Systems**

- A.** Before using an automated dispensing system as defined in R4-23-110, a pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall:
1. Notify the Board or its staff in writing of the intent to use an automated dispensing system, including the name and type of system;
  2. Obtain a separate controlled substances registration at the location of each long-term care facility at which an automated dispensing system containing controlled substances will be located as required by federal law; and
  3. Maintain copies of the registrations required under subsection (A)(2) at the provider pharmacy for inspection by the Board or its staff.
- B.** A pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall ensure:
1. Drugs contained in an automated dispensing system remain the property of the provider pharmacy,
  2. Controlled substance drugs contained in an automated dispensing system are included in all inventories required under A.R.S. § 36-2523(B) and R4-23-1003(A),
  3. Schedule II drugs are not stocked in an automated dispensing system, and
  4. A separate emergency drug supply unit is available in the long-term care facility to meet the requirements of R4-23-701.02.
- C.** A pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall:
1. Ensure that policies and procedures as required in subsection (D) for the use of an automated dispensing system in a long-term care facility are prepared, implemented, and complied with;
  2. Review biennially and, if necessary, revise the policies and procedures required under subsection (D);
  3. Document the review required under subsection (C)(2);
  4. Assemble the policies and procedures as a written or electronic manual; and
  5. Make the policies and procedures available for employee reference and inspection by the Board or its staff within the pharmacy and at any location outside of the pharmacy where the automated dispensing system is used.
- D.** A pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall ensure the written policies and procedures include:
1. Drug removal procedures that include the following:
    - a. A drug is provided only by a valid prescription order for an individual long-term care facility resident;
    - b. A drug is dispensed from an automated dispensing system only after a pharmacist has:
      - i. Reviewed and verified the resident's prescription order as required by R4-23-402(A), and
      - ii. Electronically authorized the access for that drug for that particular resident, and
    - c. The automated dispensing system labels each individual drug packet with a resident specific label that complies with R4-23-701.01(2) and contains the resident's room number or facility identification number; and
  2. Security procedures that include the following:
    - a. The pharmacy permittee or pharmacist-in-charge of the provider pharmacy is responsible for authorizing user access, including adding and removing users and modifying user access;
    - b. Each authorized user is a licensee of the Board or authorized licensed personnel of the long-term care facility; and
    - c. The automated dispensing system is secured at the long-term care facility by electronic or mechanical means or a combination thereof designed to prevent unauthorized access;
  3. Drug stocking procedures that include the following:
    - a. Automated dispensing systems that use non-removable containers that do not allow prepackaging of the container as set out in subsection (D)(3)(b);

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- i. Are stocked at the long-term care facility by an Arizona licensed pharmacist employed by the provider pharmacy, or by an Arizona licensed intern, graduate intern, technician or technician trainee under the direct onsite supervision of an Arizona licensed pharmacist; and
- ii. Utilize bar code or other technologies to ensure the correct drug is placed in the correct canister or container; and
- b. Automated dispensing systems that use removable containers may be stocked at the long-term care facility by an authorized user provided:
  - i. The prepackaging of the container occurs at the provider pharmacy;
  - ii. A pharmacist verifies the container has been properly filled and labeled, and the container is secured with a tamper-evident seal;
  - iii. The individual containers are transported to the long-term care facility in a secure, tamper-evident shipping container; and
  - iv. The automated dispensing system uses microchip, bar-coding, or other technologies to ensure the containers are accurately loaded in the automated dispensing system; and
- 4. Recordkeeping and report procedures that include the following:
  - a. All events involving the access of the automated dispensing system are recorded electronically and maintained for not less than two years;
  - b. The provider pharmacy is capable of producing a report of all transactions of the automated dispensing system including:
    - i. A single drug usage report that complies with R4-23-408(B)(5); and
    - ii. An authorized user history including date and time of access and type of transaction; and
  - c. The provider pharmacy has procedures to safeguard the storage, packaging, and distribution of drugs by monitoring:
    - i. Current inventory;
    - ii. Expiration dates;
    - iii. Controlled substance dispensing;
    - iv. Re-dispense requests; and
    - v. Wastage.
- E. A pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall:
  - 1. Ensure that an electronic log is kept for each container fill that includes:
    - a. An identification of the container by drug name and strength, and container number;
    - b. The drug's manufacturer or National Drug Code (NDC) number;
    - c. The expiration date and lot number from the manufacturer's stock bottle that is used to fill the container. If multiple lot numbers of the same drug are added to a container, each lot number and expiration date shall be documented;
    - d. The date the container is filled;
    - e. Documentation of the identity of the licensee who placed the drug into the container; and
    - f. If the licensee who filled the container is not a pharmacist, documentation of the identity of the pharmacist who supervised the non-pharmacist licensee; and
  - 2. Maintain the electronic log for inspection by the Board or its staff for not less than two years.
- F. A pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall:
  - 1. Implement an ongoing quality assurance program that monitors performance of the automated dispensing system and compliance with the established policies and procedures that includes:
    - a. Training in the use of the automated dispensing system for all authorized users,
    - b. Maintenance and calibration of the automated dispensing system as recommended by the device manufacturer,
    - c. Routine accuracy validation testing no less than every three months, and
    - d. Downtime and malfunction procedures to ensure the timely provision of medication to the long-term care facility resident, and
  - 2. Maintain documentation of the requirements of subsections (F)(1)(b) and (F)(1)(c) for inspection by the Board or its staff for not less than two years.
- G. The Board may prohibit a pharmacy permittee or pharmacist-in-charge from using an automated dispensing system in a long-term care facility if the pharmacy permittee or the pharmacy permittee's employees do not comply with the requirements of subsections (A) through (F).

**Historical Note**

New Section made by final rulemaking at 19 A.A.R. 2894, effective November 10, 2013 (Supp. 13-3).

**R4-23-702. Hospice Inpatient Facilities**

- A. If a pharmacy permittee contracts to provide pharmacy services to the patients of a hospice inpatient facility as defined in R4-23-110, the pharmacy permittee shall ensure that:
  - 1. A prescription medication is provided only by a valid prescription order for an individual hospice inpatient facility patient, properly labeled for that patient, as specified in this subsection. Nothing in this section shall prevent a provider pharmacy from supplying non-prescription drugs in a manufacturer's unopened container;
  - 2. A prescription medication label for a hospice inpatient facility patient complies with A.R.S. §§ 32-1968 and 36-2525 and contains:
    - a. The drug name, strength, dosage form, and quantity; and
    - b. The beyond-use date; and
  - 3. If the label on the hospice inpatient facility patient's drug container becomes damaged or soiled, a pharmacist employed by the pharmacy that dispensed the drug container, through the exercise of professional judgment, may relabel the drug container. Only a pharmacist is permitted to label a drug container or alter the label of a drug container.
- B. A pharmacist may help hospice inpatient facility personnel develop written policies and procedures for the procurement, administration, storage, control, recordkeeping, and disposal of drugs in the facility.
- C. The provider pharmacy may contract with the hospice inpatient facility to provide pharmacist services at the facility that include evaluation of the patient's response to medication therapy, identification of potential adverse drug reactions, and recommended appropriate corrective action.
- D. A provider pharmacy that places an emergency drug supply unit at a hospice inpatient facility shall comply with the requirements of R4-23-701.02.
- E. A pharmacy shall not place an automated dispensing system as defined in R4-23-701.04 in a hospice inpatient facility.

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- F. Drugs previously dispensed to a patient of the hospice inpatient facility by another pharmacy, and drugs previously dispensed by the provider pharmacy, shall not be repackaged.

**Historical Note**

Former Rules 6.8210, 6.8211, 6.8212, 6.8213, 6.8214, 6.8221, 6.8222, 6.8223, 6.8824, 6.8231, 6.8232, 6.8233, 6.8241, 6.8242, and 6.8243; Amended effective August 10, 1978 (Supp. 78-4). Repealed effective December 18, 1992 (Supp. 92-4). New Section made by final rulemaking at 19 A.A.R. 2894, effective November 10, 2013 (Supp. 13-3).

**R4-23-703. Assisted Living Facilities**

- A. Before dispensing, selling, or delivering a prescription or non-prescription drug to an assisted living facility resident, a pharmacy permittee shall verify the assisted living facility has a current and active license issued by the Arizona Department of Health Services.
- B. A pharmacy permittee shall ensure that, except as provided under subsection (C):
1. A controlled substance prescription drug is dispensed, sold, or delivered to an assisted living facility resident only after receiving a valid prescription order for the controlled substance prescription drug from the resident's medical practitioner; and
  2. The controlled substance prescription drug is labeled in accordance with A.R.S. §§ 32-1963.01, 32-1968, and 36-2525 and includes the beyond-use date on the label.
- C. A pharmacy permittee may dispense, sell, or deliver to an assisted living facility resident a Schedule III, IV, or V controlled substance prescription if the pharmacy permittee:
1. Receives a written or oral prescription order for the Schedule III, IV, or V controlled substance from:
    - a. The resident's medical practitioner,
    - b. An individual licensed by the Arizona Board of Nursing who is acting within the scope of practice of the individual's license, or
    - c. The manager or a caregiver of the assisted living facility if the resident's medical practitioner has a written agreement with the assisted living facility designating a representative of the assisted living facility as an agent of the medical practitioner and a licensed medical practitioner provided the prescription order;
  2. Complies with subsection (D)(2); and
  3. Labels the Schedule III, IV, or V controlled substance as specified under subsection (B)(2).
- D. A pharmacy permittee may dispense, sell, or deliver to an assisted living facility resident a non-controlled substance prescription or non-prescription drug if the pharmacy permittee:
1. Receives a written or oral prescription order for the non-controlled substance prescription or non-prescription drug from:
    - a. The resident's medical practitioner,
    - b. An individual licensed by the Arizona Board of Nursing who is acting within the scope of practice of the individual's license, or
    - c. An assisted living facility manager or caregiver acting under the authority of a licensed medical practitioner;
  2. Determines the written or oral prescription order:
    - a. Meets the requirements of R4-23-407, and
    - b. Includes the name and title of the individual transmitting the prescription order; and

3. Labels the non-narcotic prescription or non-prescription drug in accordance with A.R.S. §§ 32-1963.01 and 32-1968 and includes the beyond-use date on the label.

- E. If the label on an assisted living facility resident's drug container becomes damaged or soiled, a pharmacist employed by the pharmacy permittee that dispensed the drug container, through the exercise of professional judgment, may relabel the drug container. Only a pharmacist is permitted to label a drug container or alter the label of a drug container.
- F. A pharmacist may help assisted living facility personnel develop written policies and procedures regarding procuring, administering, storing, controlling, keeping records, and disposing of drugs in the facility and provide information concerning safe and effective supervision of drug self-administration.
- G. A pharmacy permittee shall not place an emergency drug supply unit as described in R4-23-701.02 or an automated dispensing system as described in R4-23-701.04 in an assisted living facility.
- H. A pharmacist shall not repackage a drug previously dispensed to an assisted living facility resident.

**Historical Note**

Former Rules 6.8310, 6.8320, 6.8330, 6.8340, 6.8350, 6.8360, and 6.8370; Amended effective August 10, 1978 (Supp. 78-4). Amended by final rulemaking at 5 A.A.R. 2561, effective July 16, 1999 (Supp. 99-3). Amended by final rulemaking at 19 A.A.R. 2894, effective November 10, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2424, effective October 14, 2017 (Supp. 17-3).

**R4-23-704. Customized Patient Medication Packages**

In lieu of dispensing two or more prescribed drugs in separate containers, a pharmacist may, with the consent of the patient, the patient's caregiver, the prescriber, or the facility caring for the patient, provide a customized patient medication package. The pharmacist preparing a customized patient medication package shall abide by the guidelines set forth in the current edition of the official compendium for labeling, packaging, and recordkeeping, and state and federal law.

**Historical Note**

Former Rules 6.8410, 6.8411, 6.8412, 6.8413, 6.8414, 6.8415, 6.8416, and 6.8417. Section R4-23-704 repealed by final rulemaking at 5 A.A.R. 862, effective March 3, 1999 (Supp. 99-1). Amended by final rulemaking at 19 A.A.R. 2894, effective November 10, 2013 (Supp. 13-3).

**R4-23-705. Repealed****Historical Note**

Former Rules 6.8420, 6.8421, 6.8422, 6.8423, 6.8424, 6.8425, 6.8426, 6.8427, 6.8428, and 6.8429. Amended effective August 10, 1978 (Supp. 78-4). Amended effective August 24, 1992 (Supp. 92-3). Repealed effective December 18, 1992 (Supp. 92-4).

**R4-23-706. Repealed****Historical Note**

Former Rules 6.8431, 6.8432, 6.8433, 6.8434, 6.8435, 6.8436, and 6.8437; Amended effective August 10, 1978 (Supp. 78-4). Amended subsections (C), (E), (F), and (G) effective April 20, 1982 (Supp. 82-2). Section R4-23-706 repealed by final rulemaking at 5 A.A.R. 862, effective March 3, 1999 (Supp. 99-1).

**R4-23-707. Repealed**

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**Historical Note**

Former Rules 6.8441, 6.8442, 6.8450, 6.8451, 6.8452, 6.8453, 6.8454, 6.8455, 6.8456, and 6.8457. Section R4-23-707 repealed by final rulemaking at 5 A.A.R. 862, effective March 3, 1999 (Supp. 99-1).

**R4-23-708. Repealed****Historical Note**

Former Rules 6.8461, 6.8462, 6.8463, and 6.8464. Section R4-23-708 repealed by final rulemaking at 5 A.A.R. 862, effective March 3, 1999 (Supp. 99-1).

**R4-23-709. Repealed****Historical Note**

Former Rules 6.8471, 6.8472, and 6.8473. Section R4-23-709 repealed by final rulemaking at 5 A.A.R. 862, effective March 3, 1999 (Supp. 99-1).

**ARTICLE 8. DRUG CLASSIFICATION**

*Article 8, consisting of Sections R4-23-801 and R4-23-802, recodified from Article 5 at 9 A.A.R. 4011, effective August 18, 2003 (Supp. 03-3).*

**R4-23-801. Dietary Supplements**

A person who sells, distributes, or provides a product that is labeled as a dietary supplement and is labeled or marketed as a treatment for any deficiency disease, for the correction of any symptom of disease, or for the prevention, mitigation, or cure of any disease, either by direct statement or by inference, is selling, distributing, or providing a drug and is subject to the requirements of A.R.S. Title 32, Chapter 18 and 4 A.A.C. 23.

**Historical Note**

Former Rules 7.1110, 7.1120, and 7.1130. Repealed effective November 4, 1998 (Supp. 98-4). Recodified from R4-23-501 at 9 A.A.R. 4011, effective August 18, 2003 (Supp. 03-3).

**R4-23-802. Veterinary**

Veterinary preparation: A veterinary drug manufacturer or supplier may distribute:

1. A prescription-only veterinary drug to:
  - a. A veterinary medical practitioner licensed under A.R.S. Title 32, Chapter 21,
  - b. A full-service drug wholesaler permitted under A.R.S. Title 32, Chapter 18, or
  - c. A pharmacy permitted under A.R.S. Title 32, Chapter 18, and
2. A nonprescription veterinary drug to:
  - a. A veterinary medical practitioner licensed under A.R.S. Title 32, Chapter 21,
  - b. A nonprescription drug retailer permitted under A.R.S. Title 32, Chapter 18,
  - c. A full-service or nonprescription drug wholesaler permitted under A.R.S. Title 32, Chapter 18, or
  - d. A pharmacy permitted under A.R.S. Title 32, Chapter 18.

**Historical Note**

Former Rules 7.1210, 7.1220, and 7.1230. Repealed effective November 4, 1998 (Supp. 98-4). Recodified from R4-23-502 at 9 A.A.R. 4011, effective August 18, 2003 (Supp. 03-3).

**R4-23-803. Repealed****Historical Note**

Former Rules 7.1300, 7.1400, 7.1500, and 7.1000.

Repealed effective November 4, 1998 (Supp. 98-4).

**R4-23-804. Repealed****Historical Note**

Former Rules 7.2100, 7.2200, 7.2300, 7.2410, 7.2420, and 7.2430. Repealed effective November 4, 1998 (Supp. 98-4).

**ARTICLE 9. PENALTIES AND MISCELLANEOUS****R4-23-901. Penalty for Violations**

Any person, firm, or corporation violating any provision of 4 A.A.C. 23 is subject to the penalties in A.R.S. § 32-1996. In addition, a license or permit issued under the provisions of A.R.S. Title 32, Chapter 18 is subject to suspension or revocation for violation of 4 A.A.C. 23.

**Historical Note**

Former Rule 9.0000. Amended by final rulemaking at 6 A.A.R. 3177, effective August 3, 2000 (Supp. 00-3).

**ARTICLE 10. UNIFORM CONTROLLED SUBSTANCES AND DRUG OFFENSES****R4-23-1001. Repealed****Historical Note**

Adopted effective August 2, 1982 (Supp. 82-4). Section repealed by final rulemaking at 6 A.A.R. 3177, effective August 3, 2000 (Supp. 00-3).

**R4-23-1002. Repealed****Historical Note**

Adopted effective August 2, 1982 (Supp. 82-4). Repealed effective November 4, 1998 (Supp. 98-4).

**R4-23-1003. Records and Order Forms****A. Records.**

1. If the pharmacist-in-charge of a pharmacy is replaced by another pharmacist-in-charge, the new pharmacist-in-charge shall complete an inventory of all controlled substances in the pharmacy within 10 days of assuming the responsibility. This inventory and any other required controlled substance inventory shall:
  - a. Include an exact count of all Schedule II controlled substances;
  - b. Include an exact count of all Schedule III through Schedule V controlled substances or an estimated count if the stock container contains fewer than 1001 units;
  - c. Indicate the date the inventory is taken and whether the inventory is taken before opening of business or after close of business for the pharmacy;
  - d. Be signed by:
    - i. The pharmacist-in-charge; or
    - ii. For other required inventories, the pharmacist who does the inventory;
      - e. Be kept separately from all other records; and
      - f. Be available in the pharmacy for inspection by the Board or its designee for not less than three years.
2. A loss of a controlled substance shall be reported:
  - a. Within 10 days of discovery;
  - b. On a DEA form 106;
  - c. By the pharmacist-in-charge of a pharmacy or a manufacturer;
  - d. By the permittee or designated representative of a full-service wholesaler; and
  - e. To the federal Drug Enforcement Administration (DEA), the Narcotic Division of the Department of Public Safety (DPS), and the Board of Pharmacy. A

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copy of the DEA form 106 shall be kept on file by the pharmacy permittee. The DEA form 106 shall state whether the police investigated the loss.

3. Every person manufacturing any controlled substance, including repackaging or relabeling, shall record and retain for not less than three years the manufacturing, repackaging, or relabeling date for each controlled substance.
  4. Every person receiving, selling, delivering, or disposing of any controlled substance shall record and retain for not less than three years the following information:
    - a. The name, strength, dosage form, and quantity of each controlled substance received, sold, delivered, or disposed;
    - b. The name, address, and DEA registration number of the person from whom each controlled substance is received;
    - c. The name, address, and DEA registration number of the person to whom each controlled substance is sold or delivered or who disposes of each controlled substance; and
    - d. The date of each transaction.
  5. A full-service drug wholesale permittee or the designated representative shall complete an inventory of all controlled substances in the manner prescribed in subsection (A)(1). The permittee or designated representative shall conduct this inventory:
    - a. On May 1 of each year or as directed by the Board; and
    - b. If there is a change of ownership, or discontinuance of business, or within 10 days of a change of a designated representative.
  6. A drug manufacturer permittee or the pharmacist-in-charge shall complete an inventory of all controlled substances in the manner prescribed in subsection (A)(1). The permittee or pharmacist-in-charge shall conduct this inventory:
    - a. On May 1 of each year or as directed by the Board; and
    - b. If there is a change of ownership, or discontinuance of business, or within 10 days of a change of a pharmacist-in-charge.
- B.** Order form. For purposes of A.R.S. § 36-2524, "Order Form" means DEA Form 222c.

**Historical Note**

Adopted effective August 2, 1982 (Supp. 82-4).  
Amended effective November 1, 1993 (Supp. 93-4).  
Amended effective April 1, 1995; filed January 31, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 3177, effective August 3, 2000 (Supp. 00-3). Amended by final rulemaking at 12 A.A.R. 1912, effective July 1, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 3670, effective November 8, 2008 (Supp. 08-3).

**R4-23-1004. Repealed****Historical Note**

Adopted effective August 2, 1982 (Supp. 82-4). Repealed effective November 4, 1998 (Supp. 98-4).

**R4-23-1005. Substances Excepted from the Schedules of Controlled Substances**

- A.** All over-the-counter non-narcotic substances containing limited amounts of controlled substances that are excluded from all controlled substance schedules by 21 CFR 1308.22 (Revised April 1, 2012, incorporated by reference and on file with the Board. This incorporated material contains no future

editions or amendments.), are excluded from all controlled substance schedules in Arizona.

- B.** All chemical preparations or mixtures containing one or more controlled substances listed in any schedule that are exempted from all controlled substance schedules by 21 CFR 1308.24 (Revised April 1, 2012, incorporated by reference and on file with the Board. This incorporated material contains no future editions or amendments.), are excluded from all controlled substance schedules in Arizona.
- C.** All prescription-only drugs that are exempted by 21 CFR 1308.32 (Revised April 1, 2012, incorporated by reference and on file with the Board. This incorporated material contains no future editions or amendments.), are excluded from all controlled substance schedules in Arizona.

**Historical Note**

Adopted effective August 2, 1982 (Supp. 82-4).  
Amended by final rulemaking at 6 A.A.R. 3177, effective August 3, 2000 (Supp. 00-3). Amended by final rulemaking at 18 A.A.R. 2609, effective December 2, 2012 (Supp. 12-4).

**R4-23-1006. Substances Excepted from Drug Offenses**

The following materials, compounds, mixtures, or preparations containing any stimulant or depressant substance included in A.R.S. §§ 13-3401(6)(b) or 13-3401(6)(c) are excepted from the definition of dangerous drugs under the authority of A.R.S. § 32-1904(B)(14):

1. Over-the-counter drugs excepted in R4-23-1005(A).
2. Chemical preparations excepted in R4-23-1005(B).
3. Prescription-only drugs excepted in R4-23-1005(C).

**Historical Note**

Adopted effective August 2, 1982 (Supp. 82-4).  
Amended by final rulemaking at 6 A.A.R. 3177, effective August 3, 2000 (Supp. 00-3).

**ARTICLE 11. PHARMACY TECHNICIANS**

*Article 11, consisting of R4-23-1101 through R4-23-1105, made by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1).*

**R4-23-1101. Licensure and Eligibility**

- A.** License required. A person shall not work as a pharmacy technician or pharmacy technician trainee in Arizona, unless the person possesses a pharmacy technician or pharmacy technician trainee license issued by the Board.
- B.** Eligibility.
1. To be eligible for licensure as a pharmacy technician trainee, a person shall:
    - a. Be of good moral character,
    - b. Be at least 18 years of age, and
    - c. Have a high school diploma or the equivalent of a high school diploma.
  2. To be eligible for licensure as a pharmacy technician, a person shall:
    - a. Meet the requirements of subsection (B)(1),
    - b. Complete a pharmacy technician training program that meets the standards prescribed in R4-23-1105, and
    - c. Pass the Pharmacy Technician Certification Board (PTCB) examination or another Board-approved pharmacy technician examination.
- C.** A pharmacy technician delinquent license. Before an Arizona pharmacy technician license will be reinstated, a pharmacy technician whose Arizona pharmacy technician license is delinquent for five or more consecutive years shall furnish to the Board satisfactory proof of fitness to be licensed as a phar-

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macy technician and pay all past due biennial renewal fees and penalty fees. Satisfactory proof includes:

1. For a person with a delinquent license who is practicing as a pharmacy technician out-of-state with a pharmacy technician license issued by another jurisdiction:
  - a. Proof of current, unrestricted pharmacy technician licensure in another jurisdiction; and
  - b. Proof of employment as a pharmacy technician during the last 12 months; or
2. For a person with a delinquent license who did not practice as a pharmacy technician within the last 12 months:
  - a. Take and pass a Board-approved pharmacy technician examination, and
  - b. Complete 20 contact hours or two CEUs of continuing education activity sponsored by an approved provider, including at least two contact hours or 0.2 CEUs of continuing education activity in pharmacy law.

**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).

**R4-23-1102. Pharmacy Technician Licensure**

- A. Eligibility. An applicant for licensure as a pharmacy technician shall provide the Board proof that the applicant is eligible under R4-23-1101(B)(2), including documentation that the applicant:
  1. Completed a pharmacy technician training program that meets the standards prescribed in R4-23-1105(B)(2); and
  2. Passed the Pharmacy Technician Certification Board (PTCB) examination or another Board-approved pharmacy technician examination; or
  3. Meets the requirements of R4-23-1105(D)(1) or (2).
- B. Application.
  1. An applicant for licensure as a pharmacy technician 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 initial licensure fee specified in R4-23-205(A)(3)(a), and
      - iii. The wall license fee specified in R4-23-205(E)(1)(c).
  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 prior to 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 (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(A)(3)(b).
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(G)(1) 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 that 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).

**R4-23-1103. Pharmacy Technician Trainee Licensure**

- A. Eligibility. An applicant for licensure as a pharmacy technician trainee shall provide the Board proof that 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(A)(4), and
      - iii. The wall license fee specified in R4-23-205(E)(1)(d).
  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 prior to 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

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site shall not practice as a pharmacy technician trainee until the Board office issues a certificate of licensure as specified in subsection (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 24 months from the date issued. A pharmacy technician trainee who does not complete the prescribed training program and pass the Pharmacy Technician Certification Board (PTCB) examination or another 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.
- D. Re-application for licensure.**
1. The Board may allow a pharmacy technician trainee whose license expires before the pharmacy technician trainee completes the prescribed training program and passes the Pharmacy Technician Certification Board (PTCB) examination or another Board-approved pharmacy technician examination to reapply for licensure not more than one time. A pharmacy technician trainee whose license has expired may make a special request to the Board under R4-23-401 for approval to reapply for licensure.
  2. The Board shall base its decision to grant or deny a special request to reapply for licensure on an assessment of:
    - a. The reasons the pharmacy technician trainee did not complete a pharmacy technician training program and the likelihood that the pharmacy technician trainee will complete a pharmacy technician training program within the next 24 months,
    - b. The reasons the pharmacy technician trainee failed the pharmacy technician examination and the likelihood that the pharmacy technician trainee will pass the pharmacy technician examination within the next 24 months, and
    - c. Other extenuating circumstances.
  3. A pharmacy technician trainee that receives Board approval to reapply for licensure shall submit a completed application manually on a form furnished by the Board and pay the licensure fee specified in R4-23-205(A)(4).
- E. Time-frames for pharmacy technician trainee licensure.** 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 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).

**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;
  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 pro-**

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cedures 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 permittee of a retail, institutional, or limited-service pharmacy shall prepare a written program description that includes the following:

1. Responsibility of both the pharmacist in charge and permittee to ensure compliance with this Section;
2. Responsibility of the permittee to design, implement, and monitor a process that ensures the accuracy and safety of the product dispensed;
3. Duties of a verification technician;
4. The training necessary to qualify and remain qualified as a verification technician;
5. The monitoring and evaluation procedures to be used to ensure competency of the verification technician; and
6. Prohibition of a verification technician performing a final accuracy check of a completed prescription label.

C. The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall:

1. Post the written program description required under subsection (B) in the pharmacy area;
2. Provide a copy of the written program description to the pharmacist in charge and verification technician;
3. Obtain the signature of the pharmacist in charge and verification technician on a copy of the written program description and place the signed copy in the personnel file of the pharmacist in charge and verification technician;
4. Ensure scanning technology used in the technology-assisted verification program captures both product and patient information; and
5. Update the written program description as needed and repeat subsections (C)(1) through (4) after each update.

D. Verification technician training: The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall ensure a pharmacy technician does not perform the duties of a verification technician unless the pharmacy technician has the following qualifications:

1. Is licensed under R4-23-1102;
2. Has at least 1,000 hours of pharmacy technician work experience in the same kind of pharmacy practice site in which the technology-assisted verification of product will be performed;
3. Completes a training program that includes at least the following:
  - a. Role of a verification technician in the dispensing process,
  - b. Legal requirements of a verification technician,
  - c. How to use the technology-assisted verification system,
  - d. Primary causes of medication errors, and
  - e. Identifying and resolving dispensing errors; and
4. Completes at least four hours of the continuing education required under R4-23-1106 on patient safety.

E. The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall ensure the pharmacy practice site has a computer data storage and retrieval system that meets the standards in R4-23-408(B).

F. The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall ensure a verification technician verifies only the following:

1. A product with scanning technology that identifies product, or

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2. A robotically prepared unit-dose product.
- G.** The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall ensure a verification technician does not verify the following:
1. A product that involves a combination of drugs resulting from compounding or mixing two or more ingredients or products,
  2. A product that involves or results from an alteration of a drug, or
  3. A DEA schedule II controlled substance.
- H.** The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall perform an unannounced evaluation of the competency of a verification technician at least twice a year and take steps to remediate any deficiencies identified including removing verification duties from the technician.
- I.** The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall maintain the following records:
1. Date the pharmacy technician was designated as a verification technician,
  2. Date the pharmacy technician completed the training required under subsection (D)(3),
  3. Dates and results of the evaluations conducted under subsection (H), and
  4. Date and reason for any disciplinary action against the verification technician arising from performing the duties of a verification technician.
- J.** A verification technician shall wear identification that includes the title "Verification Technician" while on duty.
- K.** As used in this Section, the term "verification technician" means an individual who:
1. Is qualified under subsection (D),
  2. Uses a combination of scanning technology and visual confirmation to verify a product prepared to be dispensed is the product prescribed and indicated on the prescription label, and
  3. Performs verification of work performed by other pharmacy technicians before a pharmacist or graduate or pharmacy intern working under the supervision of a pharmacist performs the final accuracy check required under R4-23-402(A).
- c. Address the policies and procedures specified in R4-23-1104(G) and the permissible activities specified in R4-23-1104(A).
3. A pharmacist-in-charge shall:
    - a. Document the date that a pharmacy technician trainee has successfully completed the training program, and
    - b. Maintain the documentation required in this subsection for inspection by the Board or its designee.
  4. A pharmacy technician trainee shall perform only those tasks, listed in R4-23-1104(A), for which training and competency has been demonstrated.
- C.** Pharmacy technician drug compounding training program.
1. A pharmacy permittee or pharmacist-in-charge shall develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with a pharmacy technician drug compounding training program based on the needs of the individual pharmacy;
  2. A pharmacy permittee or pharmacist-in-charge shall ensure that the pharmacy technician drug compounding training program includes training guidelines that:
    - a. Define the specific tasks a pharmacy technician is expected to perform,
    - b. Specify how and when the pharmacist-in-charge will assess the pharmacy technician's competency, and
    - c. Address the following procedures and tasks:
      - i. Area preparation,
      - ii. Component preparation,
      - iii. Aseptic technique and product preparation,
      - iv. Packaging and labeling, and
      - v. Area clean up;
  3. A pharmacist-in-charge shall:
    - a. Document the date that a pharmacy technician has successfully completed the pharmacy technician drug compounding training program, and
    - b. Maintain the documentation required in this subsection for inspection by the Board or its designee.
- D.** Alternative pharmacy technician training.
1. An individual who has passed the required Board-approved pharmacy technician examination, but has not followed the normal path to pharmacy technician licensure by obtaining a pharmacy technician trainee license and working while completing a pharmacy technician trainee training program as specified in subsection (B), may obtain a pharmacy technician license, if the individual has employment in pharmacy and completes an on-the-job training program as part of the individual's employment orientation that includes: reading and discussing with the pharmacist-in-charge of the pharmacy where employed, the Board rules concerning pharmacy technicians and pharmacy technician trainees, the pharmacy technician and pharmacy technician trainee job description, and the policies and procedures manual of that pharmacy.
  2. An individual who has completed a pharmacy technician certificate program and has passed the required Board-approved pharmacy technician examination, but has not followed the normal path to pharmacy technician licensure by obtaining a pharmacy technician trainee license and working while completing a pharmacy technician trainee training program as specified in subsection (B), may obtain a pharmacy technician license, if the individual has employment in pharmacy and completes an on-the-job training program as part of the individual's employment orientation that includes: reading and discussing with the pharmacist-in-charge of the pharmacy

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 3257, effective January 8, 2018 (Supp. 17-4).

**R4-23-1105. Pharmacy Technician Trainee Training Program, Pharmacy Technician Drug Compounding Training Program, and Alternative Pharmacy Technician Training**

- A.** Nothing in this Section prevents additional offsite training of a pharmacy technician.
- B.** Pharmacy technician trainee training program.
1. A pharmacy permittee or pharmacist-in-charge shall develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with a pharmacy technician trainee training program based on the needs of the individual pharmacy.
  2. A pharmacy permittee or pharmacist-in-charge shall ensure that the pharmacy technician trainee training program includes training guidelines that:
    - a. Define the specific tasks a pharmacy technician trainee is expected to perform,
    - b. Specify how and when the pharmacist-in-charge will assess the pharmacy technician trainee's competency, and

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where employed, the Board rules concerning pharmacy technicians and pharmacy technician trainees, the pharmacy technician and pharmacy technician trainee job description, and the policies and procedures manual of that pharmacy.

3. A pharmacist-in-charge shall:
  - a. Document the date that an individual licensed under subsection (D)(1) or (2) has successfully completed the on-the-job training program as part of the individual's employment orientation as required under subsection (D)(1) or (2), and
  - b. Maintain the documentation required in this subsection for inspection by the Board or its designee.
- E. A pharmacy technician shall perform only those tasks, listed in R4-23-1104(B), for which training and competency has been demonstrated.

**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).

**R4-23-1106. Continuing Education Requirements**

- A. General. According to A.R.S. § 32-1925(I), the Board shall not renew a pharmacy technician license unless the applicant has during the two years preceding the application for renewal:
  1. Participated in 20 contact hours or two CEUs of continuing education activity sponsored by an Approved Provider defined in R4-23-110, and
  2. At least two of the contact hours or 0.2 of the CEUs are approved courses in pharmacy law. For a pharmacy technician licensed less than 24 months the continuing education contact hours are calculated by multiplying 0.83 hours times the number of months between the date of initial licensure and the licensee's next license renewal date.
- B. Valid CEUs. The Board shall:
  1. Only accept CEUs for continuing education activities sponsored by an Approved Provider;
  2. Only accept CEUs accrued during the two-year period immediately before licensure renewal;
  3. Not allow CEUs accrued in a biennial renewal period in excess of the required two CEUs to be carried forward to the succeeding biennial renewal period;
  4. Allow a pharmacy technician who leads, instructs, or lectures to a group of health professionals on pharmacy-related topics in continuing education activities sponsored by an Approved Provider to receive CEUs for a presentation by following the same attendance procedures as any other attendee of the continuing education activity; and
  5. Not accept as a CEU a pharmacy technician's normal teaching duties within a learning institution if the pharmacy technician's primary responsibility is the education of health professionals.
- C. Continuing education records and reporting CEUs. A pharmacy technician shall:
  1. Maintain continuing education records that:
    - a. Verify the continuing education activities the pharmacy technician participated in during the preceding five years; and
    - b. Consist of a statement of credit or a certificate issued by an Approved Provider at the conclusion of a continuing education activity;

2. At the time of licensure renewal, attest to the number of CEUs the pharmacy technician participated in during the renewal period on the biennial renewal form; and
  3. When requested by the Board office, submit proof of continuing education participation within 20 days of the request.
- D. The Board shall deem a pharmacy technician's failure to comply with the continuing education participation, recording, or reporting requirements of this Section as unprofessional conduct and grounds for disciplinary action by the Board under A.R.S. § 32-1927.01.
  - E. A pharmacy technician who is aggrieved by any decision of the Board concerning continuing education units may request a hearing before the Board.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1105, effective April 30, 2005 (Supp. 05-1).

**ARTICLE 12. PRESCRIPTION MEDICATION DONATION PROGRAM****R4-23-1201. Eligibility Requirements for Participation in the Program**

A physician's office, a pharmacy, or a health care institution may participate in the prescription medication donation program, under A.R.S. § 32-1909, if all of the following requirements, as applicable, are met:

1. The physician-in-charge of the participating physician's office has a current license issued under A.R.S. Title 32, Chapter 13 or 17;
2. The pharmacy has a current permit issued under A.R.S. Title 32, Chapter 18;
3. The health care institution has a current license issued under A.R.S. Title 36, Chapter 4 and has a physician-in-charge or pharmacist-in-charge of dispensing; and
4. The physician's office, the pharmacy, or the health care institution complies with all federal and state drug laws, rules, and regulations.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4).

**R4-23-1202. Donating Medications**

- A. The following may donate an eligible prescription medication, as specified in R4-23-1203, to a physician's office, a pharmacy, or a health care institution that participates in the prescription medication donation program:
  1. An individual for whom the prescription medication was prescribed on a patient-specific prescription order or that individual's health care decision maker;
  2. A manufacturer that has a current permit issued under A.R.S. Title 32, Chapter 18; or
  3. A health care institution that has a current license issued under A.R.S. Title 36, Chapter 4.
- B. An individual or health care decision maker electing to donate an eligible prescription medication shall not have taken possession of the prescription medication before the donation and shall make the donation through a medical practitioner, pharmacy, or health care institution.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4).

**R4-23-1203. Eligible Prescription Medications**

A prescription medication may be donated to a physician's office, a pharmacy, or a health care institution that participates in the pre-

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scription medication donation program if the prescription medication:

1. Is not a:
  - a. Controlled substance;
  - b. Drug sample; or
  - c. Drug that can only be dispensed to a patient registered with the drug's manufacturer, because donation could prevent the manufacturer from maintaining required patient registration data;
2. Is in its original sealed and tamper-evident unit dose packaging that is unopened or has only its outside packaging opened and its single unit dose packaging undisturbed;
3. Has been in the possession of a licensed health care professional, manufacturer, pharmacy, or health care institution and not in the possession of the individual specified in R4-23-1202(A)(1);
4. Has been stored according to federal and state drug law and the requirements of the manufacturer's package insert;
5. Has an expiration date or beyond-use-date later than six months after the date of donation;
6. Is in packaging that shows the lot number and expiration date or beyond-use-date of the prescription medication;
7. Does not have any physical signs of tampering or adulteration; and
8. Is in packaging that does not have any physical signs of tampering, except for the outside packaging as specified in subsection (2).

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4).

**R4-23-1204. Eligibility Requirements to Receive Donated Prescription Medications**

An individual is eligible to receive donated prescription medications from the prescription medication donation program if the individual:

1. Is a resident of Arizona;
2. Has an annual family income that is less than or equal to 300% of the poverty level;
3. Satisfies one of the following:
  - a. Has no health insurance coverage;
  - b. Has health insurance coverage that does not pay for the prescription medication prescribed;
  - c. Is an American or Alaska Native who:
    - i. Is eligible for, but chooses not to use, the Indian Health Service to receive prescription medications; and
    - ii. Either has no other health insurance coverage or has health insurance coverage that does not pay for the prescription medication prescribed; or
  - d. Is a veteran who:
    - i. Is eligible for, but chooses not to use, Veterans Health Administration benefits to receive prescription medications; and
    - ii. Either has no other health insurance coverage or has health insurance coverage that does not pay for the prescription medication prescribed;
4. Is ineligible for enrollment in AHCCCS; and
5. If eligible for Medicare, is ineligible for a full low-income subsidy.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R.

4320, effective January 3, 2009 (Supp. 08-4).

**R4-23-1205. Donor Form**

- A.** Before donating a prescription medication, a donor shall sign a form that includes:
1. A statement attesting that the donor is one of the entities identified in R4-23-1202(A) and intends to voluntarily donate the prescription medication to the prescription medication donation program;
  2. If the donor is the individual named on the prescription or the individual's health care decision maker:
    - a. The individual's name and address;
    - b. The name of the individual's health care decision maker, if applicable;
    - c. The name of the medical practitioner, pharmacy, or health care institution through which the donation is being made;
    - d. The following information about the donated prescription medication:
      - i. The brand name or generic name of the prescription medication donated;
      - ii. If a generic medication, the name of the manufacturer or the national drug code number of the prescription medication donated;
      - iii. The strength of the prescription medication donated;
      - iv. The quantity of the prescription medication donated;
      - v. The lot number of the prescription medication donated; and
      - vi. The expiration date or beyond-use-date of the prescription medication donated;
    - e. A statement attesting that the individual or the individual's health care decision maker has not had possession of the donated prescription medication;
    - f. The dated signature of the individual or the individual's health care decision maker;
    - g. If the donation is an ongoing donation as authorized under subsection (B), a statement that conforms to subsection (B);
    - h. A statement by the medical practitioner, pharmacy, or health care institution attesting that the medical practitioner, pharmacy, or health care institution through which the donation is being made has stored the donated prescription medication as required in R4-23-1203(4);
    - i. A statement by the medical practitioner, pharmacy, or health care institution attesting that the drugs being donated meet the specific requirements of R4-23-1203(1); and
    - j. The dated signature of the medical practitioner or of an authorized agent for the pharmacy or health care institution through which the donation is being made;
  3. If the donor is a manufacturer:
    - a. The name and address of the manufacturer;
    - b. The information about the donated prescription medication specified in subsection (A)(2)(d);
    - c. A statement by the manufacturer that the manufacturer has stored the donated prescription medication as required in R4-23-1203(4); and
    - d. The dated signature of the manufacturer's authorized agent; and
  4. If the donor is a health care institution:
    - a. The name and address of the health care institution;
    - b. The information about the donated prescription medication specified in subsection (A)(2)(d);

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- c. A statement attesting that the health care institution has stored the donated prescription medication as required in R4-23-1203(4);
  - d. A statement by the health care institution attesting that the drugs being donated meet the specific requirements of R4-23-1203(1); and
  - e. The dated signature of the health care institution's authorized agent.
- B.** An individual who resides in a health care institution, or the individual's health care decision maker, may elect to make an ongoing donation of future unused eligible prescription medication:
- 1. When future unused eligible prescription medication is a result of the individual's prescription medication being changed or discontinued by the individual's primary care provider; and
  - 2. By indicating the following on a donor form that complies with subsection (A): "From this day forward, I wish to donate all my remaining unused prescription medications that are eligible, under R4-23-1203, to the prescription medication donation program."
- C.** To stop an ongoing donation, an individual who resides in a health care institution, or the individual's health care decision maker, shall submit written notice to the receiving physician's office, pharmacy, or health care institution indicating the individual's, or the health care decision maker's, desire to stop the ongoing donation.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4).

**R4-23-1206. Recipient Form**

Before receiving a donated prescription medication from the prescription medication donation program, a recipient of a donated prescription medication shall sign a form:

- 1. Identifying the physician's office, pharmacy, or health care institution that is dispensing the donated prescription medication;
- 2. Stating that the recipient has been advised of and understands the immunity provisions of the program under A.R.S. § 32-1909(E) and (F);
- 3. Attesting that the recipient meets the eligibility requirements specified in R4-23-1204; and
- 4. Including the following:
  - a. The brand name or generic name of the prescription medication received;
  - b. If a generic medication, the name of the manufacturer or the national drug code number of the prescription medication received;
  - c. The strength of the prescription medication received;
  - d. The quantity of the prescription medication received;
  - e. The recipient's name and address; and
  - f. The dated signature of the recipient.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4).

**R4-23-1207. Recordkeeping**

- A.** Before transferring possession of a prescription medication donated by an individual or an individual's health care decision maker, a medical practitioner, pharmacy, or health care institution that has possession of the donated prescription medication and through which the donation is being made shall create an invoice that includes the following:

- 1. The name and address of the medical practitioner, pharmacy, or health care institution that has possession of the donated prescription medication;
  - 2. The name of the individual who made the donation;
  - 3. The brand name or generic name of the prescription medication transferred;
  - 4. If a generic medication, the name of the manufacturer or the national drug code number of the prescription medication transferred;
  - 5. The strength of the prescription medication transferred;
  - 6. The quantity of the prescription medication transferred;
  - 7. The lot number of the prescription medication transferred;
  - 8. The expiration date or beyond-use-date of the prescription medication transferred;
  - 9. The date the prescription medication is transferred to a participating physician's office, pharmacy, or health care institution; and
  - 10. The name and address of the participating physician's office, pharmacy, or health care institution to which the donated prescription medication is transferred.
- B.** Before transferring possession of a prescription medication donated by a manufacturer, the manufacturer shall create an invoice that includes the manufacturer's name and address and the information described in subsections (A)(3) through (10).
- C.** Before transferring possession of a prescription medication donated by a health care institution, the health care institution shall create an invoice that includes the health care institution's name and address and the information described in subsections (A)(3) through (10).
- D.** A medical practitioner, pharmacy, health care institution, or manufacturer required to create an invoice under subsection (A), (B), or (C) shall:
- 1. Transmit a copy of the invoice and the donor form required under R4-23-1205 to the participating physician's office, pharmacy, or health care institution to which a donated prescription medication is transferred;
  - 2. Maintain a copy of the invoice for a minimum of three years from the date of the invoice;
  - 3. Maintain a copy of the donor form for a minimum of three years from the date signed; and
  - 4. Make a copy of the invoice or donor form available upon request for inspection by the Board, its designee, or other authorized officers of the law.
- E.** A physician's office, a pharmacy, or a health care institution that participates in the prescription medication donation program shall:
- 1. Maintain:
    - a. The documents required under R4-23-1206 for a minimum of three years from the date signed; and
    - b. Each invoice and donor form received under subsection (D)(1) for a minimum of three years from the date received; and
  - 2. Make the documents required under R4-23-1206 and subsection (D)(1) available upon request for inspection by the Board, its designee, or other authorized officers of the law.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4).

**R4-23-1208. Handling Fee**

A physician's office, a pharmacy, or a health care institution that dispenses a donated prescription medication may charge a recipient of a donated prescription medication a handling fee of no more than

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\$4.50 per prescription to cover inspection, stocking, and dispensing costs.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4).

**R4-23-1209. Policies and Procedures**

A physician's office, a pharmacy, or a health care institution that participates in the prescription medication donation program shall:

1. Develop, implement, and comply with policies and procedures for the receipt, storage, and distribution of prescription medications donated to the physician's office, the pharmacy, or the health care institution;
2. Review biennially and, if necessary, revise the policies and procedures required under this Section;
3. Document the review required under subsection (2);
4. Assemble the policies and procedures as a written manual or in a readily accessible electronic format;
5. Make the policies and procedures available for reference by a physician's office, pharmacy, or health care institution personnel and, upon request, for inspection by the Board or its designee; and
6. Ensure that the written or electronic policies and procedures required under subsection (1) include provisions to ensure:
  - a. That each transferred prescription medication meets the eligibility requirements of Sections R4-23-1202 and R4-23-1203;
  - b. That each individual who receives a donated prescription medication under the prescription medication donation program signs the recipient form specified in R4-23-1206;
  - c. Compliance with the applicable requirements for recordkeeping in Section R4-23-1207;
  - d. Compliance with the requirements of Section R4-23-1210; and
  - e. Compliance with the requirements of Section R4-23-1211.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4).

**R4-23-1210. Dispensing Donated Prescription Medications**

- A. Before dispensing a donated prescription medication under the program, a participating physician's office, pharmacy, or health care institution shall:
  1. Obtain and maintain a current drug identification reference or text in hard-copy or electronic media format;
  2. Inspect the donated prescription medication to ensure that the prescription medication has not been adulterated;
  3. Certify that the donated prescription medication has been stored in compliance with the requirements of the manufacturer's package insert;
  4. Comply with all federal and state laws regarding storage and distribution of a donated prescription medication;
  5. Obtain a prescription order of a licensed medical practitioner for the recipient to receive the donated prescription medication; and
  6. Properly label the donated prescription medication to be dispensed.
- B. As specified in subsection (C) a participating physician's office, pharmacy, or health care institution may transfer a prescription medication donated under this Article to another participating physician's office, pharmacy, or health care institution, but the donated prescription medication shall not be resold.

- C. A participating physician's office, pharmacy, or health care institution may transfer a donated prescription medication to another participating physician's office, pharmacy, or health care institution, if:
  1. The transferring physician's office, pharmacy, or health care institution has available a prescription medication that the receiving physician's office, pharmacy, or health care institution needs;
  2. The transferring physician's office, pharmacy, or health care institution prepares an invoice that includes its name and address and the information described in R4-23-1207(B)(3) through (10);
  3. A copy of the invoice required in subsection (C)(2) is sent to the receiving physician's office, pharmacy, or health care institution with the transferred prescription medication; and
  4. The transferring physician's office, pharmacy, or health care institution and the receiving physician's office, pharmacy, or health care institution each:
    - a. Keep a copy of the invoice required in subsection (C)(2) on file for three years from the date of transfer; and
    - b. Make the invoice records available, upon request, for inspection by the Board or its designee.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4).

**R4-23-1211. Responsibilities of the Physician-in-charge or Pharmacist-in-charge of a Participating Physician's Office, Pharmacy, or Health Care Institution**

The physician-in-charge of a participating physician's office; the pharmacist-in-charge of a participating pharmacy; or the physician-in-charge or pharmacist-in-charge of dispensing for a participating health care institution shall, either personally or through a designee:

1. Coordinate the receipt of prescription medications donated by manufacturers or health care institutions or through medical practitioners, pharmacies, or health care institutions from eligible donors;
2. Check each donated prescription medication against the invoice and any additional alternate record and resolve any discrepancies;
3. Store and secure donated prescription medications as required by federal and state law;
4. Inspect each donated prescription medication for adulteration;
5. Certify that each donated prescription medication has been stored in compliance with the manufacturer's package insert;
6. Ensure that expired, adulterated, or unidentifiable donated prescription medication is not dispensed;
7. Ensure that prescription medications identified under subsection (6) are destroyed within 30 days of identification as specified in subsection (9);
8. Ensure safety in drug recalls by destroying any donated prescription medication that may be subject to recall if its lot number cannot exclude it from recall;
9. Ensure destruction of expired, adulterated, unidentifiable, and recalled donated prescription medication by:
  - a. Following federal, state, and local guidelines for drug destruction;
  - b. Creating a list of expired, adulterated, unidentifiable, or recalled donated prescription medications to be destroyed;

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- c. Following the destruction, signing the list described in subsection (9)(b) and having the list signed by a witness verifying the destruction; and
  - d. Keeping the list described in subsection (9)(b) on file for three years from the date of destruction;
10. Redact or remove all previous patient or pharmacy labeling on a donated prescription medication before dispensing the donated prescription medication;
  11. Ensure that all dispensed donated prescription medications comply with the labeling requirements of A.R.S. § 32-1968(D);
  12. Place on the label of each dispensed donated prescription medication a beyond-use-date that does not exceed the beyond-use-date or expiration date from the original label of the donated prescription medication or, if the dispensed donated prescription medication comes from multiple packages, the earliest beyond-use-date or expiration date from the donated prescription medication packages; and
  13. Maintain the records required in this Article.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4).

As of October 21, 2019

### 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, phar

#### 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, repack, 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.

**D-2**

**BOARD OF DISPENSING OPTICIANS (R20-0101)**

Title 4, Chapter 20, Article 1, Board of Dispensing Opticians

**Amend:** R4-20-120



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** January 14, 2020

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

**FROM:** Council Staff

**DATE:** December 4, 2019

**SUBJECT: BOARD OF DISPENSING OPTICIANS (R20-0101)**  
Title 4, Chapter 20, Article 1, Board of Dispensing Opticians

**Amend:** R4-20-120

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### **Summary:**

This regular rulemaking from the Board of Dispensing Opticians (Board) relates to a rule in Title 4, Chapter 20, Article 1 regarding continuing education. Specifically, the Board seeks to amend R4-20-120 (Continuing Education; Hours Required; Reporting) to add language that clarifies when first-time applicants for licensure must complete their continuing education hours for their first renewal period. The Board seeks to add this language in the rule due to the "rolling" time periods created through a change in the administration of the Practical Examination.

Under the proposed rule, for a first-time applicant who obtains initial licensure between January 1 and June 30 of a given year, the continuing education credits would be due by December 31 of the **second** full calendar year of licensure. For a first-time applicant who obtains initial licensure between July 1 and December 31 of a given year, the continuing education credits would be due by December 31 of the **third** calendar year of licensure.

The Board also seeks to add language to the rule that states that for every subsequent period of licensure, continuing education credits are due every three years.

The Board received an exemption from the rulemaking moratorium to conduct this rulemaking on August 19, 2019.

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

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

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

No. 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 did not review or rely on any study in conducting this rulemaking.

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

The Board is proposing clarify for applicants when they must complete their Continuing Education hours for their first renewal period. The Board indicates that amending this rule would not have any adverse economic impact. Stakeholders include the Board, applicants for licensure, opticians, and consumers of dispensing optician services.

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 there is no apparent economic impact on those regulated by the rule and that administrative costs would be minimal.

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

The Board indicates that there is no apparent economic impact on consumers, businesses, small businesses, or political subdivisions.

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 these 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 did not receive any comments in conducting this rulemaking.

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

No. These rules do not require a permit.

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. There is no corresponding federal law.

11. **Conclusion**

The Board is conducting this regular rulemaking to clarify continuing education requirements for first-time applicants due to changes in the administration of the Practical Examination. Further, the amended rule would clarify that for all other licensees, the continuing education credits would be due every three years.

The Board is requesting an immediate effective date for this rulemaking pursuant to A.R.S. § 41-1032(A)(5). Under this section, a rule may be immediately effective “[t]o adopt a rule that is less stringent than the rule that is currently in effect and that does not have an impact on the public health, safety, welfare or environment, or that does not affect the public involvement and public participation process.” The amended rule, if approved, would streamline continuing education requirements for first-time applicants due to changes in the administration of the Practical Examination. This has the effect of making this rule less stringent. Thus, the Board has an adequate basis to request an immediate effective date for this rulemaking. Council staff recommends approval of this rulemaking with an immediate effective date.



**Douglas A. Ducey**  
Governor

**Dale Nyblade**  
Chairman

**ARIZONA STATE BOARD OF DISPENSING OPTICIANS**

**Suzanne Coleman**  
Vice-Chairman

1740 W. Adams, Suite, 3001  
PHOENIX, ARIZONA 85007  
Phone (602) 542-8158 FAX (602) 926-8103

**Megan Darian**  
Executive Director

October 23, 2019

Nicole Sornsin Chairperson  
Governor's Regulatory Review Council  
Arizona Department of Administration  
100 N. 15<sup>th</sup> Ave., St. 402  
Phoenix, AZ 85007

Re: Rulemaking – Arizona Dispensing Opticians Board

This will serve as the close of record date is October 23, 2019, for the proposed rulemaking on: R4-20-120 .

The definitions or terms contained in statutes or other rules and used in the rule are attached.  
The rulemaking does not relate to a five-year review report.

The rule does not establish a new fee. The amended rule does not contain a fee increase. An immediate effective date is requested. The agency has not reviewed any study relevant to this rule.

Items enclosed include:

1. Notice of Final Rulemaking
2. Economic, small business and consumer impact statement
3. Copy of the existing rule

A handwritten signature in black ink, appearing to read "M. Darian".

**Megan Darian**  
Executive Director



Fax: 602-926-8103

E-mail: mdarian@do.az.gov

Web site: www. do.az.gov

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

The rule provides detailed licensing, regulatory information, and procedural instructions. The Board is proposing to amend rule R4-20-120 to clarify for applicants when they must complete their Continuing Education hours for their first renewal period in light of the otherwise "rolling" time periods created through the change in administration of the Practical Examination.

**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:**

Not applicable

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

The proposed amendments/Repeals do not diminish a previous grant of authority of a political subdivision of this state.

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

Amending/Repealing these rules would not have any adverse economic impact on consumers and small businesses.

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

None

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

The Board held an oral proceeding on the proposed rule at 1740 W. Adams, Phoenix, AZ on Tuesday October 22, 2019. The Board received no public comment against the rule changes.

**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:**

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:**

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:**

Not Applicable.

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

Not Applicable.

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

Not Applicable.

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

Not Applicable

- 15. The full text of the rules follows:**

**TITLE 4. PROFESSIONS AND OCCUPATIONS  
CHAPTER 20. BOARD OF DISPENSING OPTICIANS**

**ARTICLE 1. GENERAL**

**R4-20-120. Continuing Education; Hours Required; Reporting**

- A. ~~Within every three year period from the date of obtaining a license, a~~ A person licensed as a dispensing optician shall complete no fewer than 12 hours of continuing education that is approved by the Board for credit.

1. For the initial period of licensure for an applicant who obtains initial licensure between January 1 and June 30, continuing education credits are due by December 31 of the second full calendar year of licensure.
2. For the initial period of licensure for an applicant who obtains initial licensure between July 1 and December 31, continuing education credits are due by December 31 of the third full calendar year of licensure.
3. Continuing education credits for every subsequent period of licensure are due every three years thereafter at the time of licensure renewal.

- B. Each licensee shall submit documentation to the Board verifying that the licensee has completed 12 hours or more of continuing education, within each three-year period. The licensee shall provide documentation that identifies the courses and the number of credit hours completed and include the following:

1. If the course is from a school approved by the Commission on Opticianry Accreditation or college-accredited course, proof of course completion and the number of credits earned.
2. If the course is part of an event, a certificate of completion issued by the sponsor which identifies each part completed.
3. If the course is a home-study course, a certificate of completion issued by the sponsor and the number of credits earned.
4. For any other course, a certificate of completion issued by the sponsor or presenter and the number of credits earned.
5. If the licensee cannot obtain the above documentation, any other documents, affidavits, or testimony which provides assurance that the licensee has completed the requirements.

- C. ~~Of the twelve~~ 12 hours of continuing education, each licensee shall obtain at least:

1. Four hours in eyeglass fitting and dispensing;

3. One hour in state or national opticianry standards.
- D. Hours will be measured as follows: one credit hour will be assigned for each 50 minutes of a single session.
  - E. The Board shall discipline any licensee who submits false information for continuing education documentation.
  - F. A licensee shall not apply any hours accrued during one reporting period to any subsequent reporting period.

## Chapter 20. Board of Dispensing Opticians

### Economic, Small Business, And Consumer Impact Statement

**1. Identification of the rulemaking**

The Board is proposing to amend rule R4-20-120 to clarify for applicants when they must complete their Continuing Education hours for their first renewal period in light of the otherwise “rolling” time periods created through the change in administration of the Practical Examination.

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

This economic, small business and consumer impact statement analyzes the costs, savings, and benefits that accrue to the Board, applicants for licensures, opticians, and consumers of dispensing optician services.

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

Name: Megan Darian

Address: 1740 W. Adams, Suite 3001  
Phoenix, AZ 85007

Telephone: 602-542-8158

Fax: 602-926-8103

E-mail: [mdarian@do.az.gov](mailto:mdarian@do.az.gov)

**4. Cost/benefit analysis**

No impact

- a. **Probable cost/benefit to implementing agency and other agencies directly affected by implementation.**

**Board of Dispensing Opticians**

<b>Rule</b>	<b>Description of Effect</b>	<b>Increased Cost Decreased Revenue</b>	<b>Decreased Cost Increased Revenue</b>
R4-20-120	Clarification on the time frame	None – Minimal	None – Minimal
Total Annual Net Cost		None- Minimal	None-Minimal

- b. **Probable cost/benefit to a political subdivision of this state directly affected by implementation.**

None apparent.

- c. **Probable cost/benefit to businesses directly affected by proposed rulemaking.**

None apparent.

- 5. **Probable impact on private and public employment in Businesses, agencies and political subdivisions directly affected by proposed rulemaking.**

None apparent.

- 6. **Impact on small businesses.**

- a. **An identification of the small businesses subject to the proposed rulemaking.**

None apparent.

**b. The administrative and other costs required for compliance with proposed rulemaking.**

The administrative costs are none to minimal, requiring only knowledge of the proposed changes.

**c. A description of the methods that the agency may use to reduce the impact on small businesses.**

None apparent.

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

None apparent.

**7. A statement of the probable effect on state revenues.**

This rulemaking will have none to minimal effect on state revenues.

**8. A description of any less intrusive or less costly alternative methods achieving the purpose of the proposed rulemaking.**

None apparent.

**ARIZONA STATE BOARD OF DISPENSING OPTICIANS**  
**RULES**

**ARTICLE 1 – GENERAL**

R4-20-101.	Definitions
R4-20-102.	Application for a Dispensing Optician's License by Examination
R4-20-107.	Application for a Dispensing Optician's License by Comity
R4-20-109.	Renewal of Dispensing Optician's License; Late Renewal; Reinstatement
R4-20-110.	Application for an Optical Establishment License; Qualifications
R4-20-111.	Time-frames for License Approvals
R4-20-112.	Fees
R4-20-113.	Display of Licenses; Nontransferability
R4-20-114.	Notice of Change of Status
R4-20-115.	Renewal of Optical Establishment License; Late Renewal; Re-application
R4-20-116.	Rehearing or Review of Decision
R4-20-117.	Scope of Practice
R4-20-118.	Unprofessional Conduct
R4-20-119.	Substandard Care
R4-20-120.	Continuing Education; Hours Required; Reporting
R4-20-121.	Continuing Education; Approval of Courses
R4-20-122.	Agency Record; Directory of Substantive Policy Statements
Table 1	Time-frames (in days)

**ARTICLE 1. GENERAL**

**R4-20-101. Definitions**

The following definitions apply in this Chapter unless otherwise specified:

1. “ABO” means the American Board of Opticianry.

2. "Applicant" means an individual requesting an initial or renewal license from the Board.
3. "Application packet" means the forms and additional information the Board requires to be submitted by an applicant or on the applicant's behalf.
4. "Comity" means the procedure for granting an Arizona license to an applicant who is already licensed as a dispensing optician in another state of the United States.
5. "Days" means calendar days.
6. "Laboratory experience" means work directly involved in the process of producing optical devices and does not include work that is strictly clerical.
7. "License" means a written authorization issued by the Board to practice as a dispensing optician or operate an optical establishment in Arizona.
8. "NCLE" means the National Contact Lens Examiners.
9. "Nationally recognized body of opticianry accreditation" means the Commission on Opticianry Accreditation.
10. "Optical devices" means eyeglasses, contact lenses, prosthetic eyes, low-vision aids, other eyewear, and eyewear appurtenances or parts.
11. "Optometrist" means a person currently licensed in any state of the United States in the practice of the profession of optometry as defined in A.R.S. § 32-1701.
12. "Physician" means a person currently licensed in any state of the United States to practice allopathic or osteopathic medicine
13. "Work week" means the period of time beginning on Sunday at 12:00 a.m. and ending the following Saturday at 11:59 p.m.

#### **R4-20-102. Application for a Dispensing Optician's License by Examination**

At least 30 days before a regularly scheduled board meeting date, an applicant for a dispensing optician's license by examination shall submit to the Board an application packet that contains:

1. An application form provided by the Board, signed and dated by the applicant, that contains:
  - a. The applicant's name, Social Security number, address, and telephone number;
  - b. The name and address of the applicant's employer at the time of application, if applicable;
  - c. If demonstrating technical skill and training under A.R.S. § 32-1683(5)(b), the name and address of each dispensing optician, physician, or optometrist for whom the applicant served as an apprentice for three of the six years immediately preceding the application date, and the beginning and ending dates of each apprenticeship;
  - d. If demonstrating technical skill and training under A.R.S. § 32-1683(5) (c), the name and address of the school from which the applicant graduated, dates of attendance, date of graduation, degree received, and the name and address of each dispensing optician for whom the applicant served as a dispensing optician apprentice for one of the six years immediately preceding the application date and the beginning and ending dates of service. The applicant shall submit a photocopy of the applicant's diploma from the optical dispensing school;
  - e. If demonstrating technical skill and training under A.R.S. § 32-1683(5) (c) received during military service, the name and address of the school from which the applicant graduated, dates of attendance, date of graduation, and degree received, the location and name of the duty station at which the applicant has worked for three of the six years immediately preceding the application date and the beginning and ending dates of service.
  - f. If demonstrating technical skill and training under A.R.S. § 32-1683(5)(d), the name and address of each dispensing optician, physician, or optometrist for whom the applicant has worked for three of the six years immediately preceding the application date and the beginning and ending dates of employment;
  - g. A statement of whether the applicant has ever been convicted of a felony or of a misdemeanor involving moral turpitude in any state;
  - h. A statement of whether the applicant has ever had an application for a

- professional license denied or had a license suspended or revoked in any state; and
    - i. A sworn statement by the applicant verifying the truthfulness of the information provided by the applicant;
- 2. A photocopy of the applicant's:
  - a. High school diploma or general educational diploma issued in any state; or
  - b. Transcripts from a high school or college; or,
  - c. Evidence of a college degree or admission to any college in any state;
- 3. Verification of passing both spectacle and contact lens written and practical examinations in opticianry administered by a nationally recognized body as evidenced by an original notice of examination results or a copy of the original certificate of passage issued by the organization that prepared the examination;
- 4. A letter attesting to good moral character from each of three individuals who are not family members, who have known the applicant for two years immediately before the date of the application, and support the applicant's licensure;
- 5. A letter from each physician, optometrist, or dispensing optician named in subsection (1) (c), (d), or (e) that contains:
  - a. The individual's printed name, address, and telephone number; and
  - b. A statement that the applicant has either served as an apprentice or been employed as a dispensing optician by the physician, optometrist, or dispensing optician for the time required in subsection (1) (c), (d), or (e);
- 6. A photograph of the applicant no smaller than 1 ½ x 2 inches and taken not more than six months before the date of application; and
- 7. The fee required in R4-20-112.

**R4-20-107. Application for a Dispensing Optician's License by Comity**

An applicant for a dispensing optician's license by comity shall submit an application packet to the Board that contains:

- 1. An application form provided by the Board, signed and dated by the applicant that contains:
  - a. The applicant's name, Social Security number, address, and telephone number;
  - b. The applicant is dispensing optician license number and the state and date of licensure;
  - c. A statement of whether the applicant has ever been convicted of a felony or of a misdemeanor involving moral turpitude in any state;
  - d. A statement of whether the applicant has ever been denied a license or had a license suspended or revoked in any state; and
  - e. A sworn statement by the applicant verifying the truthfulness of the information provided by the applicant;
- 2. A photocopy of the unexpired license and a written statement, signed by an officer of the Board that issued the license, that states the license is in good standing, and that the license is valid to dispense both eyeglasses and contact lenses;
- 3. A photograph of the applicant no smaller than 1 ½ x 2 inches and taken not more than six months before the date of application; and
- 4. The fee required in R4-20-112.

**R4-20-109. Renewal of Dispensing Optician's License; Late Renewal; Reinstatement**

- A. No later than December 31 of each year, an applicant for renewal of a dispensing optician's license shall submit to the Board the fee required by R4-20-112, proof of continuing education credits required by R4-20-120, and an application form, provided by the Board, signed and dated by the applicant, that contains:
  - 1. The applicant's name, Social Security number, address, and telephone number;
  - 2. The name, address, telephone number, and Arizona license number of the

- optical establishment at which the applicant is currently practicing as a dispensing optician; and
3. A statement that the information contained on the renewal application is correct.
- B.** A licensee who submits a renewal application and renewal fee after December 31 but before January 31 of the following year shall pay the late fee in R4-20-112.
- C.** A licensee who fails to submit a renewal application before January 31 following a license expiration of December 31, and who wishes to reinstate the license, shall:
1. Submit a reinstatement application within one year of license expiration;
  2. Pay the renewal fee and the late fee in R4-20-112;
  3. Achieve a passing grade on the practical examination, unless the applicant has successfully completed the practical examination in the five-year period immediately preceding the license expiration.

**R4-20-110. Application for an Optical Establishment License**

- A.** Any person, corporation, company, partnership, firm, association or society operating an optical establishment, except those exempt under A.R.S. §32-1691, shall obtain an optical establishment license.
- B.** An applicant for an optical establishment license shall submit an application packet to the Board that contains:
1. An application form provided by the Board, signed and dated by the applicant, that contains:
    - a. The applicant's name, establishment name, establishment address, and telephone number. An application form shall be signed by the following:
      - i. If a sole proprietorship, the individual owning the optical establishment;
      - ii. If a corporation, each individual owning 20% or more of the voting stock in the corporation;
      - iii. If a partnership, the managing partner and a general partner;
      - iv. If a limited liability company, the designated manager, or if no manager is designated, any two members of the limited liability company;
    - b. The hours the establishment will be open to the public for business;
    - c. If applicable, the name, business address, and telephone number of each licensed optical establishment currently being operated by the applicant in Arizona;
    - d. If a corporation, the name of the statutory agent, the corporation's officers, and the state of incorporation; and
    - e. The name, business address, telephone number, and license number of each licensed dispensing optician who is scheduled to work at the establishment on a full-time basis, consisting of 32 hours or more per week;
      2. If a corporation, the articles of incorporation; and
      3. The fee required in R4-20-112.
- C.** To be licensed, an optical establishment shall employ at least one dispensing optician licensed by the Board, for at least 32 hours or more per week.

**R4-20-111. Time-frames for License Approvals**

- A.** The overall time-frame described in A.R.S. § 41-1072(2) for each type of approval granted by the Board is set forth in Table 1. The applicant and the Executive Director of the Board may agree in writing to extend the substantive review and overall time-frame. The substantive review time-frame may not be extended by more than 25% of the overall time-frame.
- B.** The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of approval granted by the Board is set forth in Table 1.
1. The administrative completeness review time-frame begins:
    - a. For approval to take a dispensing optician examination or for an optical establishment license, when the Board receives an application packet.

- b. For approval or denial of a license by examination, when the applicant takes the dispensing optician examination.
- c. For a license by comity, when the Board receives an application packet.
- 2. If the application packet is incomplete, the Board shall send to the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the postmark date of the notice until the date the Board receives a complete application packet from the applicant.
- 3. If an application packet is complete, the Board shall send a written notice of administrative completeness to the applicant.
- 4. If the Board grants a license or approval during the time provided to assess administrative completeness, the Board shall not issue a separate written notice of administrative completeness.
- C. The substantive review time-frame described in A.R.S. § 41-1072(3) is set forth in Table 1 and begins on the postmark date of the notice of administrative completeness.
  - 1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information or documentation. The time-frame for the Board to complete the substantive review is suspended from the postmark date of the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation.
  - 2. The Board shall send a written notice approving the applicant to take an examination or granting a license to an applicant who meets the qualifications in A.R.S. §§32-1681 through 32-1684 and 32-1687.
  - 3. The Board shall send a written notice of denial to an applicant who fails to meet the qualifications in A.R.S. §§32-1681 through 32-1684 and 32-1687.
- D. The Board shall consider an application withdrawn if within 360 days from the application submission date the applicant fails to:
  - 1. Supply the missing information under subsection (B)(2) or (C)(1); or
  - 2. Take the dispensing optician examination.
- E. An applicant who does not want an application withdrawn may request a denial in writing within 360 days from the application submission date.
- F. If a time-frame's last day falls on a Saturday, Sunday, or an official state holiday, the next business day shall be considered the time-frame's last day.

**R4-20-112. Fees**

- A. Dispensing optician fees, which are non-refundable, unless A.R.S. §41-1077 applies, are as follows:
  - 1. License issuance fee \$100
  - 2. Renewal of dispensing optician license \$135
  - 3. License renewal late fee \$100
- B. Optical establishment license fees are as follows:
  - 1. License application fee \$100
  - 2. License issuance fee \$100
  - 3. Renewal of optical establishment license \$135
  - 4. License renewal late fee \$100
- C. Fees for copies of public records are:
  - 1. Duplicate optician license \$25
  - 2. Duplicate establishment license \$25
  - 3. Dispensing Optician Statutes and rules \$10
  - 4. Directories:
    - a. Commercial use \$2.50 per page
    - b. Non-commercial use \$1.00 per page
  - 5. Labels
    - a. Commercial use \$ .30 per name
    - b. Non-commercial use \$ .10 per name

6. All other records

\$ .50 per page

**R4-20-113. Display of Licenses; Non-transferability**

- A. A licensee shall display all licenses in a conspicuous place. If a license is renewed, the licensee shall display the evidence of renewal in public view.
- B. Optical establishment and dispensing optician licenses are not transferable.
- C. A licensee shall return an optical establishment license to the Board upon transfer of ownership or going out of business.

**R4-20-114. Notice of Change of Status**

- A. An optical establishment licensee and dispensing optician licensee shall notify the Board of any change in the information provided to the Board concerning license application or its renewal, including any change in name, address, work location, establishment ownership or the name, address or home telephone number of each dispensing optician, working at the establishment.
- B. This notice shall be in writing and made within 30 days of change of status.
- C. For purposes of this Section, a change of establishment ownership means:
  - 1. The transfer of a controlling interest in the optical establishment business from one person to another;
  - 2. The addition or termination of a general partner; or
  - 3. The transfer or agreement to transfer a block of twenty percent or more of the outstanding voting stock of a corporation or association or the transfer or agreement to transfer any amount of voting stock that would give the transferee control of a majority of outstanding voting stock. For purposes of this paragraph, "voting stock" means any interest or system whereby the operation of a corporation is controlled by its owners or trustees.

**R4-20-115. Renewal of Optical Establishment License; Late Renewal; Re-application**

- A. No later than June 30 of each year, an applicant for renewal of an optical establishment license shall submit to the Board the fee required by R4-20-112 and an application form, provided by the Board that contains:
  - 1. The name, address, and telephone number of the optical establishment;
  - 2. The name and license number of each dispensing optician who is scheduled to work 32 hours or more each week at the optical establishment; and
  - 3. The applicant's signature and title.
- B. A licensee who submits a renewal application and renewal fee after June 30 but before July 31 of the renewal year shall pay the late fee in R4-20-112.
- C. A licensee who fails to submit a renewal application before July 31 following a license expiration of June 30, and who wishes to re-apply for an establishment license, shall submit an original application, and pay the application fee and license fee in R4-20-112.

**R4-20-116. Rehearing or Review of Decision**

- A. Except as provided in subsection (G), a party in a contested case before the Board who is aggrieved by a decision rendered in the case may file with the Board not later than 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds for the rehearing or review. For purposes of this Subsection a decision is deemed to be served when personally delivered or mailed by certified mail to the party at the party's last known residence or place of business.
- B. A party may amend a motion for rehearing or review at any time before it is ruled upon by the Board. Any other party may file a response within 15 days after service of the motion or amended motion. The Board may require the filing of written brief upon the issues raised in the motion and may provide for oral argument.
- C. A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:

1. Irregularity in the administrative proceedings of the Board, the Board's informal interviewing officer, or the prevailing party, or any order or abuse of discretion that deprived the moving party of a fair hearing or interview;
  2. Misconduct of the Board 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. Excessive or insufficient penalties;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing; or
  7. The decision is not justified by the evidence or is contrary to law.
- D. The Board may affirm or modify the decision or grant a rehearing or review to all or any of the parties and on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds on which the rehearing or review is granted, and the rehearing or review shall cover only those matters specified.
- E. Not later than 10 days after a decision is rendered, the Board may on its own initiative order a rehearing or review of its decision for any reason for which the Board might have granted a rehearing or review on motion of a party. After giving the parties or the parties' counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion.
- F. When a motion for rehearing or review is based upon affidavits, the moving party shall serve the affidavits with the motion. An opposing party may within 10 days after service, serve opposing affidavits. The Board may extend the period for an additional 20 days for good cause shown or by written stipulation of the parties. The Board may permit reply affidavits.
- G. If in a decision the Board makes specific findings that the immediate effectiveness of the decision is necessary for the immediate preservation of the public peace, health, or safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue the decision as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, a party shall make application for judicial review of the decision within the time limits permitted for applications for judicial review of the Board's final decisions.
- H. For purposes of this Section the terms "contested case" and "party" have the same meaning as in A.R.S. §41-1001 and "appealable agency action" has the same meaning as in A.R.S. §41-1092.

**R4-20-117. Scope of Practice**

- A. The scope of practice of a dispensing optician means the activities described in A.R.S. §32-1671(3).
- B. The dispensing optician shall fill a refill of a contact lens prescription prior to its expiration date with no more than the sufficient quantity of replacement contact lenses needed through the expiration date.

**R4-20-118. Unprofessional Conduct**

In addition to actions specified in A.R.S. §32-1696, unprofessional conduct in the practice of optical dispensing includes the following:

1. Substandard care as specified in R4-20-119;
2. Failing to maintain a copy or record of the customer's prescription and failing to prepare and maintain a record of optical devices dispensed for at least three years. The record of optical devices dispensed shall include the brand, style, and size of the frame, if any, and the style, material, source, and all other information necessary to accurately reproduce each lens. The record shall be separate from optometrists' or

- physicians' records;
3. Failing or refusing to make a copy of a prescription or record described in subsection (2) promptly available to the customer who is the subject of the prescription or record, the customer's designated representative, the customer's prescribing practitioner, or the Board or its investigator, when requested. Notwithstanding this provision, a dispensing optician need not make the record of contact lenses dispensed on a trial basis available to the customer;
  4. Failing or refusing to take corrective action or investigate a customer complaint concerning the manufacture or fit of eyeglasses, contact lenses, or other optical devices dispensed at the establishment by which the dispensing optician is employed if there is a substantial basis for the complaint;
  5. Failure of any person, corporation, company, partnership, firm, association or society to maintain an active optical establishment license as required by R4-20-110; and
  6. Failure to comply with a Board order.

**R4-20-119. Substandard Care**

- A.** It is substandard care for a dispensing optician:
1. To dispense improperly manufactured eyeglasses or contact lenses. If a complaint indicates that eyeglasses or contact lenses dispensed by a dispensing optician or other employee of an optical establishment may have been improperly manufactured, the Board shall be guided in its determination of the facts by referring to the standards incorporated by reference in subsection (B) with regard to the individual parameters listed in the standards and considering patient wear, care, and usage;
  2. When interpreting written prescriptions:
    - a. To fail to follow standards incorporated by reference in subsection (B) in determining lens powers due to differences in vertex distances, base curvatures, special lens requirements, and facial fitting problems, or
    - b. To fail to comply with special instructions of the vision practitioner or optometrist shown on the prescription without the full knowledge and consent of the customer, the physician, or optometrist; or
    - c. To fill prescriptions beyond the expiration date indicated on the prescription;
  3. To fail to follow manufacturer's guidelines regarding usual and customary lens thickness of eyewear;
  4. To intentionally or negligently injure a customer during the course of optical dispensing; or
  5. To fail to give the customer appropriate instructions on the care, handling, and wearing of an optical device.
- B.** The following standards published by the American National Standards Institute, Inc., (ANSI), 1819 L Street, NW, Suite 600, Washington, DC 20036, are incorporated by reference, and no further editions or amendments and are on file with the Board:
1. ANSI Z80.1 2015, "Prescription Ophthalmic Lenses-Recommendations."
  2. ANSI Z80.20 2016, "Contact Lenses- Standard Terminology, Tolerances, Measurements And Physiochemical Properties."
  3. ANSI Z87.1 2015, "Occupational and Educational Personal Eye and Face Protection Devices."
  4. ANSI Z80.9 2015, "Optical Devices for Low Vision."

**R4-20-120. Continuing Education; Hours Required; Reporting**

- A. ~~Within every three-year period from the date of obtaining a license, a~~ A person licensed as a dispensing optician shall complete no fewer than 12 hours of continuing education that is approved by the Board for credit.
1. For the initial period of licensure for an applicant who obtains initial licensure between January 1 and June 30, continuing education credits are due by December 31 of the second full calendar year of licensure.
  2. For the initial period of licensure for an applicant who obtains initial licensure between July 1 and December 31, continuing education credits are due by December 31 of the third full calendar year of licensure.
  3. Continuing education credits for every subsequent period of licensure are due every three years thereafter at the time of licensure renewal.
- B. Each licensee shall submit documentation to the Board verifying that the licensee has completed 12 hours or more of continuing education, within each three-year period. The licensee shall provide documentation that identifies the courses and the number of credit hours completed and include the following:
1. If the course is from a school approved by the Commission on Opticianry Accreditation or college-accredited course, proof of course completion and the number of credits earned.
  2. If the course is part of an event, a certificate of completion issued by the sponsor which identifies each part completed.
  3. If the course is a home-study course, a certificate of completion issued by the sponsor and the number of credits earned.
  4. For any other course, a certificate of completion issued by the sponsor or presenter and the number of credits earned.
  5. If the licensee cannot obtain the above documentation, any other documents, affidavits, or testimony which provides assurance that the licensee has completed the requirements.
- C. Of the twelve hours of continuing education, each licensee shall obtain at least:
1. Four hours in eyeglass fitting and dispensing;
  2. Three hours in contact lens fitting and dispensing;
  3. One hour in state or national opticianry standards.
- D. Hours will be measured as follows: one credit hour will be assigned for each 50 minutes of a single session.
- E. The Board shall discipline any licensee who submits false information for continuing education documentation.
- F. A licensee shall not apply any hours accrued during one reporting period to any subsequent reporting period.

#### **R4-20-121. Continuing Education; Approval of Courses**

ABO and NCLE courses are approved by the Board for continuing education credit. Other individuals or organizations seeking approval of a continuing education course for credit shall apply to the Board 45 days before the date the course is offered. The application shall contain the following information on the course:

1. Title and description of course content;
2. Time, date, and place;
3. Number of credit hours;
4. Name of the sponsor and presenter; and
5. Brief curriculum vitae of the presenter.

#### **R4-20-122. Agency Record; Directory of Substantive Policy Statements**

The official rulemaking record for each rulemaking and a directory of substantive policy

statements is located in the office of the Board and may be reviewed Monday through Friday, 8:00 a.m. to 5:00 p.m., except state holidays.

Table 1. Time-frames (in days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
License by Examination (R4-20-102)	A.R.S. § 32-1682 A.R.S. § 32-1684	60	30	30
License by Comity (R4-20-107)	A.R.S. §32-1683	90	30	60
Optical Establishment License (R4-20-110)	A.R.S. § 32-1684.01	60	30	30
Optician's License Renewal (R4-20-109)	A.R.S. § 32-1682	60	30	30
Establishment License Renewal (R4-20-115)	A.R.S. § 32-1684.01	60	30	30



### 32-1673. Powers and duties of the board

A. The board shall adopt rules to administer and enforce this chapter. Rules adopted pursuant to this section shall include rules to specify the lawful scope of the practice of dispensing opticians and necessary evidence that may support a charge of substandard care rendered by a dispensing optician or an optical establishment.

B. The board may:

1. Hire investigators subject to title 41, chapter 4, article 4 or contract with investigators to assist in the investigation of violations of this chapter.

2. Hire employees subject to title 41, chapter 4, article 4 and contract with other state agencies as necessary to carry out this chapter.

3. In connection with board hearings and investigations, issue subpoenas for the attendance of witnesses and the production of books, records, documents and other necessary evidence.

### 32-1687. Continuing education

A. All dispensing opticians licensed under this chapter shall satisfy a continuing education requirement in accordance with board rules.

B. The board shall prescribe by rule the form and content of continuing education for dispensing opticians licensed under this chapter that is designed to educate the licensee in current developments, skills and procedures. Opticians may satisfy this continuing education requirement by home study courses or attending seminars and are not required to join a professional association of dispensing opticians in this state in order to fulfill the requirement. The rules shall establish the number of hours of continuing education required within a three-year period in an amount not to exceed twenty-one hours.

**D-3**

**DEPARTMENT OF ECONOMIC SECURITY (R20-0102)**

Title 6, Chapter 14, Department of Economic Security Food Stamps Program

**New Article:** Article 3, Article 4, Article 5

**New Section:** R6-14-301, R6-14-302, R6-14-303, R6-14-304, R6-14-305, R6-14-306, R6-14-307, R6-14-308, R6-14-309, R6-14-310, R6-14-311, R6-14-401, R6-14-402, R6-14-403, R6-14-404, R6-14-405, R6-14-406, R6-14-407, R6-14-408, R6-14-409, R6-14-410, R6-14-411, R6-14-412, R6-14-413, R6-14-414, R6-14-415, R6-14-416, R6-14-417, R6-14-501, R6-14-502, R6-14-503, R6-14-504, R6-14-505, R6-14-506, R6-14-507



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** January 14, 2020

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

**FROM:** Council Staff

**DATE:** December 5, 2019

**SUBJECT: DEPARTMENT OF ECONOMIC SECURITY (R20-0102)**  
Title 6, Chapter 14, Department of Economic Security Food Stamps Program

**New Article:** Article 3, Article 4, Article 5

**New Section:** R6-14-301, R6-14-302, R6-14-303, R6-14-304, R6-14-305, R6-14-306, R6-14-307, R6-14-308, R6-14-309, R6-14-310, R6-14-311, R6-14-401, R6-14-402, R6-14-403, R6-14-404, R6-14-405, R6-14-406, R6-14-407, R6-14-408, R6-14-409, R6-14-410, R6-14-411, R6-14-412, R6-14-413, R6-14-414, R6-14-415, R6-14-416, R6-14-417, R6-14-501, R6-14-502, R6-14-503, R6-14-504, R6-14-505, R6-14-506, R6-14-507

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### **Summary:**

This regular rulemaking from the Department of Economic Security (Department), relates to rules in Title 6, Chapter 14 regarding the Nutrition Assistance Program (formerly known as Food Stamps). The Nutrition Assistance Program is authorized under the federal Supplemental Nutrition Assistance Program (SNAP). SNAP is based on federal law, specifically, the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) and federal regulation, 7 CFR 271 through 7 CFR 283.

In this rulemaking, the Department seeks to create new rules that are consistent with federal law and regulation. Article 3 establishes procedures for the Department to identify and collect overpayments from households. Article 4 provides for an appeal and fair hearing to any

household wishing to contest an adverse Department action. Article 5 defines an Intentional Program Violation (IPV) and establishes a procedure for disqualifying a household from further Program benefits. As discussed in Item 14 of the Preamble, these rules were previously made as emergency rules in 2018.

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

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

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

No. 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 did not review or rely on any study in conducting this rulemaking.

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

The Department states that the purpose of this rulemaking is to promulgate rules that are clear, concise, and understandable and will make the Nutrition Assistance Program consistent with governing federal law and regulations. The Department believes that the public will benefit from this rulemaking because rules that are consistent with current federal and state laws and regulations are easier for program participants and other stakeholders to comply with and understand. This allows for a consistent and informative client experience.

Stakeholders include the Department and individuals or households who are applicants for, recipients of, or former recipients for the Nutrition Assistance program.

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 Department believes there is no less intrusive or less costly method of achieving the objectives of this rulemaking.

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

The Department states that this rulemaking will directly impact applicants, recipients, and former recipients of Nutrition Assistance Program benefits. These individuals will benefit from clear, concise, and understandable information regarding the overpayment and claims processes and the rights and responsibilities afforded to individuals and households in the Fair Hearings, Appeals, and Intentional Program Violation processes.

The proposed rules are consistent with and in compliance with applicable federal law and federal regulations. There is no additional cost to the Department or other state agencies. This rulemaking does not impact small businesses or political subdivisions.

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

No. The Department made numerous changes to the rules between the Notice of Proposed Rulemaking and Notice of Final Rulemaking. These changes were made in response to the numerous public comments the Department received. Council staff finds that these changes do not result in rules that are “substantially different” from the proposed rules based on the criteria in A.R.S. § 41-1025.

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

The Department received numerous public comments on these rules. The Department has included a summary of the comments received and its response to those comments in the Notice of Final Rulemaking. The Department adequately responded to the public comments received.

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

No. These rules do not require a permit.

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

Federal laws and regulations are applicable to these rules.

For Article 3 (Claims Against Households), the corresponding federal law is 7 U.S.C. § 2022 (Disposition of claims; waiver; offset, overpayment, etc.); the corresponding federal regulation is 7 CFR 273.18 (Claims against households). The rules in Article 3 are not more stringent than the corresponding federal law and regulation.

For Article 4 (Appeals and Fair Hearings), the corresponding federal law is 7 U.S.C. § 2020 (Administration); the corresponding federal regulation is 7 CFR 273.15 (Fair hearings). The rules in Article 4 are not more stringent than the corresponding federal law or regulation.

For Article 5 (Intentional Program Violation), the corresponding federal law is 7 U.S.C. § 2015 (Eligibility disqualifications); the corresponding federal regulation is 7 CFR 273.16 (Disqualification for intentional Program violation). The rules in Article 5 are not more stringent than the corresponding federal law or regulation.

## **11. Conclusion**

In this regular rulemaking, the Department seeks to create new rules to implement components of the Nutrition Assistance Program. The rules are necessary for the Nutrition Assistance Program to comply with applicable federal laws and regulations regarding SNAP.

The Department is requesting an immediate effective date for these rules pursuant to A.R.S. § 41-1032(A)(2). Under this section, a rule may be immediately effective “[t]o avoid a violation of federal law or regulation or state law, if the need for an immediate effective date is not created due to the agency’s delay or inaction.” Council staff finds that this is an acceptable basis for the Department to request an immediate effective date. Council staff recommends approval of the rulemaking with an immediate effective date.



DEPARTMENT OF ECONOMIC SECURITY

*Your Partner For A Stronger Arizona*

Douglas A. Ducey  
Governor

Cara M. Christ, MD, MS  
Interim Director

NOV 12 2019

Ms. Nicole Sornsin  
Chairperson, Governor's Regulatory Review Council  
Department of Administration  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

Dear Ms. Sornsin:

The attached 6AAC14, Articles 3, 4 and 5, Food Stamps Program final rulemaking package is respectfully submitted for review and approval by the Council. The following information is provided for use in reviewing the rulemaking package:

1. **Close of Record Date:** The rulemaking record closed on August 7, 2019, following the public comment period. This rulemaking package is being submitted within the 120-day timeframe provided by A.R.S. § 41-1024(B). The Arizona Department of Economic Security (Department) scheduled and hosted an oral proceeding on August 6, 2019 at which there were two attendees from the public.
2. **General and Specific Statutes Authorizing the Rules; Definitions of Terms Contained in Statutes or Other Rules:** General Statute: A.R.S. § 41-1954(A)(3), 4-134(1) and (10). Implementing Statutes: A.R.S. §§ 41-1954(A)(1)(c) and (A)(8) and 46-136(B) and (C); 7 U.S.C. 2013.
3. **Relation of the Rulemaking to a Five-year Review Report:** This rulemaking is in response to a Five-year Review report approved by Council on February 3, 2015.
4. **New Fee or Fee Increase:** This rulemaking does not establish a new fee or increase an existing fee.
5. **Effective Date:** The Department is requesting the rule become effective immediately on filing with the Office of the Secretary of State under A.R.S. § 41-1032(A) for the reasons detailed in the rulemaking preamble.
6. **Material Incorporated by Reference:** No material is incorporated by reference in this rulemaking.
7. **Certification Regarding Studies:** The Department certifies that the preamble accurately discloses that no study relevant to the rules was reviewed and was not relied on in the Department's evaluation of or justification of the rules.

Ms. Nicole Sornsin  
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8. Joint Legislative Budget Committee (JLBC) Certification: The Department was not required to make a certification to JLBC because the rule does not require any new full-time employees.
9. List of Documents Enclosed:
  - a. Notice of Final Rulemaking including the preamble and full text of the rules;
  - b. Economic Impact Statement;
  - c. Current rules;
  - d. Applicable statutes; and
  - e. Governor's Office Approval.

If you have any questions, please contact Rod Huenemann, Rules Analyst, Division of Business and Finance, at (602) 542-6159 or [rhuenemann@azdes.gov](mailto:rhuenemann@azdes.gov).

Sincerely,



Cara M. Christ, MD  
Interim Director

Enclosures

**NOTICE OF FINAL RULEMAKING**  
**TITLE 6. ECONOMIC SECURITY**  
**CHAPTER 14. DEPARTMENT OF ECONOMIC SECURITY**  
**FOOD STAMPS PROGRAM**  
**PREAMBLE**

<b><u>1.</u></b>	<b><u>Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
	Article 3	New Article
	R6-14-301	New Section
	R6-14-302	New Section
	R6-14-303	New Section
	R6-14-304	New Section
	R6-14-305	New Section
	R6-14-306	New Section
	R6-14-307	New Section
	R6-14-308	New Section
	R6-14-309	New Section
	R6-14-310	New Section
	R6-14-311	New Section
	Article 4	New Article
	R6-14-401	New Section
	R6-14-402	New Section
	R6-14-403	New Section
	R6-14-404	New Section
	R6-14-405	New Section

R6-14-406	New Section
R6-14-407	New Section
R6-14-408	New Section
R6-14-409	New Section
R6-14-410	New Section
R6-14-411	New Section
R6-14-412	New Section
R6-14-413	New Section
R6-14-414	New Section
R6-14-415	New Section
R6-14-416	New Section
R6-14-417	New Section
Article 5	New Article
R6-14-501	New Section
R6-14-502	New Section
R6-14-503	New Section
R6-14-504	New Section
R6-14-505	New Section
R6-14-506	New Section
R6-14-507	New Section

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

Authorizing statute: A.R.S. §§ 41-1954(A)(3) and 46-134(1) and (10)

Implementing statute: A.R.S. §§ 41-1954(A)(1)(c) and (A)(8) and 46-136(B) and (C);  
7 U.S.C. 2013

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

[DATE OF FILING TO BE ENTERED BY CODE EDITOR]

**a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

The rules shall become effective immediately upon filing with the Secretary of State under A.R.S. § 41-1032(A)(2). The Code of Federal Regulations (CFR) requires the Arizona Department of Economic Security (Department) to implement procedures for claims against households (7 CFR 273.18), provide fair hearings to any household aggrieved by a Department action (7 CFR 273.15), and establish a system for conducting Intentional Program Violation disqualifications (7 CFR 273.16). The effective immediate date of the rule will permit the Department to comply with federal law and regulation.

**b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

Not applicable.

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

Notice of Emergency Rulemaking: 24 A.A.R. 2081, July 27, 2018

Notice of Rulemaking Docket Opening: 24 A.A.R. 2971, October 19, 2018

Notice of Proposed Rulemaking: 24 A.A.R. 2893, October 19, 2018

Notice of Emergency Rulemaking: 24 A.A.R. 3591, December 28, 2018

Notice of Termination of Rulemaking: 25 A.A.R. 413, February 22, 2019

Notice of Rulemaking Docket Opening: 25 A.A.R. 1739, July 5, 2019

Notice of Proposed Rulemaking: 25 A.A.R. 1721, July 5, 2019

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

Name: Rodney K. Huenemann

Address: Department of Economic Security

P.O. Box 6123, Mail Drop 1292

Phoenix, AZ 85005

or

Department of Economic Security

1789 W. Jefferson St., Mail Drop 1292

Phoenix, AZ 85007

Telephone: (602) 542-6159

Fax: (602) 542-6000

E-mail: [rhuenemann@azdes.gov](mailto:rhuenemann@azdes.gov)

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

The Department administers the Nutrition Assistance Program (Program), formerly called Food Stamps. The Program is authorized by the federal Supplemental Nutrition Assistance Program (SNAP) under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) and the Code of Federal Regulations (7 CFR 271 through 7 CFR 283). The rulemaking will amend Chapter 14, Food Stamps Program, of the Arizona Administrative Code and provide rules that are consistent with federal law and regulation.

Article Three establishes procedures for the Department to identify and collect overpayments from households. The rules establish categories of claims and criteria for identifying a claim's date of discovery. The Department may determine the cost effectiveness of pursuing or terminating the collection of an overpayment and provide the household a compromise agreement to settle a claim. The rules provide for acceptable payment and collection methods.

Article Four provides for an appeal and fair hearing to any household wishing to contest an adverse Department action. The household must file an appeal request within 90 days of receiving a notice of the adverse action. The Department shall stay any adverse action pending an appeal decision. The fair hearing procedure outlines the hearing schedule, duties of the hearing officer, and parties' rights. The hearing officer must issue a decision within 60 days after the appeal request is filed. The household can appeal the hearing officer's decision.

Article Five defines an Intentional Program Violation and establishes a procedure for disqualifying a household from further Program benefits. A household may waive the right to an administrative disqualification hearing. The administrative disqualification procedures outline the hearing schedule, hearing officer's responsibilities, and the parties' rights. Various sanctions may be imposed for any program violation found. A household may appeal the determination of a program violation. The Department will honor out-of-state sanctions and impose Program penalties in this 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 relevant to the rules.

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

Not applicable.

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

The Department anticipates that this rulemaking will have a minimal economic impact on the implementing agency, small businesses, and consumers. There is no additional cost to the Department or other state agencies anticipated by this rulemaking.

The persons directly impacted by this rulemaking are individuals or households who are applicants for, recipients of, or former recipients of the Nutrition Assistance program. These individuals and households will benefit from clear, concise, and understandable information regarding the overpayment and claims processes, and the rights and responsibilities afforded to individuals and households in the Fair Hearings, Appeals, and Intentional Program Violation processes.

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

In response to public comments received, the following changes have been made. These changes increase consistency across the rules and increase clarity for the public. None of the changes between the proposed rulemaking and the final rulemaking are substantial under the standard set forth A.R.S. § 41-1025.

- R6-14-303(A)(2) has been revised to provide more clarity regarding what “an error” means, both on the part of the Department and on the part of the applicant/recipient household, as pertains to the circumstances specific to this rule.
- R6-14-303(A)(2) has been revised by adding a new subsection (c) that specifies that the Department shall issue a supplement(s) when it is discovered that the household received less than the full amount of benefits due to Department error when rendering an eligibility determination and authorizing benefits.
- R6-14-308(E) has been revised to clarify that the financial statement associated

with resolving a claim under the rule is required to be provided by the thirtieth calendar day following the date that the Department mailed or otherwise transmitted the Financial Statement to the household or the agreed upon extension date by the household, unless the delay was for good cause.

- R6-14-409(C) has been revised to change the word “work” to “working” to be consistent with the wording in R6-14-402(A)(2).
- R6-14-417(B) and (C) have been revised to clarify that only the household appellant adversely affected by an Appeals Board decision may seek further judicial review.
- R6-14-502(C)(2) has been revised to be consistent with the language in R6-14-410(B) regarding the receipt of a free copy of any document in the individual’s case file, with certain restrictions.
- R6-14-502(C)(11) has been revised by adding a subsection (c) to include a third option in the waiver notice of the Administrative Disqualification Hearing that the person may check stating: "I do not admit that the facts as presented are correct in my Nutrition Assistance case. I do not waive my right to require an Administrative Disqualification Hearing where the Department must prove by clear and convincing evidence that I committed and intended to commit an Intentional Program Violation."
- R6-14-503(D)(3) has been revised to be consistent with the language in R6-14-410 (B) and R6-14-502(C)(2) regarding the receipt of a free copy of any document in the individual’s case file, with certain restrictions.
- R6-14-503(G) has been revised to remove the language "and the consequences of

exercising that right” pertaining to the person’s right to remain silent.

- R6-14-503(I) has been revised to include the language “and intended to commit” to add clarity to the rule.
- R6-14-503(J) has been revised to add “and appeal rights” to the items that are contained in the written decision notice that is sent by the Hearing Officer to an individual suspected of an Intentional Program Violation.
- R6-14-505(H) has been revised to add the relevant federal regulation citation to add clarity.

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

	<b>SECTION REFERENCE</b>	<b>COMMENT FROM COMMENTOR</b>	<b>DEPARTMENT RESPONSE</b>
<i>Article 3. Claims Against Households</i>			
1	R6-14-301. <b>Purpose and Definitions</b> (B)(1) and (B)(4)	DES’ definitions for “agency error” in subsection (B)(1) and “inadvertent household error” in subsection (B)(4) continue to be incomplete. Both definitions fail to link errors to action or inaction required by federal regulation.	The additional language “required by federal regulation” is not needed as the Department administers the Nutrition Assistance program in accordance with the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 et seq), the Code of Federal Regulations 7 CFR 271 through 7 CFR 283 including the state options allowed in the federal regulations, and any alternative policies and procedures that are approved under the waiver authority of the federal Food and Nutrition Service.  The two definitions are taken from 7 CFR 273.18(a)(4)(b)
2	R6-14-301. <b>Purpose and Definitions</b>	The definition of “claim” in subsection (B)(2) also must be linked to the agency or claimant taking an action or failing to take an action	The definition of “claim” is based on the federal regulation at 7 CFR 273.18(a)(1) and (2). The

	(B)(2)	required by federal regulation. As drafted, the definition of “claim” occurs whenever food stamps were “overpaid.” That is not the definition of when an overpayment occurs.	federal regulation states, in part, that “A recipient claim is an amount owed because of benefits that are overpaid or benefits that are trafficked.”  Not every overpayment of benefits results in a claim being established. Those overpayments that are not considered to be Cost Effective as allowed under 7 CFR 273.18(e)(2)(i) are not established as claims and collection activities are not initiated.
3	R6-14-302. <b>Claim Calculation; Date of Discovery; Overpayment Period (B)</b>	DES’ initial draft rules in 2017 had a look back period of 12 months for the collection of overpayments in agency error cases. In subsection (B), the proposed rule increases the collection period to 36 months for both agency error and inadvertent household error. From information DES provided to the Institute a few years ago, most overpayments in Arizona are caused by agency error. In those situations, the error was out of the control of the claimant. The longer collection period for agency error cases should be changed back to the initial draft proposal of 12 months. The further back DES goes for collection, the less likely the claimant will have the documents needed to challenge the overpayment. Several states, including Washington, limit the collection of agency errors to 12 months. Such a limitation on collection policy or practice is reasonable because the error is the fault of the agency and the agency may not keep any of the recovered overpayment. We continue to recommend that for agency errors DES only go back 12 months. We also continue to recommend that the 12-month time period is appropriate for inadvertent household errors as well. While collections may go back three years, in cases with no intent to obtain benefits the person was not eligible for, administrative time and effort would be better served ensuring the operation of the food stamp program complied with federal law.	7 CFR 273.18(c)(1)(i) requires the Department to calculate an Agency Error or Inadvertent Household Error claim back to at least twelve months but no more than 6 years prior to when the Department became aware of the overpayment.  The Department has chosen to calculate such claims back to 36 months from the Date of Discovery, as allowed in this regulation.
4	R6-14-302. <b>Claim Calculation; Date of Discovery; Overpayment Period</b>	The federal regulation 7 C.F.R. § 273.18(d)(1) requires the agency to “establish a claim before the last day of the quarter following the quarter in which the overpayment or trafficking incident was discovered.” DES failed to include this requirement in the proposed rules. It must be included.	The Department complies with 7 CFR 273.18(d)(1) and does not use the option to develop and use a different standard, as allowed in this rule. Had we selected to deviate from the timeframe requirement in this regulation, a

	(B)		rule would have been included to specify the alternative timeframe. As required under 7 CFR 273.18(d)(3) the Department establishes all claims even if they cannot be established within the timeframes in 7 CFR 273.18(d)(1).
5a	R6-14-303. <b>Determining a Claim Amount</b>	In general, the Institute is concerned about what this section purports to cover and what it should cover: This section is entitled "determining a claim amount," by which DES appears to mean determining an "overpayment" amount. This section should be broader and address change reporting in general and the consequences of a report or a failure to report a change, which may result in an increase in benefits or a decrease in benefits and a potential overpayment. Or DES should have a separate change reporting section. By combining the two concepts, this section is very confusing and the wording is not clear. The Institute has tried to understand what DES intends and the legal basis for its proposed rule.	In a new rulemaking that will address other aspects of the Nutrition Assistance program that are not included in, or relevant to, this rulemaking, the Department will include an Article specific to Change Reporting and Change Processing.  The rules developed in this rulemaking address the change related issues specific to identifying and establishing Claims Against Households.
5b	R6-14-303. <b>Determining a Claim Amount (A)(2)</b>	The rule provides that when DES determines an "error occurred at the application, [DES] shall re-determine eligibility and the benefit amount ...using the application approval and denial policies and procedures that were in effect at the time eligibility was determined." The rule does not define an "error," and unless DES defines the word, it should be deleted. This issue goes back to the Institute's concerns discussed in R6-14-301, where agency error and inadvertent household error are not linked to any action or inaction. These definitions must be linked to the agency or claimant taking or failing to take an action required by the federal regulation.	As suggested, the Department has revised R6-14-303(A)(2) to provide more clarity regarding what "an error" means, both on the part of the Department and on the part of the applicant/recipient household, as pertains to the circumstances specific to this rule.
6	R6-14-303. <b>Determining a Claim Amount (A)(2)</b>	Although subsection (A)(2) pertains to the calculation of benefits, the last sentence of the subsection specifically provides that DES "will not consider information that was not previously reported by the household that would have resulted in an increase in benefit allotment at the time of initial approval of benefits." At the public hearing on August 6, 2019, we asked the approximately 14 DES representatives present to give us the federal authority for this differential treatment and there was no response. We request that DES provide the specific federal regulation that allows DES to not consider information	The subsection cited in the comment addresses "information that <u>was not previously reported by the household</u> that would have resulted in an increase in the benefit allotment at the time of initial approval of benefits".  For changes that are reported by the household after the eligibility determination has been rendered and benefits have been issued, 7 CFR 273.12(c)(1), <i>Increase in benefits</i> , subsection (i) addresses

		that would result in an increase in benefits. If there is no federal authority, then that sentence must be deleted.	<p>the effective date of a reported change that results in an increase in a household's benefits: "the State agency shall make the change effective no later than the first allotment issued 10 days after the date the change was reported to the State agency."</p> <p>The Department has revised R6-14-303(A)(2) by adding a new subsection (c) that specifies that the Department shall issue a supplement(s) when it is discovered that the household received less than the full amount of benefits <u>due to Department error</u> when rendering an eligibility determination and authorizing benefits.</p>
7	R6-14-303. <b>Determining a Claim Amount</b> (A)(2)	Moreover, the subsection only pertains to when the household is either "ineligible," (A)(2)(a), or the household was eligible but received an overpayment. (A)(2)(b). Thus, this subsection only looks at situations when the household benefits are expected to decrease and fails to look at situations when the benefits will <i>increase</i> because of the change reporting. Further, we could not find any authority for this analysis in the federal regulation.	<p>As noted in the Department response #6, R6-14-303(A)(2) has been revised to address this issue. When the department discovers that the household received less than the full amount of benefits <u>due to Department error</u> at the time an eligibility determination was rendered and when benefits were authorized, the department will issue a benefit supplement(s) and increase the benefit allotment for the remaining months in the certification for which benefits have not yet been paid.</p> <p>See response #6 regarding the effective date of changes that are reported by the household after the eligibility determination has been rendered and benefits have been issued.</p>
8	R6-14-303. <b>Determining a Claim Amount</b> (A)(2)	The federal regulation requires the agency to offset or reduce the overpayment by both any underissuance and expunged benefits. <i>See</i> 7 C.F.R. § 273.12 (c)(1)(ii)(D). In subsections (A)(2)(a) and (b), DES included expunged benefits but failed to include underissuances. Underissuances must be included. Otherwise, how does DES get to the correct amount of benefits that should have been paid during the relevant time period? This issue has come up in legal services cases, where in some months	<p>The redetermination required in the rule includes consideration of appropriate overissuances and underissuances of benefits.</p> <p>As noted in Department response #6, the Department has revised R6-14-303(A)(2) by adding a new subsection (c) that specifies that the Department shall issue a supplement(s) when it is</p>

		there was an overpayment but in other months there was an underissuance. In the overpayment calculation, DES staff ignored the underissuance months. If the underissuance months were taken into account, the amount of the overpayment would have been reduced. Of course, there may be situations where the amount of the underissuance may result in no overall overpayment and increased benefits being owed to the household.	discovered that the household received less than the full amount of benefits <u>due to Department error</u> when rendering an eligibility determination and authorizing benefits.
9	R6-14-303. <b>Determining a Claim Amount (A)(3)</b>	Subsection (A)(3) pertains to changes that occur during the certification period. Subsection (A)(3)(a) pertains to a change that was required to be reported by the household and was reported. In those cases, under the rule, DES is required to recalculate benefits and determine whether an overpayment (i) or an underissuance (ii) (supplement is needed) occurred. We think the way this subsection is drafted is very unclear. We request that DES insert the following words at the beginning of subsection (a)(ii): "THE RESULT MAY BE THAT THERE IS NO OVERPAYMENT."	The rule clearly specifies that the result of processing the reported change(s) may result in either a claim being established for an overpayment of benefits or the issuance of supplemental benefits for each month the household was paid less than the new benefit amount.
10	R6-14-303. <b>Determining a Claim Amount (A)(3)</b>	Subsection (A)(3)(b) pertains to changes that were not reported by the household during certification. If the change was not required to be reported, DES will not recalculate benefits. (A)(3)(b)(i). Federal regulation 7 C.F.R. § 273.12(d) provides that if the household fails to report a change that it was not required to report, then there shall not be an overpayment. But the proposed rule fails to address what should happen if the failure to report would have increased benefits. DES must change subsection (A)(3)(B)(i) to read: "When the change was not required to be reported, the Department will not process the change for benefits that would result in an overpayment." A new (B)(ii) must be added that provides: "When the change was not required to be reported, the Department will process the change for benefits that would result in an underissuance."	Please refer to the responses for numbers 6 through 9.  This rule is consistent with the federal regulation requirements at 7 CFR 273.12(c) and (d).
11	R6-14-303. <b>Determining a Claim Amount (A)(3)</b>	If the change was required to be reported, then DES will recalculate benefits and establish the overpayment. (A)(3)(b)(ii). There is no provision to recalculate benefits when an increase occurs. We do not understand how DES can hold the failure to report against the household to create an overpayment but will not recalculate benefits when the result is an underissuance. Here as well, at the August 6, 2019 public hearing we asked the approximately 14 DES employees present for	Please refer to the responses for numbers 6 through 10.  This rule is consistent with the federal regulation requirements at 7 CFR 273.12(c) and (d).

		<p>the federal citation that allows this differential treatment and there was no response. The last sentence in subsection (A)(3)(b)(ii) must be revised to read with the new wording capitalized: "The Department shall establish a claim based on the amount of benefits that were paid in excess of the correct benefit amount in each month of the certification period minus the amount of benefits that the Department has expunged from the household's EBT benefit account</p> <p>AND ANY UNDERISSUANCES, THE RESULT MAY BE THAT THERE IS NO OVERPAYMENT. DEPARTMENT SHALL ISSUE A SUPPLEMENT FOR EACH MONTH THE HOUSEHOLD WAS PAID LESS THAN THE NEW BENEFIT AMOUNT." We have taken the last sentence from DES' subsection (A)(3)(a)(ii) to be consistent.</p>	
12	R6-14-303. <b>Determining a Claim Amount (A)(3)</b>	<p>DES failed to articulate the steps to calculate a food stamp overpayment as required by 7 C.F.R. § 273.18(c)(1)(ii). DES should have a comprehensive rule on how to calculate an overpayment and should add the following: <i>New subsection:</i> The Department shall only count income that was reasonably certain under 7 C.F.R. § 273.10(c)(1) at the time that the initial calculation of benefits was made.</p>	<p>The process described in this rule complies with 7 CFR 273.18(c).</p> <p>The details regarding an overpayment calculation are published in the Department's Cash and Nutrition Assistance Policy (CNAP) Manual which is available to the public via the Department's website at <a href="https://des.az.gov/">https://des.az.gov/</a>.</p> <p>The CNAP policy reference is FAA6.E03C.</p>
13	R6-14-303. <b>Determining a Claim Amount (A)(3)</b>	<p>Since most households are on simplified reporting, we will discuss the rule in that context. The only thing a household on simplified reporting must report during the certification period is if the household income goes above 130% of the FPL. 7 C.F.R. §273.12(a)(5)(v). Other changes such as household composition that must be reported at the recertification stage are not required to be reported during the certification period. Thus, we would add the following to the proposed rule.</p> <p><i>New subsection:</i> The Department uses simplified reporting in most cases and unless the household's income exceeds 130 % of the federal poverty guidelines, a report of change is not required until the six-month point in certification period and does not constitute an overpayment.</p>	<p>The Department processes all changes that are reported by a household, as allowed under 7 CFR 273.12(c).</p> <p>When the Department discovers a change that was not reported by the household, the rule specifies that only changes that are required to be reported will be evaluated when determining whether an overpayment occurred.</p>

14	R6-14-303. <b>Determining a Claim Amount</b> (A)(3)	<p>During the certification period, the agency must act when the household's gross income exceeds the monthly gross income limits for the household size. 7 C.F.R. §273.12(a)(5)(v).*</p> <p>We could not find other times when the agency must act to decrease benefits under simplified reporting in the federal regulation. If DES has found such a provision, we request that DES provide the citation to us.</p> <p><i>* The federal regulation was amended on April 15, 2019.</i></p>	As stated in the Department response #13, the Department processes all changes that are reported by a household, regardless if the change was required to be reported, as allowed under 7 CFR 273.12(c).
15	R6-14-303. <b>Determining a Claim Amount</b> (A)(3)	DES uses the term "correct benefit amount" but the term is not defined. If this term is going to be used, DES should define it.	The phrase "correct benefit amount" as used in this rule is consistent with the language in 7 CFR 273.18(c)(1)(ii) – "correct amount of benefits".
16	R6-14-307. <b>Collection Methods</b> (C)	DES includes the option that it "may" collect overpayments from unemployment insurance ("UI") benefits through an intercept or a repayment agreement. DES previously stated it would not collect from UI benefits. In meetings, DES staff reiterated that DES does not currently collect overpayments from UI benefits. Collection from UI benefits is not required, <i>see</i> 7 C.F.R. § 273.18 (g)(6)(i) and(ii), and we request that DES not collect from UI payments. Recipients of UI benefits are persons and families who have had a life altering event, the loss of a job through no fault of their own and are in financial crisis. Add to this situation the fact that Arizona has the second lowest UI weekly amount in the country, and the further loss of benefits will lead many households into being homeless. DES should not intentionally add to the financial stress these vulnerable families are facing.	While the Department does not currently utilize this collection method, nor is it required to, it is an allowable option under 7 CFR 273.18 (g)(6), and is included in this rule in order for this option to be retained.
17	R6-14-308. <b>Claim Compromise</b> (C)	DES limits a household's ability to obtain a claim compromise to one time. There is no such limitation in the federal regulation, and this is an example where DES' proposed rule <i>is</i> more restrictive than the federal regulation. Under the federal regulation, 7 C.F.R. § 273 .18 (e)(7), a household is entitled "compromising claims." There is no limitation to only compromising a claim one time.	<p>7 CFR 273.18(e)(7) allows states the <u>option</u> to compromise a claim. Compromising a claim is not a requirement under federal regulation and thus a household is not entitled to a Compromise.</p> <p>Also, 7 CFR 273.18(e)(7)(iii) allows states to reinstate any compromised portion of a claim if a claim becomes delinquent.</p>

			Since the Department has opted to allow a Compromise, any rules and subsequent procedures the Department adopts for a Claim Compromise are not more restrictive than the federal regulation.
18	R6-14-308. <b>Claim Compromise (E)</b>	In subsection (E), the rule should be clarified that an untimely submission of the documents excludes the situations where the person asked for more time or asked for help from DES. We request that DES insert after the sentence "A household may request additional time or help from the Department" the following sentence "A household that requests additional time or help from the Department shall not be required to submit the Financial Statement with requested information and verification within the thirty calendar days following the mailing or transmittal of the Financial Statement to the household."	As suggested, the Department has revised R6-14-308(E) to clarify that the Financial Statement is required to be provided by the thirtieth calendar day or the agreed upon extension date by the household, unless the delay was for good cause.  The revised rule also adds a provision that when the household requests additional time or assistance from the Department, the Department shall allow an additional 30 calendar days.
19	R6-14-309. <b>Reinstatement of a Compromise Claim</b>	The Institute does not object to subsections (1) and (2), except that the proposed rule fails to address what happens when the default or delinquency of the compromised claim is the result of changed circumstances and renegotiation of the repayment plan is needed because of a hardship. The federal regulation, 7 C.F.R. § 73.18(e)(5)(iii), provides for the renegotiation of the repayment agreement and DES' current policies contain a renegotiation provision as well. DES policy "FAA 6. E Overpayments, .06 Methods of NA Overpayment Collection - Recoupment Collection Notices" provides that when the household fails to make a payment pursuant to the payment schedule, DES sends a notice that the household "may negotiate the payment schedule," and DES may "renegotiate the repayment schedule." We are dismayed that while DES currently renegotiates repayment plans it continues to fail to include the policy and practice in the proposed rules. Therefore, we request the following be added as a new section:  <i>New Section: Delinquency and Renegotiation of a Repayment Plan</i> A. If the household is in default or delinquency of the repayment plan, the department shall send a notice to the household advising the household of the delinquency. The notice shall inform the household how to apply for a	This rule is consistent with 7 CFR 273.18(e)(7)(iii) which allows states to reinstate any compromised portion of a claim if a claim becomes delinquent.

		renegotiated payment plan, and specify the documentation they will need to submit. B. If the household's circumstances have changed, and it can no longer make the agreed upon payments, they may apply for a renegotiated payment plan based on the hardship. C. The household has the right to appeal the agency's failure to renegotiate a new repayment plan and the terms of any renegotiated repayment plan.	
<b>Article 4. Appeals and Fair Hearings</b>			
20	R6-14-403. <b>Request for Hearing; Form; Time Limits; Presumption (E)</b>	In subsection (E), the reasons DES will consider when an untimely submission of an appeal will be considered timely continue to be too limited. In every other section of the rules there is a general "good cause" exception. There should be a general good cause exception in this rule as well. The Institute requests the addition of a new subsection (F)(4) that provides: "For other good cause as defined in subsection R6-14-412(B)."	This rule is consistent with 7 CFR 273.15(g) and due process requirements.  We think it is important to note that a person has 90 days to file for a Fair Hearing and there are additional protections including that a recipient can appeal the current level of benefits at any time within a certification period.
21	R6-14-403. <b>Request for Hearing; Form; Time Limits; Presumption Proposed (J)</b>	The following sentence should be added to subsection (J): "The notice of hearing shall include information on the person's rights to reasonable accommodations under the Americans with Disabilities Act ("ADA") and how an accommodation may be requested."* DES recognizes this obligation in proposed rule R6-14-503(F) for Administrative Disqualification Hearings where the rule provides that "The time and place for the hearing shall be arranged so the hearing is accessible ... including making reasonable accommodations for a person with a disability." While, as explained in R6-14-503(F), we do not think this provision is adequate, it highlights that DES understands its obligation to provide this information to persons.  <i>* Although beyond the rules, we also want to state that DES must immediately stop burying information concerning the household's rights under the ADA in tiny font at the end of all of its notices. In addition to tiny font which is not readable for persons with visual impairments, the text starts off referring to other federal laws. Several years ago, the Institute and legal services worked on the notices with the Appellate Services Administration and the notices had a separate section in at least 12 font with a heading on Americans with</i>	The Department does not agree with this comment. The Department complies with all federal Americans with Disabilities Act requirements in the administration of Department programs and services. The rule need not set forth in detail the ADA related duties of the Department.

		<i>Disabilities Act rights. We request that DES immediately go back to that format.</i>	
22	R6-14-405. <b>Hearings; Location; Notice; Time (A)</b>	In subsection (A) the rule should affirmatively state that: "The notice of hearing shall inform the appellant that he or she may request to appear in person before an administrative law judge and specify the steps to take to make this request." DES' Appellate Services Administration has been very reluctant to have in-person hearings even though claimants have a right to one. <i>See</i> discussion below in parties' rights, R6-14-410, concerning the parties' rights to appear in person.	The rule states that the Notice of Hearing shall include information on how to request an in-person hearing. The Department believes that this requirement adequately addresses this comment.
23	R6-14-405. <b>Hearings; Location; Notice; Time (D)</b>	In the proposed rule, DES has conflated two rights: (1) the right to look at the person's whole file and get copies of the file and (2) the right to examine and get copies of the documents to be used at the hearing. The wording in subsection D(5)(a) provides that the notice shall inform the person of the right to "Examine the case file prior to the hearing ... If requested ... the Department shall provide a free copy of the portions of the case file that are relevant to the hearing." As explained below, DES must segregate the two rights and not conflate them.  Federal regulation 7 C.F.R. § 273.15(1) lists the information that must be in a notice of a hearing as part of the person's pre-hearing rights. The fourth item is: "Explain that the household or representative may examine the case file prior to the hearing." 7 C.F.R. § 273.15(1)(4). This is a right to review the whole case file and get a copy of the whole file. The right is not limited to "portions" of the case file. We request DES list this right separately as subsection (5)(a). "Explain that the household or representative may examine the case file prior to the hearing and obtain a copy of the whole case file."	The provisions in R6-14-405 (D)(5)(a) conform in full to the following federal regulations:  7 CFR 273.15(i)(1): "Upon request, the State agency shall make available without charge the specific materials necessary for a household or its representative to determine whether a hearing should be requested or to prepare for a hearing."  7 CFR 273.15(l)(4): "Explain that the household or representative may examine the case file prior to the hearing."  7 CFR 273.15(p)(1): "If requested by the household or its representative, the State agency shall provide a free copy of the portions of the case file that are relevant to the hearing."
24	R6-14-405. <b>Hearings; Location; Notice; Time (D)</b>	Under 7 C.F.R. § 273.15(p)(l), the household must be given an opportunity to "[ e ]xamine all documents and records to be used at the hearing at a reasonable time before the hearing." (emphasis added). Any documents that will be used at the hearing and documents that are "relevant" to the hearing, must be provided to the household without charge. We propose listing this right separately as 5(b) and then renumbering the rest of rights listed in the subsection. That subsection would read:	R6-14-405(D)(5)(a) conforms with the federal regulation requirement at 7 CFR 273.15(l)(4).  Additionally, R6-14-410 addresses this issue per 7 CFR 273(p)(1).

		"Examine all documents and records to be used at the hearing and all relevant documents to the hearing and get copies of those documents without charge both prior to the hearing and during the hearing."	
25	R6-14-405. <b>Hearings; Location; Notice; Time</b>	The federal regulation provides for agency conferences in situations beyond the denial of expedited services. 7 C.F.R. § 273. 15 (d). DES offers the conferences and DES should affirmatively explain this in the notice. Legal services utilizes these conferences to settle cases without going to a hearing. The conferences present legal services the opportunity to explain the problems with DES' factual and legal analysis of the case. The same applies to unrepresented claimants. Ultimately, agency conferences can save DES' resources as well by increasing the opportunities for settlement. Moreover, this information falls squarely under DES' obligation to include in the notice "any other information that would provide the household with an understanding of the proceedings and that would contribute to the effective presentation of the household's case." 7 C.F.R. § 273. 15 (1)(3).	The Department does not agree with this comment. The federal regulations do not require this information to be included.  The Department provides the information and it is not necessary to repeat the information in the Notice of Hearing. No change is needed.
26	R6-14-409. <b>Subpoenas (C)</b>	In subsection (C), the word "work" should be changed to "working," as that is the wording in R-6-14-402(A)(2).	As suggested, the Department has revised R6-14-409(C) by changing "work" to "working".
27	R6-14-410. <b>Parties' Rights</b>	The Institute requests that DES add the right to appear in person at the hearing before an administrative law judge; the right to bring family and friends to the hearing; and the right to review the whole case file to the list of a party's rights. Federal regulation 7 C.F.R. § 273.15 (o) specially provides for "attendance" at the hearing of the household, as well as friends and relatives of the household, "if the household so chooses" unless there are space limitations. The friends and relatives of the household do not need to be witnesses to attend the hearing.	The Department is unaware of any legal authority that provides that there is a right to an in-person hearing. The section of the federal regulations cited by the commenter only provides that the household has a right to attend the hearing. Attendance by telephone is no less an exercise of the right to attend the hearing than attendance in-person. No change is needed.  R6-14-405(D)(1) stipulates that the Notice of hearing shall include information on how to request an in-person hearing.  The right to bring friends and relative to the hearing is specified in the federal regulations. It is not necessary to reiterate this right in

			these state rules. No change is needed.
28	R6-14-413. <b>Hearing Proceedings</b>	DES added at our request that 7 C.F.R. § 273.15(p)(4) requires the state agency to honor a party's right to "advance" arguments without undue interference. The Institute also requests that DES put back in the proposed rule, the right to make an oral opening and closing argument with the consent of the hearing officer. We think both rights are important.	This rule conforms with the federal regulation requirements at 7 CFR 273.15(p) and does not need to be revised.
29	R6-14-416 <b>Further Administrative Appeal or R6-14-417. Appeals Board</b>	This section needs to be clarified pursuant to 7 CFR 273.15(q)(2) that the Appeals Board Decision is binding on the Agency and that is our understanding that DES agrees with that, but the way it is worded we think it talks about both parties.	R6-14-417(B) and (C) have been revised to clarify that only the household appellant adversely affected by an Appeals Board decision may seek further judicial review.
<b>Article 5. Intentional Program Violation</b>			
		We propose adding the following new subsections to the Intentional Program Violation sections:	
30	R6-14-501. <b>Intentional Program Violations (IPV); Defined</b>	<i>New subsection (C) in R6-14-501</i> The Department shall inform the household in writing of the disqualification penalties for Intentional Program Violation each time the household applies for Nutrition Assistance. The penalties shall be in clear, prominent, and boldface lettering on the application form as required by 7 C.F.R. § 273.16 (d).	The Department agrees that it must provide this information as a part of the application process. However, this requirement is adequately set forth in the federal regulations at 7 CFR 273.16(d). It is not necessary to reiterate it in these rules. No change is needed.
31	R6-14-502. <b>IPV Administrative Disqualification Hearings; Hearing Waiver</b>	<i>New subsection (A) in R6-14-502</i>  The Department may only require reporting and the clarification of unclear information as provided for in 7 C.F.R. §273.12.	Reporting and clarification of information is adequately set forth in federal regulations at 7 CFR 273.12. It is not necessary to reiterate that information in these rules. No change is needed.
32	R6-14-502. <b>IPV Administrative Disqualification Hearings; Hearing Waiver</b>	<i>New subsection (B) in R6-14-502</i>  A person is not required to cooperate with a fraud investigation for continued eligibility.	The Department does not agree with this comment. Any provision dealing with the requirement for an individual to cooperate with a fraud investigation should be included in rules concerning eligibility requirements, not in the rules concerning Administrative Disqualification Hearings. No change is needed.
33	R6-14-502. <b>IPV Administrative</b>	<i>New subsection (C) in R6-14-502</i>	The Department is unaware of any existing legal authority that specifies the items that must be

	<b>Disqualification Hearings; Hearing Waiver</b>	<p>In determining whether an IPV occurred, the Department must investigate whether:</p> <ol style="list-style-type: none"> <li>1. The person knew about the Department program rule in question and intended to act dishonestly.</li> <li>2. The person has a mental or cognitive disability that prevents him or her from forming an intent to violate program rules or act dishonestly.</li> <li>3. The person did not understand the Department rule because of literacy problems, limited English proficiency or a disability.</li> <li>4. The person reported information but the Department failed to act on the information or the Department recorded the information incorrectly. 7 C.F.R. §273.2(b)(1)(v).</li> <li>5. The Department told the person their actions were legal or failed to explain the reporting requirements. <i>See</i> 7 C.F.R. § 273.2(e)(1).</li> <li>6. The Department failed to provide reasonable accommodations to a person with a disability that led to an unintentional violation of a program rule.</li> </ol>	<p>investigated in an Intentional Program Violation investigation. It is not appropriate to specify such items in these rules because it is important to allow the investigator to focus the investigation on the relevant factual matters, given the unique circumstances of the individual case. The list of items proposed by the commenter would cause the Department to use resources inefficiently to investigate matters for which there is no evidentiary basis. While it may be useful to include such a list in internal policy or training material as areas of potential inquiry, the list is not appropriate for inclusion in these rules. No change is needed.</p>
34	R6-14-502. <b>IPV Administrative Disqualification Hearings; Hearing Waiver (C)(2)</b>	<p>In subsection (C)(2), the conflation of rights noted in R6-14-405 also occurs in this proposed rule. The rule provides "notification that the individual ... has the right to examine the case file prior to the hearing and, when requested ... be provided a free copy of the portions of the requested portions of the case file." The person must be allowed to obtain a copy of their whole file, not just portions of the file. DES' continued efforts to make it difficult for the person to see their complete file is unlawful. We request that DES segregate out the two rights as we set forth in our comments to section R6-14-405 above.</p>	<p>As suggested, the language in R6-14-502(C)(2) has been revised to be consistent with the language in R6-14-410(B) regarding the receipt of a free copy of any document in the individual's case file, with certain restrictions.</p>
35	R6-14-502. <b>IPV Administrative Disqualification Hearings; Hearing Waiver (C)(11)</b>	<p>In subsection (C)(11)(c), we request that DES include a third option in the notice that the persons may check. "I do not admit that the facts as presented are correct in my Nutrition Assistance case. I do not waive my right to require an Administrative Disqualification Hearing where the Department must prove by clear and convincing that I committed and intended to commit an Intentional Program Violation." The correct criteria should be disclosed to the person receiving the notice. 7 C.F.R. § 273.16(v)(6).</p>	<p>As requested, the Department has revised R6-14-502(C)(11) by adding a subsection (c) to include a third option in the notice that the persons may check: "I do not admit that the facts as presented are correct in my Nutrition Assistance case. I do not waive my right to require an Administrative Disqualification Hearing where the Department must prove by clear and convincing evidence that I committed and intended to commit an Intentional Program Violation."</p>

36	R6-14-503. <b>Administrative Disqualification Hearings</b> (D)(3)	The notice of the disqualification hearing must contain the rights listed in 7 C.F.R. § 273.1S(p) which under subsection (1) includes the right to look at the person's complete case file. DES must include this right in its notice. The person also has a right to a copy of the person's complete file. Subsection (D)(3) is not adequate and incorrectly conflates these rights. That subsection provides the person "has a right to examine the case file prior to the hearing. When requested the Department shall provide a free copy of the requested portions of the case file." The rule improperly limits the documents to "requested portions of the case file." We request that DES use our proposed wording in R6-14-405 above.	As suggested, the Department has revised R6-14-503(D)(3) to be consistent with the language in R6-14-410(B) and R6-14-502(C)(2) regarding the receipt of a free copy of any document in the individual's case file, with certain restrictions.
37	R6-14-503. <b>Administrative Disqualification Hearings</b> (D)	In subsection (D), the hearing notice should also include: (1) the person has the right to not attend the hearing or attend the hearing and remain silent	The Department does not agree with this comment. Although it is true that an individual is permitted to remain silent and that anything said can be used against him, the federal regulations do not require that this statement be included in the Notice of Hearing. Adding the statement would make the Notice of Hearing longer and more difficult to read and understand. No change is needed.
38	R6-14-503. <b>Administrative Disqualification Hearings</b> (D)	In subsection (D), the hearing notice should also include: (2) the person's right to remain silent and that anything said or signed by the person can be used against them.	The Department does not agree with this comment. Although it is true that the standard of proof is clear and convincing evidence, the federal regulations do not require that this statement be included in the Notice of Hearing. Adding the statement would make the Notice of Hearing longer and more difficult to read and understand. No change is needed.
39	R6-14-503. <b>Administrative Disqualification Hearings</b> (D)	In subsection (D), the hearing notice should also include: (3) if the person does not attend the hearing, the ALJ will make findings based on the record produced by DES.	The Department does not agree with this comment. The suggested language is already covered adequately under R6-14-503(D)(4). No change is needed.
40	R6-14-503. <b>Administrative Disqualification Hearings</b> (D)	In subsection (D), the hearing notice should also include: (4) that the standard of proof to find a violation is clear and convincing evidence that the person "committed and intended to commit an IPV." 7 C.F.R. §	The Department does not agree with this comment. Although it is true that the standard of proof is clear and convincing evidence, the federal regulations do not

		273.16(v)(6). It is important that persons understand the heightened proof that DES must satisfy in these cases.	require that this statement be included in the Notice of Hearing. Adding the statement would make the Notice of Hearing longer and more difficult to read and understand. No change is needed.
41	R6-14-503. <b>Administrative Disqualification Hearings (F)</b>	Subsection (F) is an Americans with Disabilities Act provision but it should be revised to be clearer. We request that DES use our proposal in R6-14-403(J).	The Department does not agree with this comment. The rule as drafted is clear and unambiguous. The rule need not set forth in detail the ADA related duties of the Department.
42	R6-14-503. <b>Administrative Disqualification Hearings (G)</b>	Subsection (G) provides that in addition to informing the person at the beginning of the disqualification hearing that she can remain silent, the proposed rule also requires the ALJ to state "the consequences of exercising that right." The right to remain silent is absolute and there is no "consequence" to exercising that right and the ALJ cannot make any inference about the person asserting their constitutional and statutory right to remain silent. See 7 C.F.R. § 273.16(e)(2)(iii) and (f)(1)(ii)(B). <sup>1</sup> The words "the consequences of exercising that right" must be deleted.  <sup>1</sup> Arizona courts have recognized that the protection against self-incrimination includes the freedom from adverse consequences flowing from defendant's exercise of his Fifth amendment rights. <i>State v. Bravo</i> , 158 Ariz. 364, 378, 762 P.2d 1318, 1332 (1988); <i>State v. Carrillo</i> , 156 Ariz. 125, 750 P.2d 883 (1988). Normally, any reference by a judge or a prosecutor about a defendant's protected silence will constitute fundamental error. <i>State v. Anderson</i> , 110 Ariz. 238, 517P.2d 508 (1973). <i>Miranda</i> warnings carry an implicit assurance that a defendant's choice to remain silent will carry no penalties. <i>Carrillo</i> , 156 Ariz. at 134, 750 P.2d at 892 (citing <i>Doyle v. Ohio</i> , 426 U.S. 610, 618-19, 96 S.Ct. 2240, 2245, 49 L.Ed.2d 91, 96 (1976)).	As suggested, the Department has revised R6-14-503(G) to remove the language "and the consequences of exercising that right".
43	R6-14-503. <b>Administrative Disqualification Hearings (I)</b>	In subsection (I), the wording should include the capitalized words to read: "The Department shall prove by clear and convincing evidence that the household "INTENDED TO COMMIT and committed an IPV."	As suggested, the Department has revised R6-14-503(I) to include the language "and intended to commit".

44	R6-14-503. <b>Administrative Disqualification Hearings</b>	<p>The Institute suggests the following subsections be added for when an ALJ finds the person committed and intended to commit an IPV.</p> <p><i>New (L):</i> If the hearing officer finds that the person did commit and intend to commit an IPV, the hearing officer shall provide a written notice that informs the person of the decision pursuant to 7 C.F.R. §273.16(e)(9)(ii) and explains the right to appeal to state court and the appeal process.</p>	To address this comment, rather than adding a new subsection to the rule, the Department has revised subsection (J) of the rule to add “and include appeal rights” to the items that are contained in the written decision notice that is sent by the Hearing Officer to the individual suspected of the IPV.
45	R6-14-505. <b>Disqualification Sanctions; Notice</b>	<p>The Institute requests that subsection (G) include the following words at the beginning of the subsection:</p> <p>The department shall provide a separate written notice to the remaining household members, if any, of the disqualification period, including any explanation of any deferment of disqualification; the allotment they will receive during the disqualification period or that they must reapply because the certification period has expired. <i>See</i> 7 C.F.R. §273.16(e)(9)(ii) and (f)(3).</p>	The Department disagrees that subsection (G) needs to be revised, as it conforms to the federal regulations requirements as cited in the subsection, However, for additional clarity, the department has added the federal regulation citation provided in the comment to subsection (H).
46	R6-14-506. <b>Administrative Disqualification Hearings or Waiver of the Right to a Hearing: Appeal</b>	We would add that pursuant to 7 CFR 273.15(q)(2) that the Appeals Board Administrative Decision is binding on the Agency.	The Department does not agree with the comment. The rule limits further review to “an individual adversely affected.” The Department is not an individual.

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

No other matters are prescribed.

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

The rules do not require a permit.

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

Article Three - Claims Against Households. Federal law at 7 U.S.C. 2022 is applicable to this rule. This federal law is implemented in the SNAP program at 7 CFR 273.18. This rule is not more stringent than federal law or regulation.

Article Four – Appeals and Fair Hearings. Federal law at 7 U.S.C. 2020 is applicable to this rule. This federal law is implemented in the SNAP program at 7 CFR 273.15. This rule is not more stringent than federal law or regulation.

Article Five – Intentional Program Violation. Federal law at 7 U.S.C. 2015 is applicable to this rule. This federal law is implemented in the SNAP at 7 CFR 273.16. This rule is not more stringent than federal law or regulation.

**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 rules:**

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:**

This rule was previously published as an emergency rule as cited below. The emergency rules in both publications contained identical text.

Notice of Emergency Rulemaking: 24 A.A.R. 2081, July 27, 2018

Notice of Emergency Rulemaking: 24 A.A.R. 3591, December 28, 2018

The following rules in the Notice of Emergency Rulemaking have been revised, renumbered, or both in the Notice of Final Rulemaking:

**R6-14-302. Calculating a Claim Amount**

In the final rulemaking, this rule has been revised by separating the rule out into two rules:

- R6-14-302. Claim Calculation; Date of Discovery; Overpayment Period addresses the ‘date of discovery’ for each of the 4 types of claims that may be established and the specific period of time that will be used for each of the claim types when calculating a claim amount.
- R6-14-303. Determining A Claim Amount addresses the policies and procedures the Department uses to determine the amount of a claim.

**R6-14-303. Pre-establishment Cost Effectiveness Determination**

In the final rulemaking, this rule has been renumbered to R6-14-304. Pre-establishment Cost Effectiveness Determination.

**R6-14-304. Claim Compromise**

In the final rulemaking, this rule has been renumbered to R6-14-308. Claim Compromise and has been extensively revised to provide detailed policies and procedures that the Department uses when determining whether an entire claim or any portion of a claim may be compromised.

**R6-14-305. Terminating and Writing Off a Claim**

In the final rulemaking, this rule has been renumbered to R6-14-310. Terminating and Writing Off a Claim.

**R6-14-307. Collection Methods**

In the final rulemaking, this rule has been revised to provide more detailed information about the various methods the Department is allowed to use when collecting an established claim. The revised rule provides more clarity that will enable the household to better understand their responsibilities when requesting and utilizing a negotiated repayment agreement.

**R6-14-308. Notice of Claim**

In the final rulemaking, this rule has been renumbered to R6-14-305. Notice of Claim.

**R6-14-401. Entitlement to a Fair Hearing; Appealable Action**

In the final rulemaking, this rule has been slightly revised by clarifying that any action or inaction taken by the Department, that “affects the participation of the household in the program”, may result in a request for hearing. This provides a reasonable limitation on the matters that are subject to appeal.

**R6-14-403. Request for Hearing: Form; Time Limits; Presumptions**

In the final rulemaking, this rule has been revised to further clarify the Department’s responsibilities as required by federal regulations and to more closely align with the language used in the pertinent federal regulations.

**R6-14-405. Hearings: Location; Notice; Time**

In the final rulemaking, this rule has been revised to further clarify the Department’s responsibilities as required by federal regulations and to more closely align with the language used in the pertinent federal regulations.

**R6-14-407. Hearing Officer: Duties and Qualifications**

In the final rulemaking, this rule has been revised to further clarify the duties of a Hearing Officer as required by federal regulations and to more closely align with the language used in the pertinent federal regulations.

**R6-14-409. Subpoenas**

In the final rulemaking, this rule has been revised to remove the requirement for a party to first attempt to obtain a desired witness or evidence by voluntary means prior to asking the assigned Hearing Officer to issue a subpoena. The rule also was revised further to specify that a party may request a postponement of the hearing when the party is unable to request a subpoena at least five days before the hearing date.

**R6-14-412. Failure to Appear; Default; Reopening**

In the final rulemaking, this rule has been revised to change the “good cause” definition in section (B) to align with the expanded “good cause” circumstances in section (E). The methods available to an appellant to request that a hearing be reopened were also expanded.

**R6-14-413. Hearing Proceedings**

In the final rulemaking, this rule has been revised to stipulate that a party may advance arguments without undue interference.

**R6-14-415. Effect of the Decision**

In the final rulemaking, this rule has been revised by adding a new section (C) that specifies the time frames for Department implementation of hearing decisions as set forth in federal regulations.

**R6-14-417. Appeals Board**

In the final rulemaking, this rule has been revised by stipulating that the complete record that the Appeals Board decision is based on includes the audio recording or the transcript of the hearing. For clarity, the rule was further revised to specify that only the household appellant, and not the Department, may seek further judicial review when adversely affected by an Appeals Board decision.

**R6-14-502. IPV Administrative Disqualification Hearings; Hearing Waiver**

In the final rulemaking, this rule has been revised to require that the waiver notice of the Administrative Disqualification Hearing informs the individual that they both committed and intended to commit an Intentional Program Violation (IPV). The revised rule now specifies that, when requested, a free copy of any document in the household's case record may be provided, with certain restrictions. Additionally, the rule was further revised to clarify that the individual be informed that the standard of proof for having committed an IPV is "clear and convincing evidence".

**R6-14-503. Administrative Disqualification Hearings**

In the final rulemaking, several revisions were made to this rule, including:

- Regarding the Hearing Notice, the revised rule now specifies that, when requested, a free copy of any document in the household's case record may be provided, with certain restrictions in section (D)(3).
- The opening sentence in section (G) was revised by removing the language "and the consequences of removing that right".
- In section (I), the language "and intended to commit" was added to clarify that an IPV consists of two parts: Committing an IPV and Intending to commit the IPV.
- In section (J), the language "and appeal rights" was added as an item that will be included in the written decision notice that is sent to the person suspected of the IPV.

**R6-14-504. Failure to Appear; Default; Reopening**

In the final rulemaking, the definition of "Good Cause" in section (B) has been revised.

**R6-14-505. Disqualification Sanctions; Notice**

In the final rulemaking:

- Section (F) now contains the requirements for written disqualification notice that is sent to the individual found to have committed the IPV. This information had been contained in section (G) in the NER.
- Section (G) now contains the information regarding the Department's treatment of the income and resources of the disqualified person when the Department

determines the eligibility and benefit amount for the remaining eligible members of the household. This information had been found in section (F) in the NER.

- A new section (H) has been added to state the Department's requirements to notify the remaining members of the household of their eligibility and benefit level at the same time that the excluded member is notified of his or her disqualification.

**R6-14-506. Administrative Disqualification Hearings or Waiver of the Right to a Hearing; Appeal**

In the final rulemaking, section (B) has been revised to clarify that a party may appeal a Hearing Officer's Disqualification Hearing decision to the Appeals Board and provides the appropriate cross-references to the Appeals rules in Article 4.

In the final rulemaking, a new section (C) has been added to stipulate that an individual adversely affected by an Appeals Board decision may seek further review and provides the authorizing state law citation.

In the final rulemaking, the Department has added the following two rules which were not included in the Notice of Emergency Rulemaking:

**R6-14-309. Reinstatement of a Compromised Claim.** This rule establishes when the Department may reinstate any compromised portion of a claim.

**R6-14-311. Claims Established in Another State.** This rule establishes under what circumstances the Department may accept a claim from another state if the household subject to the claim receives Nutrition Assistance benefits in Arizona.

**15. The full text of the rules follows:**

**TITLE 6. ECONOMIC SECURITY**

**CHAPTER 14. DEPARTMENT OF ECONOMIC SECURITY**

**FOOD STAMPS PROGRAM NUTRITION ASSISTANCE PROGRAM**

**Article 3. EXPIRED CLAIMS AGAINST HOUSEHOLDS**

- R6-14-301. ~~Expired~~ Purpose and Definitions
- R6-14-302. ~~Expired~~ Claim Calculation; Date of Discovery; Overpayment Period
- R6-14-303. ~~Expired~~ Determining a Claim Amount
- R6-14-304. ~~Expired~~ Pre-establishment Cost Effectiveness Determination
- R6-14-305. ~~Expired~~ Notice of Claim
- R6-14-306. ~~Expired~~ Acceptable Forms of Payment
- R6-14-307. ~~Expired~~ Collection Methods
- R6-14-308. ~~Expired~~ Claim Compromise
- R6-14-309. ~~Expired~~ Reinstatement of a Compromised Claim
- R6-14-310. ~~Expired~~ Terminating and Writing Off a Claim
- R6-14-311. ~~Expired~~ Claims Established in Another State

**Article 4. EXPIRED APPEALS AND FAIR HEARINGS**

- R6-14-401. ~~Expired~~ Entitlement to a Fair Hearing; Appealable Action
- R6-14-402. ~~Expired~~ Computation of Time
- R6-14-403. Request for Hearing; Form; Time Limits; Presumptions
- R6-14-404. Stay of Action Pending Appeal
- R6-14-405. Hearings: Location; Notice; Time

- R6-14-406.    Postponing the Hearing
- R6-14-407.    Hearing Officer: Duties and Qualifications
- R6-14-408.    Change of Hearing Officer; Challenges for Cause
- R6-14-409.    Subpoenas
- R6-14-410.    Parties' Rights
- R6-14-411.    Withdrawal of an Appeal
- R6-14-412.    Failure to Appear; Default; Reopening
- R6-14-413.    Hearing Proceedings
- R6-14-414.    Hearing Decision
- R6-14-415.    Effect of the Decision
- R6-14-416.    Further Administrative Appeal
- R6-14-417.    Appeals Board

**Article 5. ~~EXPIRED~~ INTENTIONAL PROGRAM VIOLATION**

- R6-14-501.    ~~Expired~~ Intentional Program Violations (IPV); Defined
- R6-14-502.    ~~Expired~~ IPV Administrative Disqualification Hearings; Hearing Waiver
- R6-14-503.    ~~Expired~~ Administrative Disqualification Hearings
- R6-14-504.    ~~Expired~~ Failure to Appear; Default; Reopening
- R6-14-505.    ~~Expired~~ Disqualification Sanctions; Notice
- R6-14-506.    ~~Expired~~ Administrative Disqualification Hearings or Waiver of the Right to a  
Hearing; Appeal
- R6-14-507.    ~~Expired~~ Honoring Out-of-State IPV Determinations and Sanctions

### Article 3. Claims Against Households

#### R6-14-301. Purpose and Definitions

- A. The Department establishes and collects claims under 7 CFR 273.18, Claims against households. This Article clarifies the Department’s policies and procedures as permitted in federal regulation.
- B. The definitions in section R6-14-111 and the following definitions apply to this Article:
1. “Agency error” or “AE claim” means any claim for an overpayment caused by an action or failure to take action by the Department.
  2. “Claim” means the amount of a federal debt owed because Nutrition Assistance benefits were overpaid or benefits were trafficked.
  3. “Household” means one of the following individuals or groups of individuals, unless otherwise specified under 7 CFR 273.1(b):
    - a. Except as contained in (b):
      - i. An individual living alone;
      - ii. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
      - iii. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.
    - b. Specific to the Claim Compromise process in R6-14-308, the following persons who are residing together:

- i. Adults who were members of the Nutrition Assistance household for which the claim was established, and who were adults at the time the claim was established, and
  - ii. Minor children for whom adult household members are responsible.
- 4. “Inadvertent household error” or “IHE claim” means any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the Nutrition Assistance household. This includes instances when the household received more benefits than it was entitled to receive because the household requested a continuation of benefits, pending a fair hearing decision.
- 5. “Intentional Program Violation” or “IPV claim” means any claim for an overpayment resulting from an individual committing and intending to commit, an IPV under 7 CFR 273.16.
- 6. “Trafficking claim” means any claim for the value of benefits that are trafficked, under 7 CFR 273.18. Trafficking is defined under 7 CFR 271.2.

**R6-14-302. Claim Calculation; Date of Discovery; Overpayment Period**

Under 7 CFR 273.18, the Department shall calculate an overpayment of benefits claim by:

- A. Date of discovery. The date of discovery is determined when the Department becomes aware of the overpayment.
  - 1. For AE claims, the date of discovery is the date the overpayment has been verified or the date the household ultimately fails to respond to or satisfy an overpayment inquiry.
  - 2. For IHE and IPV claims, the date that the Department obtains verification used to calculate the over-issuance.

3. For claims resulting from trafficking, the date of the court decision, or the date the household signed a waiver of administrative disqualification hearing form or a disqualification consent agreement.
- B. For AE and IHE claims, calculate a claim for the month of the date of discovery and for each prior month, not to exceed 36 months prior to the date of discovery.
- C. For an IPV claim not related to trafficking, calculate a claim back to the month that the IPV first occurred, not to exceed 72 months prior to the date of discovery.
- D. For a claim resulting from trafficking, calculate a claim for the value of the trafficked benefits, as determined under 7 CFR 273.18(c)(2).

**R6-14-303. Determining a Claim Amount**

- A. For all claims other than a claim resulting from trafficking:
  1. The Department shall determine whether the overpayment of benefits occurred at the time an eligibility determination was rendered for a new or recertification application or whether the overpayment occurred during an eligible certification period.
  2. When it is discovered that the Department rendered an incorrect eligibility determination or issued an incorrect benefit amount because the Department failed to correctly act on information provided on the application or reported by the applicant, or because the applicant failed to provide correct information on the application or prior to application approval, the Department shall re-determine eligibility and a benefit amount for that application and for the months in the certification period, using the application approval or denial policies and procedures that were in effect at the time the eligibility determination for the

application was rendered. The Department will not consider information that was not previously reported by the household that would have resulted in an increase in the benefit allotment at the time of initial approval of benefits.

- a. When it is determined that the household was ineligible, the Department shall establish a claim based on the amount of benefits issued for each month during the certification period that was established when the application was originally approved, minus the amount of benefits that the Department has expunged from the household's EBT benefit account, for each of the corresponding overpaid months.
- b. When it is determined that the household was eligible, the Department shall establish a claim based on the amount of benefits that were paid in excess of the correct benefit amount in each month of the certification period, minus the amount of benefits that the Department has expunged from the household's EBT benefit account, for each of the corresponding overpaid months.
- c. When it is determined that the household was eligible and received a smaller benefit amount than it was eligible to receive because the Department failed to correctly act on information provided on the application or reported by the applicant prior to application approval, the Department shall issue a supplement for each month in the certification period that the household was paid less than the correct benefit amount as provided in 7 CFR 273.17.

3. When a change occurred during an eligible certification period:

- a. The Department shall process any change that was reported and re-determine a new benefit allotment amount for each affected month in the certification period using the change processing policies and procedures that were in effect for those months under 7 CFR 273.12(c).
  - i. The Department shall establish a claim based on the amount of benefits that were paid in excess of the new benefit amount in each affected month of the certification period, minus the amount of benefits that the Department has expunged from the household's EBT benefit account.
  - ii. The Department shall issue a supplement for each month the household was paid less than the new benefit amount.
- b. When the Department discovers a change which was not reported by the household, the Department shall determine whether the change was required to be reported based on the change reporting requirement assigned to the household for the certification period.
  - i. When the change was not required to be reported the Department shall not process the change for the months in the certification period.
  - ii. When the change was required to be reported the Department shall re-determine eligibility and a new benefit allotment amount for each affected month in the certification period using the change processing policies and procedures that were in effect for those months under 7 CFR 273.12(c). The Department shall establish a

claim based on the amount of benefits that were paid in excess of the correct benefit amount in each month of the certification period, minus the amount of benefits that the Department has expunged from the household's EBT benefit account.

- B. For a claim resulting from trafficking, the Department shall calculate a claim amount based on the entire value of the trafficked benefits.

**R6-14-304. Pre-establishment Cost Effectiveness Determination**

The Department shall not establish an overpayment that is not cost effective using the threshold at 7 CFR 273.18(e)(2)(ii), unless the Department establishes and collects claims under a cost-effectiveness plan approved by the Food and Nutrition Service of the U.S. Department of Agriculture under 7 CFR 273.18(e)(2)(i) that establishes a different threshold.

**R6-14-305. Notice of Claim**

To begin collection on a claim, the Department shall send the household a Notice of Claim. At a minimum, the notice shall include all elements required under 7 CFR 273.18(e)(3)(iv).

**R6-14-306. Acceptable Forms of Payment**

The Department may accept all forms of payment, including the methods listed in 7 CFR 273.18(f) to collect a claim.

**R6-14-307. Collection Methods**

- A. Allotment reduction. When a household is receiving Nutrition Assistance benefits, the Department may use the allotment reduction in 7 CFR 273.18(g)(1).
- B. As provided under 7 CFR 273.18(g)(5), the Department may allow a household that is not participating in the Nutrition Assistance program to pay a claim in equal monthly payments

in a negotiated repayment agreement. The household shall be responsible to pay a monthly payment in one of the following amounts until the claim is paid in full:

1. An amount equal to the balance of the claim at the time the negotiated repayment agreement is made, divided by 36.
2. When the amount in (1) is equal to or less than \$10.00, the monthly repayment amount shall be \$10.00.

C. Under 7 CFR 273.18(g)(6), the Department may arrange with a liable individual to intercept his or her unemployment compensation benefits. This collection option may be included as part of a repayment agreement. The Department may also intercept an individual's unemployment compensation benefits by obtaining a court order.

D. Under 7 CFR 273.18(g)(8), the Department may use other collection methods that include:

1. Submitting the claim to the Arizona Department of Revenue for payment through a state tax refund.
2. Submitting the claim to the Arizona Lottery Commission for payment through a lottery winnings offset.
3. Submitting the claim to the federal Treasury Offset Program under 7 CFR 273.18(n).
4. A wage garnishment established through a civil judgment or criminal restitution order. When the Department has obtained a judgment or order, the Department shall:
  - a. Send the household a Pre-Garnishment Notice to allow the household to agree to pay the claim in a manner other than wage garnishment; and

- b. If the household fails to arrange for payment in response to the Pre-Garnishment Notice, the Department may request the Arizona Attorney General's Office to initiate a wage garnishment under A.R.S. Title 12, Chapter 9, Article 4.1, and that garnishment may continue until the claim is paid in full.
- 5. Garnishment or levy of monies or property per A.R.S. Title 12, Chapter 9, Article 4.
- 6. Imposition or enforcement of all liens, including judgment liens imposed under A.R.S. § 33-961.
- 7. Any other legal or equitable remedy for the collection of debts and judgments.
- E. Under 7 CFR 273.18(j) and at the Arizona Attorney General's direction, the Department shall act on behalf of the Food and Nutrition Service of the U.S. Department of Agriculture in any bankruptcy proceeding against a household subject to a claim.

**R6-14-308. Claim Compromise**

- A. In accordance with the Department's Claim Compromise policy and procedures as contained in the Arizona Cash and Nutrition Assistance Policy manual, the Department may compromise an entire claim or any portion of a claim if it can be reasonably determined that a household's economic circumstances dictate that the claim will not be paid in three years.
- B. For purposes of a claim compromise "household" means the following persons who are residing together:

1. Adults who were members of the Nutrition Assistance household for which the claim was established, and who were adults at the time the claim was established, and
  2. Minor children for whom adult household members are responsible.
- C. When a household reports that it is unable to pay the claim in the equal monthly increments specified in R6-14-307(A) or (B), the Department shall inform the household that it may request a one-time compromise of the claim and shall provide the household with instructions for requesting a compromise. The Department may compromise the claim by reducing the claim amount and the resulting monthly payment amount when:
1. The household contacts the Department, orally or in writing, and requests a compromise of the claim,
  2. The claim was established as an Agency Error claim or an Inadvertent Household Error claim,
  3. There is no pending Appeal of the claim,
  4. The Department has not previously approved a compromise of the claim, and
  5. The Department approves the compromise request as provided in this rule.
- D. When the Department receives a compromise request, and there is no pending appeal of the claim for which the compromise is requested, the Department shall send the household a Financial Statement form requesting necessary information and verification required for the Department to determine eligibility for a claim compromise.
- E. The household must return the completed Financial Statement with requested information and verification to the Department no later than the thirtieth calendar day following the date that the Department mailed or otherwise transmitted the Financial Statement to the

household. When the household requests assistance or additional time, the Department shall allow an additional thirty calendar days for the household to provide a completed Financial Statement. The Department shall deny the compromise claim request when the Financial Statement is not provided by the household by the thirtieth calendar day or the agreed upon extension date, unless the delay was for good cause. Good cause includes circumstances beyond the household's reasonable control such as illness, illness of another household member requiring the presence of the adult member, or a household emergency.

F. When the Financial Statement is timely provided to the Department, and all information and verification is complete, the Department shall complete the determination of eligibility for a compromise and send a notice no later than the twentieth working day, as defined in R6-14-402, following the date that the Department received the Financial Statement and all required information and verification.

G. When the compromise request is approved the Department shall notify the household of the compromised claim amount, the repayment plan for the new claim amount, and the household's right to file an appeal of the Department's action. The compromised claim amount shall be final unless modified by an appeal hearing decision.

1. The household shall pay a monthly payment in one of the following amounts until the compromised claim balance is paid in full:

a. An amount equal to the balance of the compromised claim amount, divided by 36.

b. When the amount in (1)(a) is equal to or less than \$10.00, the monthly payment shall be \$10.00.

- c. When the household is currently participating in the Nutrition Assistance program, the Department shall reduce the household's monthly Nutrition Assistance benefit allotment by the greater of \$10 or 10 percent.
  - d. When the household is no longer participating in the Nutrition Assistance program, the household shall be responsible to pay the original claim compromise monthly payment amount calculated in accordance with R6-14-308(G)(1)(a) and (b). The Department shall notify the household of the claim compromise monthly payment obligation.
2. The approval of a compromise request shall apply only to the household that requested the compromise and does not affect the responsibility of any person:
- a. Who is not a member of the household that requested the compromise, and
  - b. Who is responsible for paying the claim under 7 CFR 273.18(a)(4).
- H. When the compromise request is denied the Department shall notify the household of the denial and the household's right to file an appeal of the Department's action.
- I. The household may appeal the following actions or inaction related to a request for a compromise:
- 1. The Department's inaction or untimely action on processing the compromise request;
  - 2. The amount of the approved compromise balance; or
  - 3. A denial of the compromise request.

**R6-14-309. Reinstatement of a Compromised Claim**

The Department shall reinstate any compromised portion of a claim when either of the following occurs:

1. A claim becomes delinquent under 7 CFR 273.18(e)(5).
2. The Department approved a compromise for a claim that was originally established as an Inadvertent Household Error claim and the original claim is later determined to have resulted from an Intentional Program Violation, as evidenced by a signed waiver of an Administrative Disqualification Hearing, an Administrative Disqualification Hearing decision, or a decision rendered by a State or Federal court in a civil or criminal action.

**R6-14-310. Terminating and Writing Off a Claim**

The Department shall terminate and write off a claim as required under 7 CFR 273.18(e)(8)(ii)(A through E), and may terminate and write off a claim as allowed under 7 CFR 273.18(e)(8)(ii)(F) and (G).

**R6-14-311. Claims Established in Another State**

Under 7 CFR 273.18(i)(2), the Department may accept a claim from another state if the household subject to the claim receives Nutrition Assistance benefits in Arizona, when:

- A. The Department confirms that the household was notified by the other state of the overpayment; and
- B. There is no pending or unresolved Fair Hearing or Appeal of the overpayment in the other state, and
- C. The Department determines with reasonable certainty that the household is able to repay the outstanding claim balance in full within the Nutrition Assistance certification period assigned to the household in the Arizona.

## **Article 4. Appeals and Fair Hearings**

### **R6-14-401. Entitlement to a Fair Hearing; Appealable Action**

Any applicant or recipient who disagrees with any action or inaction by the Department which affects the participation of the household in the program has the right to challenge the action or inaction by requesting an administrative or fair hearing. Administrative hearings are conducted by the Department's Office of Appeals. In this Article, "hearing" refers to a Fair Hearing as required in 7 CFR 273.15.

### **R6-14-402. Computation of Time**

#### **A. In computing any time period:**

- 1. "Day" means a calendar day;**
- 2. "Working day" means Monday through Friday, excluding federal or Arizona state holidays;**
- 3. The Department does not count the date of the act, event, notice, or default from which a designated time period begins to run as part of the time period; and**
- 4. The Department counts the last day of the designated time period. When the day is a Saturday, Sunday, federal holiday or Arizona state holiday, the last day is the first working day following that day.**

#### **B. Documents sent by the Department are received by an applicant or recipient on the date sent to the applicant or recipient's last known street or e-mail address, plus an additional five calendar days only when sent by U.S. mail. The send date is the date shown on the document unless the facts show otherwise.**

### **R6-14-403. Request for Hearing: Form; Time Limits; Presumptions**

- A. As contained in 7 CFR 273.15(h) a request for a hearing is defined as a clear expression, oral or written, by the household or its representative to the effect that it wishes to appeal a decision or that an opportunity to present its case to a higher authority is desired.
- B. An applicant or recipient who wishes to appeal an action or inaction shall make an oral or written request for a hearing to the Department within 90 days of the notice date advising the applicant or recipient of the action, except that a recipient may appeal the current level of benefits at any time within a certification period. Action by the Department shall include a denial of a request for restoration of any benefits lost more than 90 days but less than one year prior to the request for a hearing. An applicant or recipient may file a request for hearing in-person or by mail, fax, phone, or Internet. The Department shall provide a form for this purpose. Upon request, the Department shall help an applicant or recipient to file an appeal. If the applicant or recipient makes an oral request for a hearing, the Department shall accept the oral request, record in writing the date of the request and the stated reasons for the hearing, and forward the request to the Office of Appeals. The freedom to make a request for a hearing shall not be limited or interfered with in any way.
- C. An appellant is an applicant or recipient who files an appeal.
- D. The Department shall process any oral or written request for a hearing that contains sufficient information for the Department to determine the appellant's identity.
- E. The Department deems a request for hearing filed:
1. If the appellant sends the request for hearing by first-class mail through the United States Postal Service to the Department:
    - a. On the mailing date as shown by the postmark;



K. The Department shall offer an agency conference as provided by 7 CFR 273.15(d) to those persons denied expedited service and to any person who requests a conference.

**R6-14-404. Stay of Action Pending Appeal**

As provided by 7 CFR 273.15(k), if the appellant timely requests a fair hearing, the Department shall stay the implementation of an action until the hearing officer renders a final decision on the appeal and the person receives the decision, unless the appellant signs a waiver of continuation of benefits.

**R6-14-405. Hearings: Location; Notice; Time**

A. The Office of Appeals shall schedule the hearing. The Office of Appeals may schedule a telephonic hearing instead of an in-person hearing or permit a witness or party, upon request, to appear telephonically.

B. Unless the appellant requests an earlier hearing date, the Office of Appeals shall schedule the hearing no earlier than 20 days from the date the Department receives the appellant's request for hearing.

C. The Office of Appeals shall send a notice of hearing to all parties at least 20 days before the hearing date, unless a request for an earlier hearing date is granted under subsection B.

D. The notice of hearing shall be in writing and shall:

1. Include information on how to request an in-person hearing;
2. Advise the appellant or the appellant's representative of the name, address, and phone number to notify the Office of Appeals in the event it is not possible for the appellant to attend the hearing;
3. Specify that the Office of Appeals will dismiss the hearing request if the appellant or the appellant's representative fails to appear for the hearing without good cause;

4. Include the Office of Appeals hearing procedures and any other information that would provide the appellant with an understanding of the proceedings and that would contribute to the effective presentation of the appellant's case; which shall include a pre-hearing summary prepared by the Department, and
5. Explain that the appellant or the appellant's representative shall be given adequate opportunity to:
  - a. Examine the case file prior to the hearing. The contents of the case file including the application form and documents of verification used by the Department to establish the household's ineligibility or eligibility and allotment shall be made available, provided that confidential information, such as the names of individuals who have disclosed information about the household without its knowledge or the nature or status of pending criminal prosecutions, is protected from release. If requested by the household or its representative, the Department shall provide a free copy of the portions of the case file that are relevant to the hearing. Confidential information that is protected from release and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decision.
  - b. Present the case or have it presented by legal counsel or another person.
  - c. Bring witnesses.
  - d. Advance arguments without undue interference.
  - e. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.

f. Submit evidence to establish all pertinent facts and circumstances in the case.

6. The notice shall include information about the availability of free legal services.

**R6-14-406. Postponing the Hearing**

A. The appellant may request and is entitled to receive one postponement of the first scheduled hearing. The postponement shall not exceed 30 days and the time limit for action on the decision may be extended for as many days as the hearing is postponed. The Office of Appeals may grant subsequent postponements upon a showing of good cause.

B. When the Office of Appeals reschedules a hearing under this Section, the Office of Appeals shall send the notice of rescheduled hearing at least 11 days prior to the date of the rescheduled hearing, unless the appellant agrees to shorter notice.

**R6-14-407. Hearing Officer: Duties and Qualifications**

A. An impartial hearing officer in the Office of Appeals shall conduct all hearings.

B. The hearing officer shall:

1. Administer oaths and affirmations;

2. Regulate the conduct and course of the hearing consistent with due process to insure an orderly hearing;

3. Consider all relevant issues;

4. Request, receive, and admit into the record all evidence determined necessary to decide the issues being raised;

5. Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the Department. The hearing officer shall decide on the source of the medical

assessment or professional evaluation when the household and the Department are unable to agree on a mutually satisfactory source. The Department shall pay for the medical assessment or professional evaluation when such services are not available to the household as part of the household's current health insurance coverage;

6. As provided under 7 CFR 273.15(m)(2)(vi), render a hearing decision and issue a written decision reversing, affirming, modifying or remanding the agency's decision; and

7. Issue subpoenas under R6-14-409.

**R6-14-408. Change of Hearing Officer; Challenges for Cause**

A. A party may request a change of hearing officer as prescribed in A.R.S. § 41-1992(B) by filing an affidavit that includes:

1. The case name and number;
2. The hearing officer assigned to the case; and
3. The name and signature of the party requesting the change.

B. The party requesting the change shall file the affidavit with the Office of Appeals and send a copy to all other parties at least five days before the hearing date.

C. A party shall request only one change of hearing officer unless that party is challenging a hearing officer for cause under subsection (E).

D. A party may not request a change of hearing officer once the hearing officer has heard and decided a motion except as provided in subsection (E).

E. At any time before a hearing officer renders a final decision under R6-14-414, a party may challenge a hearing officer on the grounds that the hearing officer is not impartial or disinterested in the case.

- F. A party who brings a challenge for cause shall file an affidavit as provided in subsection (A) and send a copy of the affidavit to all other parties. The affidavit shall explain the reason why the assigned hearing officer is not impartial or disinterested.
- G. When a party files an affidavit for a change in hearing officer as provided in subsection (F), the Office of Appeals shall assign another hearing officer to determine whether the hearing officer being challenged shall be removed, unless the hearing officer recuses himself or herself.
- H. The Office of Appeals shall transfer the case to another hearing officer when:
1. A party requests a change as provided in subsections (A) through (D); or
  2. The hearing officer is removed for cause, as provided in subsections (E) through (G).
- I. The Office of Appeals shall send the parties written notice of the new hearing officer assignment.

**R6-14-409. Subpoenas**

- A. A party may ask the assigned hearing officer to issue a subpoena for a witness, document, or other physical evidence or to otherwise obtain the requested evidence. Subpoena forms are available to the appellant under R6-14-410(D).
- B. The party seeking the subpoena shall send the hearing officer a written request for a subpoena. The request shall include:
1. The case name and number;
  2. The name of the party requesting the subpoena;
  3. The name and address of any person to be subpoenaed;

4. A description of any documents or physical evidence the appellant desires the hearing officer to subpoena, including the title, appearance, and location of the item if the appellant knows its location, and the name and address of the person in possession of the item; and
  5. A statement about the expected substance of the testimony or other evidence as well as the relevance and importance of the requested testimony or other evidence.
- C. A party shall request a subpoena at least five working days before the hearing date. A party who is unable to request a subpoena at least five days before the hearing date may request a postponement of the hearing. A party may raise the denial of a subpoena request in a petition for review to the Appeals Board, pursuant to R6-14-416.
- D. The hearing officer shall deny the request if the witness's testimony or the physical evidence is not relevant to an issue in the case or is duplicative.
- E. The Office of Appeals shall prepare all subpoenas and serve them by mail, except that the Office of Appeals may serve subpoenas on state employees who are appearing in the course of their jobs, by regular mail, hand-delivered mail, e-mail, or interoffice mail.

#### **R6-14-410. Parties' Rights**

The appellant and the Department have the following rights:

- A. The right to request a postponement of the hearing;
- B. The right to receive before and during the hearing documents the Department may use at the hearing and a free copy of any documents in the Department's file on the appellant, except documents protected by the attorney-client or work-product privilege or as otherwise protected by federal or state confidentiality laws;
- C. The right to request a change of hearing officer;

- D. The right to request subpoenas for witnesses and evidence;
- E. The right to be represented by an authorized representative, subject to any limitations on the unauthorized practice of law in the Rules of the Supreme Court of Arizona, Rule 31;
- F. The right to bring witnesses, present evidence and to confront and cross-examine adverse witnesses;
- G. The right to advance arguments without undue interference, to question or refute any testimony or evidence; and
- H. The right to further appeal, as provided in R6-14-416 and R6-14-417, if dissatisfied with the Office of Appeals decision.

**R6-14-411. Withdrawal of an Appeal**

- A. An appellant may withdraw an appeal at any time prior to the time the hearing officer issues a decision.
  - 1. An appellant may withdraw an appeal orally, either in person or by telephone. The Department may record the audio of the withdrawal. The Department is prohibited from coercion or actions that would influence the person or their representative to withdraw the fair hearing request. The Department must provide a written notice within 10 days of the oral request confirming the withdrawal request and providing the person an opportunity to request to reinstate the hearing within 10 days of the date the notice is received as provided in R6-14-402(B).
  - 2. An appellant may withdraw an appeal by signing a written statement expressing the intent to withdraw. The Department shall make a withdrawal form available for this purpose.

B. The Office of Appeals shall dismiss the appeal when the appellant or the appellant's representative provides a signed withdrawal request to the Department or to the hearing officer prior to the issuance of a hearing decision or when the appellant or the appellant's representative makes such a request on the record during a hearing, or orally as provided in (A)(1).

**R6-14-412. Failure to Appear; Default; Reopening**

A. If an appellant fails to appear at the hearing, the hearing officer shall:

1. Enter a default and issue a decision dismissing the appeal, except as provided in subsection (B);
2. Rule summarily on the available record; or
3. Adjourn the hearing to a later date and time.

B. The hearing officer shall not enter a default or rule summarily if the appellant notifies the Office of Appeals before the scheduled time of hearing that the appellant cannot attend the hearing because of good cause and still desires a hearing or wishes to have the matter considered on the available record. Good cause includes circumstances beyond the household's reasonable control such as illness of another household member requiring the presence of the adult member, or a household emergency.

C. A party who did not appear at the hearing may file a request to reopen the proceedings no later than 10 days after the hearing. The request shall be in writing, by mail or e-mail, or be made in person or by telephone and shall demonstrate good cause for the party's failure to appear.

- D. If the hearing officer finds that the party had good cause for failure to appear, the hearing officer shall reopen the proceedings and schedule a new hearing with notice to all interested parties as prescribed in R6-14-405.
- E. If the hearing officer cannot grant or deny the request to reopen the proceedings based on the information provided, the hearing officer shall set the matter for a hearing to determine whether the party had good cause for failure to appear.
- F. Good cause, for the purpose of reopening a hearing, is established if the failure to appear at the hearing and the failure to timely notify the hearing officer were beyond the reasonable control of the nonappearing party. Good cause also exists when the nonappearing party demonstrates excusable neglect, as used in Arizona Rules of Civil Procedure, Rule 60(b)(1) for both the failure to appear and the failure to timely notify the hearing officer. "Excusable neglect" means an action involving an error such as might be made by a reasonably prudent person who attempts to handle a matter in a prompt and diligent fashion.

**R6-14-413. Hearing Proceedings**

- A. The hearing is a de novo proceeding. The Department has the initial burden of presenting the evidence to support the adverse action being appealed.
- B. The standard of proof is a preponderance of the evidence.
- C. The Arizona Rules of Evidence do not apply at the hearing. The hearing officer may admit and give probative effect to evidence as prescribed in A.R.S. § 41-1062(A).
- D. The Office of Appeals shall audio record all hearings. The Office of Appeals shall also transcribe the proceedings when a transcription is requested by the Appeals Board or when

a transcription is required for judicial review under A.R.S. § 41-1993. If a transcript is prepared for any purpose, the appellant is entitled to a copy of the transcription at no cost.

E. A party may, at the party's own expense, arrange to have a court reporter present to transcribe the hearing, provided that such transcription does not delay or interfere with the hearing. The Office of Appeal's recording of the hearing shall constitute the official record of the hearing.

F. The hearing officer shall call the hearing to order and dispose of any prehearing motions or issues.

G. With the consent of the hearing officer, the parties may stipulate to factual findings or legal conclusions.

H. A party may advance arguments without undue interference.

I. A party may testify, present evidence, call witnesses, cross-examine adverse witnesses, and object to evidence. The hearing officer may also take witness testimony or admit evidence on the hearing officer's own motion.

J. The hearing officer shall keep a complete record of all proceedings in connection with an appeal.

K. The hearing officer may request the parties to submit memoranda on issues in the case if the hearing officer finds that the memoranda would assist the hearing officer in deciding the case. The hearing officer shall establish a briefing schedule for any required memoranda.

L. The recording of the hearing, all the evidence presented at the hearing and all papers and requests filed shall constitute the record and shall be available to the household or its representative at any reasonable time for copying and inspection.

**R6-14-414. Hearing Decision**

- A. No later than 60 days after the date the appellant files a request for hearing with the Department, the hearing officer shall render a decision based solely on the evidence and testimony produced at the hearing and the applicable law. The 60-day time limit is extended for any delay necessary to accommodate hearing continuances or extensions, or postponements requested by a party.
- B. The hearing decision shall include:
1. Findings of fact concerning the issue on appeal;
  2. Citations to the law and authority applicable to the issue on appeal;
  3. A statement of the conclusions derived from the controlling facts and law and the reasons for the conclusions;
  4. The name of the hearing officer;
  5. The date of the decision;
  6. A statement of further appeal rights, a statement of the process required to initiate a further appeal, and the time period for exercising those rights; and
  7. That an appeal may result in a reversal of the decision.
- C. The Office of Appeals shall send a copy of the decision to each party or the party's representative.
- D. When requested by the appellant, the Department, or upon the hearing officer's own motion, the Office of Appeals may amend or vacate a decision to correct clerical errors, including typographical and computational errors.

**R6-14-415. Effect of the Decision**

- A. If the hearing officer affirms the adverse action against the appellant, the adverse action is effective as of the date of the initial determination of adverse action by the Department. The adverse action remains effective until the appellant appeals and obtains a higher administrative or judicial decision reversing or vacating the hearing officer's decision.
- B. If the hearing officer vacates or reverses the Department's decision to take adverse action, the Department shall not take the action or shall reverse any adverse action, unless the Department appeals and obtains a higher administrative or judicial decision reversing or vacating the hearing officer's decision.
- C. As specified in 7 CFR 273.15(c) the Department shall:
1. For decisions that result in an increase in household benefits:
    - a. Authorize and deposit a benefit supplement in the household's EBT benefit account within 10 days of the receipt of the hearing decision; or
    - b. The Department may take longer than 10 days if it elects to make the decision effective in the household's normal issuance cycle, provided that the issuance will occur within 60 days from the household's request for the hearing.
  2. For decisions that result in a decrease in household benefits the Department shall authorize and deposit a decreased benefit amount in the household's EBT benefit account for the next scheduled issuance following receipt of the hearing decision.

**R6-14-416. Further Administrative Appeal**

- A. A party can appeal an adverse decision issued by a hearing officer to the Department's Appeals Board as prescribed in A.R.S. § 41-1992(C) and (D) by filing a written petition

for review with the Office of Appeals within 15 days of the mailing or transmittal date of the hearing officer's decision.

B. The petition for review shall:

1. Be in writing and filed in person or by mail or fax;
2. Describe why the party disagrees with the hearing officer's decision; and
3. Be signed and dated by the party or the party's representative.

**R6-14-417. Appeals Board**

A. The Appeals Board shall conduct proceedings in accordance with A.R.S. §§ 41-1992(D) and 23-672.

B. The Appeals Board shall issue to all parties a final written decision affirming, reversing, setting aside, or modifying the hearing officer's decision based on the complete record, including the audio recording or the transcript of the hearing. The decision of the Appeals Board shall specify the right to further review and the time for filing an application for appeal.

C. A household appellant adversely affected by an Appeals Board decision may seek judicial review under A.R.S. § 41-1993.

## **Article 5. Intentional Program Violation**

### **R6-14-501. Intentional Program Violations (IPV); Defined**

- A. An Intentional Program Violation (IPV) consists of having intentionally:
1. Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
  2. Committed any act that constitutes a violation of the Food and Nutrition Act, the Supplemental Nutrition Assistance Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of Supplemental Nutrition Assistance Program benefits or Electronic Benefit Transfer (EBT) cards. In Arizona, the name of the Supplemental Nutrition Assistance Program is the Nutrition Assistance Program.
- B. For the purpose of imposing sanctions as prescribed in R6-14-505, a person is considered to have committed an IPV if:
1. A person signs a waiver of an Administrative Disqualification Hearing,
  2. A person is found to have committed an IPV by an Administrative Disqualification Hearing, or
  3. A person is convicted of a criminal offense the elements of which would constitute an IPV under subsection A above or enters into a disqualification consent agreement for deferred prosecution for fraud in a court of law.

### **R6-14-502. IPV Administrative Disqualification Hearings; Hearing Waiver**

- A. Upon receipt of sufficient documentary evidence substantiating that a person has committed an IPV, the Department shall initiate either an Administrative Disqualification Hearing, or a referral for prosecution.

- B. When the Department initiates an Administrative Disqualification Hearing, the Department shall mail the person suspected of an IPV written notice of the right to waive the Administrative Disqualification Hearing. This notice shall be sent either by first class mail or certified mail – return receipt requested.
- C. The waiver notice of the Administrative Disqualification Hearing shall include the following information as well as the information described in R6-14-503(D):
1. A statement that the Department has determined that the individual suspected of the IPV committed, and intended to commit, one or more acts described in R6-14-501(A) and that the Department has initiated an Administrative Disqualification Hearing against the individual suspected of the IPV.
  2. A summary of the allegations and evidence against the individual suspected of the IPV and notification that the individual suspected of the IPV has the right to examine the case file prior to the hearing and, when requested by the individual or representative, be provided a free copy of any documents in the case file, except documents protected by the attorney-client or work-product privilege or as otherwise protected by federal or state confidentiality laws.
  3. A statement of the right of the individual suspected of the IPV to remain silent concerning the allegation of an IPV, and that anything said or signed by the individual concerning the allegations can be used against the individual suspected of the IPV in a court of law, including signing any part of the waiver.
  4. A statement that signing a waiver of the Administrative Disqualification Hearing will result in disqualification periods as determined by section R6-14-505, a statement of the penalty the Department believes is applicable to the case scheduled

for a hearing and a reduction in benefits for the period of disqualification, even if the individual suspected of the IPV does not admit to the facts as presented by the Department.

5. A statement that the individual suspected of the IPV does not have to sign a waiver of the Administrative Disqualification Hearing, return the waiver form to the Department or speak to anyone at the Department.
6. A statement of the fair hearing rights of the individual suspected of the IPV and notification that these rights are waived when the individual suspected of the IPV submits a signed waiver of the Administrative Disqualification Hearing form.
7. A statement that waiver of the Administrative Disqualification Hearing does not preclude the State or Federal Government from prosecuting the individual suspected of the IPV for the IPV in a civil or criminal court action, or from collecting any over issuance of Nutrition Assistance benefits.
8. A statement that the individual suspected of the IPV may wish to consult an attorney and a list of any individuals or organizations that provide free legal representation.
9. A statement that Nutrition Assistance benefits will continue and will only be terminated if the following occurs:
  - a. The individual suspected of the IPV signs a notice to waive their rights to an Administrative Disqualification Hearing,
  - b. There is an Administrative Disqualification Hearing decision that the individual suspected of the IPV is disqualified,
  - c. The individual is determined to no longer be eligible on other grounds, or

- d. The individual requests that the Nutrition Assistance benefits not be continued in order to avoid a potential over issuance of benefits.
- 10. A statement that the remaining adult household members, if any, will be held responsible for repayment of the resulting over issuance claim.
- 11. An opportunity for the individual suspected of the IPV to specify whether or not the individual admits to the facts as presented by the Department. This opportunity shall consist of the following statements, and a method for the individual suspected of the IPV to designate the individual's waiver choice:
  - a. I admit to the facts as presented and understand that a disqualification penalty will be imposed if I sign this waiver. I understand that if I sign this waiver, there will not be an Administrative Disqualification Hearing; or
  - b. I do not admit that the facts as presented are correct in my Nutrition Assistance case. However, I have chosen to sign this waiver of the Administrative Disqualification Hearing. I also understand that a disqualification penalty will be imposed. I understand that if I mark this box, I will not be able to submit additional evidence, have an Administrative Disqualification Hearing, or have the right to administrative appeal; or
  - c. I do not admit that the facts as presented are correct in my Nutrition Assistance case. I do not waive my right to require an Administrative Disqualification Hearing where the Department must prove by clear and convincing evidence that I committed, and intended to commit, an Intentional Program Violation.

12. A statement that if the individual suspected of the IPV does not waive their right to an Administrative Disqualification Hearing, then the Department must prove by clear and convincing evidence that the person committed and intended to commit, an Intentional Program Violation. The statement shall also advise the person that they may attend the hearing but are not required to attend. If the person opts to attend the hearing, they may talk to the judge about what happened and present additional evidence to the judge if they want to. The person also has the right to remain silent. The judge will decide if the person will be disqualified from participating in the Nutrition Assistance program.
  13. The telephone number of the appropriate Department unit that the individual may contact to obtain additional information.
  14. A due date that the signed waiver of an Administrative Disqualification Hearing must be provided to the Department so that a hearing will not be held and a signature block for the individual suspected of the IPV, along with a statement that the head of household must also sign the waiver if the individual suspected of the IPV is not the head of household, with an appropriately designated signature block.
  15. If the signed waiver of the Administrative Disqualification Hearing is not returned by the due date, the Department shall schedule the Administrative Disqualification Hearing and shall send the individual suspected of the IPV a written hearing notice as contained in R6-14-503(C).
- D. For the purpose of imposing sanctions as prescribed in R6-14-505, a timely signed waiver of an Administrative Disqualification Hearing shall have the same effect as an administrative adjudication that an IPV occurred.

**R6-14-503. Administrative Disqualification Hearings**

- A. The rules on fair hearings contained in Article 4 of this Chapter apply to Intentional Program Violation (IPV) Administrative Disqualification Hearings, except as provided in this Article.
- B. All IPV Administrative Disqualification Hearings are conducted by the Department's Office of Appeals.
- C. If the individual suspected of an IPV does not sign and return the waiver of Administrative Disqualification Hearing by the return date set in the waiver notice, or returns the waiver notice stating they do not waive the Administrative Disqualification Hearing, the Office of Appeals shall send the individual a written hearing notice. The Office of Appeals shall send the notice by first class mail, certified mail - return receipt requested, or any other reliable method, no later than 30 days before the scheduled hearing date.
- D. The hearing notice shall include the following information:
1. The date, time, and place of the hearing;
  2. The allegations of an IPV against the individual;
  3. A summary of the evidence, how and where the evidence can be examined, and that the individual suspected of the IPV has the right to examine the case file prior to the hearing. When requested by the household or its representative, the Department shall provide a free copy of any documents in the case file, except documents protected by the attorney-client or work-product privilege or as otherwise protected by federal or state confidentiality laws.
  4. A notice that the decision will be based solely on information provided by the Department if the individual suspected of the IPV fails to appear at the hearing;

5. A statement that the individual or representative will, upon receipt of the notice, have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;
6. A warning that a determination of IPV will result in disqualification periods as defined by section R6-14-505, and a statement of which penalty the Department believes is applicable to the case scheduled for a hearing;
7. A listing of the individual's rights as contained in R6-14-410;
8. A statement that the Administrative Disqualification Hearing does not preclude the State or Federal Government from prosecuting the individual for the IPV in a civil or criminal court action, or from collecting any over issuance of Nutrition Assistance benefits; and
9. A statement that the individual suspected of the IPV may consult with an attorney and a list of any individuals or organizations known to the Department that provide free legal representation.
10. A notice that the individual suspected of the IPV has the right to obtain a copy of the Department's published hearing procedures together with an explanation of how the individual suspected of the IPV can obtain these procedures.

E. The hearing officer shall postpone a hearing for up to 30 days if the individual suspected of the IPV files a written or oral request for postponement with the hearing officer no later than 10 days before the hearing date. Any such postponement shall increase the time by which the hearing officer shall issue a decision, as provided in subsection (J) below.

- F. The time and place for the hearing shall be arranged so that the hearing is accessible to the individual suspected of the IPV, including making reasonable accommodations for a person with a disability.
- G. At the start of the Administrative Disqualification Hearing, the hearing officer shall advise the individual suspected of the IPV or representative of the right to remain silent during the hearing. The hearing officer shall also advise that if the individual suspected of the IPV or representative chooses not to exercise the right to remain silent, anything they say may be used against them.
- H. A hearing officer, as prescribed in R6-14-407, shall conduct the Administrative Disqualification Hearing pursuant to the procedures set forth in R6-14-408, R6-14-409, R6-14-410 and R6-14-413, except as prescribed in this subsection.
- I. The Department shall prove by clear and convincing evidence that the household member committed, and intended to commit, an IPV.
- J. No later than 90 days from the date of the notice of hearing, as increased by any postponement days, the hearing officer shall send to the individual suspected of the IPV a written decision. The hearing officer shall find whether the evidence shows by clear and convincing evidence that the person committed, and intended to commit, an IPV. The decision shall specify the reasons for the decision, identify the supporting evidence, identify the pertinent regulation, respond to reasoned arguments made by the individual suspected of the IPV or representative, and include appeal rights.

**R6-14-504. Failure to Appear; Default; Reopening**

- A. If the individual suspected of the IPV fails to appear at the Administrative Disqualification Hearing without good cause, the hearing officer shall conduct the hearing.

- B. The hearing officer shall not conduct the hearing if the individual suspected of the IPV notifies the Office of Appeals before the hearing that the individual cannot attend the hearing because of good cause and still desires a hearing. Good cause includes circumstances beyond the household's reasonable control such as illness, illness of another household member requiring the presence of the adult member, or a household emergency.
- C. An individual suspected of the IPV who did not appear at the hearing may file a request to reopen the Administrative Disqualification Hearing. The request shall be in writing and shall demonstrate good cause for the party's failure to appear.
1. The individual suspected of the IPV has 30 days after the date of the written notice of the hearing decision to file a request to reopen the Administrative Disqualification Hearing if the individual did not receive a hearing notice.
  2. In all other instances, the individual suspected of the IPV has 10 days from the hearing date to show good cause why the individual failed to appear.
- D. The hearing officer shall review the good cause reason submitted by the individual suspected of the IPV and unless the hearing officer can grant or deny the request based on the information provided, shall set the matter for a hearing to determine whether the individual suspected of the IPV had good cause for failing to appear.
- E. If the hearing officer finds that the individual suspected of the IPV had good cause for failure to appear, the previous decision shall be vacated and the hearing officer shall reopen the Administrative Disqualification Hearing and schedule a new hearing with notice to all parties. The hearing officer must enter the good cause decision on the record.
- F. Good cause, for the purpose of reopening an Administrative Disqualification Hearing, is established if the failure to appear at the hearing and the failure to timely notify the hearing

officer were beyond the reasonable control of the individual suspected of the IPV. Good cause also exists when the individual suspected of the IPV demonstrates excusable neglect for both the failure to appear and the failure to timely notify the hearing officer. "Excusable neglect" means an action involving an error such as might be made by a reasonably prudent person who attempts to handle a matter in a prompt and diligent fashion.

**R6-14-505. Disqualification Sanctions; Notice**

- A. A person found to have committed an IPV is disqualified from program participation:
1. For a period of 12 months for the first IPV, except as provided under subsections (B) through (E) of this section.
  2. For a period of 24 months for the second IPV, except as provided in subsections (B ) through (E) of this section; and
  3. Permanently for the third IPV.
  4. The same act of IPV repeated over a period of time shall not be separated so that separate penalties can be imposed.
- B. Individuals found by any court to have used or received benefits in a transaction involving the sale of a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), shall be ineligible to participate in the program:
1. For a period of 24 months for the first violation; and
  2. Permanently upon the second violation.
- C. Individuals found by any court to have used or received benefits in a transaction involving the sale of firearms, ammunition or explosives shall be permanently ineligible to participate in the program upon the first violation.

- D. An individual convicted by any court of having trafficked benefits for an aggregate amount of \$500 or more shall be permanently ineligible to participate in the program upon the first violation.
- E. Except as provided under subsection (A)(3) of this section, an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple Nutrition Assistance benefits simultaneously shall be ineligible to participate in the program for 10 years.
- F. Upon a determination of IPV, the Department shall notify the disqualified person in writing of the pending disqualification. The written notice shall:
1. Inform the disqualified person of the decision and the reasons for the decision; and
  2. Inform the disqualified person of the date the disqualification will take effect and the duration of the disqualification.
- G. Under 7 CFR 273.11(c)(1), when determining the eligibility and benefit level for the remaining eligible members of the household, the Department shall count the income and resources of the disqualified person in their entirety and the entire household's allowable earned income, standard, medical, dependent care, child support, and excess shelter deductions shall continue to apply to the remaining household members. The Department shall not include the ineligible member when determining the household's size for the purposes of:
1. Assigning a benefit level to the household;
  2. Assigning a standard deduction to the household;
  3. Comparing the household's monthly income with the income eligibility standards;
- or

4. Comparing the household's resources with the resource eligibility limits.
- H. Under 7 CFR 273.11 (c)(4) and 7 CFR §273.16(e)(9)(ii) and (f)(3), the Department shall notify the remaining members of their eligibility and benefit level at the same time the excluded member is notified of his or her disqualification.

**R6-14-506. Administrative Disqualification Hearings or Waiver of the Right to a Hearing;**

**Appeal**

- A. Upon a determination of IPV through a signed waiver of an Administrative Disqualification Hearing, the individual has no right to further administrative appeal. The individual may seek relief in a court having jurisdiction and may seek a stay or other injunctive relief of a period of disqualification.
- B. A party may appeal a Hearing Officer's Administrative Disqualification Hearing decision as provided in R6-14-416(A) to the Appeals Board as provided in R6-14-417.
- C. An individual adversely affected by an Appeals Board decision may seek judicial review under A.R.S. § 41-1993.

**R6-14-507. Honoring Out-of-State IPV Determinations and Sanctions**

The Department shall honor sanctions imposed against an applicant or recipient by the agency of another state that administers the Supplemental Nutrition Assistance Program and shall consider prior violations committed in another state when determining the appropriate sanction.

# **Economic, Small Business, and Consumer Impact Statement**

## **Title 6. Economic Security**

### **Chapter 14. Department of Economic Security – Food Stamps Program**

#### **Article 3. Claims Against Households**

#### **Article 4. Appeals and Fair Hearings**

#### **Article 5. Intentional Program Violation**

#### **1. Identification of the rulemaking:**

The Arizona Department of Economic Security (Department), Division of Benefits and Medical Eligibility, is amending Title 6, Chapter 14, by adding three new Articles. The rulemaking will provide rules that are consistent with federal Supplemental Nutrition Assistance Program (SNAP, formerly called Food Stamps) laws and regulations. Further, this rulemaking will add rules that are clear, concise and understandable.

Article Three, Claims Against Households, establishes procedures for the Department to identify overpayments, determine the amount of overpayments (claims), and to collect overpayments from households. The Department may determine the cost effectiveness of collecting an overpayment and provide the household an opportunity for a compromise agreement to mitigate a claim. The rules provide for acceptable payment and collection methods.

Article Four, Appeals and Fair Hearings, provides a household the right to contest an adverse Department action by requesting a fair hearing and further appeal of a fair

hearing decision. The rules specify a household's responsibilities when filing for a fair hearing or appeal and the Department's responsibilities when processing the request, including a stay of any adverse action pending a fair hearing or appeal decision. The fair hearing procedures in this Article outline the hearing schedule, the duties of the hearing officer, and the parties' rights.

Article Five defines an Intentional Program Violation (IPV) and details the procedures for an Administrative Disqualification Hearing, or waiver of such hearing by a person suspected of an IPV, that are required to determine whether a person has committed an IPV. The rules provide a person who is found to have committed an IPV through an Administrative Disqualification Hearing decision the right to appeal the decision to the Appeals Board. The mandatory disqualification sanctions that the Department imposes for IPV's are included in this Article.

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

Name: Rodney K. Huenemann  
Address: Department of Economic Security  
P.O. Box 6123, Mail Drop 1292  
Phoenix, AZ 85005  
Or  
Department of Economic Security  
1789 W Jefferson St., Mail Drop 1292

Phoenix, AZ 85007

Telephone: (602) 542-6159

Fax: (602) 542-6000

E-mail: [rhuenemann@azdes.gov](mailto:rhuenemann@azdes.gov)

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

The purpose of this rulemaking is to promulgate rules that are clear, concise, and understandable and will conform Department practice and terminology in the Nutrition Assistance Program. The public will benefit from this rulemaking, as administrative rules that are consistent with current federal and state law and regulations are easier for program participants and other stakeholders to understand allowing for a consistent and informative client experience.

The Department's Family Assistance Administration (FAA) is responsible for the eligibility and case maintenance functions in the Nutrition Assistance program. This includes determining an overpayment amount when it is discovered that benefits have been issued in excess of the amount a household was eligible to receive and referring those claims to the Office of Accounts Receivable and Collections (OARC) for collection and repayment activities. During Federal Fiscal Year 2018, the Department reported \$742,974 in total SNAP collections.

The Department's OARC is responsible for the processes and procedures for collecting claims in the Nutrition Assistance program, as contained in Article 3.

The Department's Appellate Services Administration is responsible for the Fair Hearings and Appeals processes, including IPV Administrative Disqualification Hearings. In State Fiscal Year 2018 there were 4,588 SNAP-related appeal hearings and 34 Intentional Program Violation hearings.

The Department anticipates that this rulemaking will have a minimal economic impact on the implementing agency, small businesses, and consumers. There is no anticipation of the need for an increase in employees because of this rulemaking.

**4. Cost-benefit analysis:**

**a. Costs and benefits to state agencies directly affected by the rulemaking:**

These proposed rules contain additions to state administrative code that are consistent with and in compliance with federal regulations. There is no additional cost to the Department or other state agencies anticipated by this rulemaking. The Department will benefit from the rulemaking as the processes in the three Articles involve multiple Department administrations and will facilitate in the effective operation of the Nutrition Assistance program, allowing staff to more effectively handle inquiries, grievances, and appeals.

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

This program has no economic impact on political subdivisions; therefore, there is no cost or benefits to political subdivisions by this rulemaking.

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

Not applicable

**5. Impact on private and public employment:**

This rulemaking is not expected to impact public and private employment.

**6. Impact on small businesses:**

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

This rulemaking does not impact small businesses.

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

There are no administrative or other costs required to comply with this rulemaking.

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

**i. Establish less costly or less stringent compliance or reporting requirements:**

Not applicable

**ii. Establish less costly schedules or less stringent deadlines for compliance:**

Not applicable

**iii. Consolidate or simplify compliance or reporting requirements:**

Not applicable

**iv. Establish separate performance standards:**

Not applicable

**v. Exempt small businesses from any or all requirements:**

Not applicable

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

The persons directly impacted by this rulemaking are individuals or households who are applicants for, recipients of, or former recipients of the Nutrition Assistance program.

These individuals and households will benefit from clear, concise, and understandable information regarding the overpayment and claims processes, and the rights and responsibilities afforded to individuals and households in the Fair Hearings, Appeals, and Intentional Program Violation processes.

**8. Probable effects on state revenues:**

None

**9. Less intrusive or less costly alternative methods considered:**

There is no less intrusive or less costly method of achieving the objectives of the rulemaking.

**a. Monetizing of the costs and benefits for each option:**

Not applicable

**b.     Rationale for not using non-selected alternatives:**

Not applicable

**10.    Description of any data on which the rule is based:**

Not applicable

## 6AAC14 – Applicable Statutes

### 41-1954. Powers and duties

A. In addition to the powers and duties of the agencies listed in section 41-1953, subsection E, the department shall:

1. Administer the following services:

(a) Employment services, including manpower programs and work training, field operations, technical services, unemployment compensation, community work and training and other related functions in furtherance of programs under the social security act, as amended, the Wagner-Peyser act, as amended, the federal unemployment tax act, as amended, 33 United States Code, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(b) Individual and family services, which shall include a section on aging, services to children, youth and adults and other related functions in furtherance of social service programs under the social security act, as amended, title IV, except parts B and E, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services, the older Americans act, as amended, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(c) Income maintenance services, including categorical assistance programs, special services unit, child support collection services, establishment of paternity services, maintenance and operation of a state case registry of child support orders, a state directory of new hires, a support payment clearinghouse and other related functions in furtherance of programs under the social security act, title IV, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services, as amended, and other related federal acts and titles.

(d) Rehabilitation services, including vocational rehabilitation services and sections for the blind and visually impaired, communication disorders, correctional rehabilitation and other related functions in furtherance of programs under the vocational rehabilitation act, as amended, the Randolph-Sheppard act, as amended, and other related federal acts and titles.

(e) Administrative services, including the coordination of program evaluation and research, interagency program coordination and in-service training, planning, grants, development and management, information, legislative liaison, budget, licensing and other related functions.

(f) Manpower planning, including a state manpower planning council for the purposes of the federal-state-local cooperative manpower planning system and other related functions in furtherance of programs under the comprehensive employment and training act of 1973, as amended, and other related federal acts and titles.

(g) Economic opportunity services, including the furtherance of programs prescribed under the economic opportunity act of 1967, as amended, and other related federal acts and titles.

(h) Intellectual disability and other developmental disability programs, with emphasis on referral and purchase of services. The program shall include educational, rehabilitation, treatment and training services and other related functions in furtherance of programs under the developmental disabilities services and facilities construction act, Public Law 91-517, and other related federal acts and titles.

(i) Nonmedical home and community based services and functions, including department designated case management, housekeeping services, chore services, home health aid, personal care, visiting

nurse services, adult day care or adult day health, respite sitter care, attendant care, home delivered meals and other related services and functions.

2. Provide a coordinated system of initial intake, screening, evaluation and referral of persons served by the department.

3. Adopt rules it deems necessary or desirable to further the objectives and programs of the department.

4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

5. Employ and determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons subject to chapter 4, article 4 and, as applicable, article 5 of this title as may be necessary in the performance of its duties, contract for the services of outside advisors, consultants and aides as may be reasonably necessary and reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business.

6. Make contracts and incur obligations within the general scope of its activities and operations subject to the availability of funds.

7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of its purposes, objectives and programs.

8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.

9. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.

10. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of its duties subject to the departmental rules on the confidentiality of information.

11. Establish and maintain separate financial accounts as required by federal law or regulations.

12. Advise and make recommendations to the governor and the legislature on all matters concerning its objectives.

13. Have an official seal that shall be judicially noticed.

14. Annually estimate the current year's population of each county, city and town in this state, using the periodic census conducted by the United States department of commerce, or its successor agency, as the basis for such estimates and deliver such estimates to the economic estimates commission before December 15.

46-134. Powers and duties; expenditure; limitation

The state department shall:

1. Administer all forms of public relief and assistance except those that by law are administered by other departments, agencies or boards.
2. Develop a section of rehabilitation for the visually impaired that shall include a sight conservation section, a vocational rehabilitation section in accordance with the federal vocational rehabilitation act, a vending stand section in accordance with the federal Randolph-Sheppard act and an adjustment service section that shall include rehabilitation teaching and other social services deemed necessary, and shall cooperate with similar agencies already established. The administrative officer and staff of the section for the blind and visually impaired shall be employed only in the work of that section.
3. Assist other departments, agencies and institutions of the state and federal governments, when requested, by performing services in conformity with the purposes of this title.
4. Act as agent of the federal government in furtherance of any functions of the state department.
5. Carry on research and compile statistics relating to the entire public welfare program throughout this state, including all phases of dependency and defectiveness.
6. Cooperate with the superior court in cases of delinquency and related problems.
7. Develop plans in cooperation with other public and private agencies for the prevention and treatment of conditions giving rise to public welfare and social security problems.
8. Make necessary expenditures in connection with the duties specified in paragraphs 5, 6, 7, 13 and 14 of this subsection.
9. Have the power to apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this chapter.
10. Make rules, and take action necessary or desirable to carry out the provisions of this title, that are not inconsistent with this title.
11. Administer any additional welfare functions required by law.
12. If a tribal government elects to operate a cash assistance program in compliance with the requirements of the United States department of health and human services, with the review of the joint legislative budget committee, provide matching monies at a rate that is consistent with the applicable fiscal year budget and that is not more than the state matching rate for the aid to families with dependent children program as it existed on July 1, 1994.
13. Furnish a federal, state or local law enforcement officer, at the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the recipient and notifies the agency that the recipient is a fugitive felon or a probation, parole or community

supervision violator or has information that is necessary for the officer to conduct the official duties of the officer and the location or apprehension of the recipient is within these official duties.

14. In conjunction with Indian tribal governments, request a federal waiver from the United States department of agriculture that will allow tribal governments that perform eligibility determinations for temporary assistance for needy families programs to perform the food stamp eligibility determinations for persons who apply for services pursuant to section 36-2901, paragraph 6, subdivision (a). If the waiver is approved, the state shall provide the state matching monies for the administrative costs associated with the food stamp eligibility based on federal guidelines. As part of the waiver, the department shall recoup from a tribal government all federal fiscal sanctions that result from inaccurate eligibility determinations.

46-136. Powers of state department regarding work projects for unemployed persons

A. The state department may institute work projects for the employment of needy unemployed persons being granted public assistance. The nature of the work projects shall be determined by the state department and the governing body of the county, municipal government or school district involved to be projects necessary and desirable to the community including projects designed to improve health and public safety. County or municipal governments, including school districts, shall cooperate in such projects by furnishing supervision, transportation and payment of industrial commission insurance.

B. The state department shall act as the official agency for the state in any social welfare activity initiated by the federal government and shall administer state funds appropriated or made available for the relief of dependent persons, except as otherwise provided by law.

C. The state department shall expend from any amounts otherwise available by law amounts that, in the discretion of the director, are determined necessary for such purpose in conjunction with any agency or department of the federal government for the purpose of receiving and distributing food stamps offered to public welfare agencies for needy persons. The amount so determined may be expended by the department in payment of expenses necessarily incurred by reason of the receipt or distribution of such food stamps.

**7 U.S.C. § 2013. Establishment of supplemental nutrition assistance program**

**(a) In general**

Subject to the availability of funds appropriated under section 2027 of this title, the Secretary is authorized to formulate and administer a supplemental nutrition assistance program under which, at the request of the State agency, eligible households within the State shall be provided an opportunity to obtain a more nutritious diet through the issuance to them of an allotment and, through an approved State plan, nutrition education, except that a State may not participate in the supplemental nutrition assistance program if the Secretary determines that State or local sales taxes are collected within that State on purchases of food made with benefits issued under this chapter. The benefits so received by such households shall be used only to purchase food from retail food stores which have been approved for participation in the supplemental nutrition assistance program. benefits <sup>1</sup> issued and used as provided in this chapter shall be redeemable at face value by the Secretary through the facilities of the Treasury of the United States.

**(b) Food distribution program on Indian reservations**

**(1) In general**

Distribution of commodities, with or without the supplemental nutrition assistance program, shall be made whenever a request for concurrent or separate food program operations, respectively, is made by a tribal organization.

**(2) Administration**

**(A) In general**

Subject to subparagraphs (B) and (C), in the event of distribution on all or part of an Indian reservation, the appropriate agency of the State government in the area involved shall be responsible for the distribution.

**(B) Administration by tribal organization**

If the Secretary determines that a tribal organization is capable of effectively and efficiently administering a distribution described in paragraph (1), then the tribal organization shall administer the distribution.

**(C) Prohibition**

The Secretary shall not approve any plan for a distribution described in paragraph (1) that permits any household on any Indian reservation to participate simultaneously in the supplemental nutrition assistance program and the program established under this subsection.

**(3) Disqualified participants**

An individual who is disqualified from participation in the food distribution program on Indian reservations under this subsection is not eligible to participate in the supplemental nutrition assistance program under this chapter for a period of time to be determined by the Secretary.

**(4) Administrative costs**

The Secretary is authorized to pay such amounts for administrative costs and distribution costs on Indian reservations as the Secretary finds necessary for effective administration of such distribution by a State agency or tribal organization.

**(5) Bison meat**

Subject to the availability of appropriations to carry out this paragraph, the Secretary may purchase bison meat for recipients of food distributed under this subsection, including bison meat from—

- (A) Native American bison producers; and
- (B) producer-owned cooperatives of bison ranchers.

**(6) Traditional and locally-grown food fund**

**(A) In general**

Subject to the availability of appropriations, the Secretary shall establish a fund for use in purchasing traditional and locally-grown foods for recipients of food distributed under this subsection.

**(B) Native American producers**

Where practicable, of the food provided under subparagraph (A), at least 50 percent shall be produced by Native American farmers, ranchers, and producers.

**(C) Definition of traditional and locally grown**

The Secretary shall determine the definition of the term "traditional and locally-grown" with respect to food distributed under this paragraph.

**(D) Survey**

In carrying out this paragraph, the Secretary shall—

- (i) survey participants of the food distribution program on Indian reservations established under this subsection to determine which traditional foods are most desired by those participants; and
- (ii) purchase or offer to purchase those traditional foods that may be procured cost-effectively.

**(E) Report**

Not later than 1 year after the date of enactment of this paragraph, and annually thereafter, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the activities carried out under this paragraph during the preceding calendar year.

**(F) Authorization of appropriations**

There is authorized to be appropriated to the Secretary to carry out this paragraph \$5,000,000 for each of fiscal years 2008 through 2012.

**(c) Regulations; transmittal of copy of regulations to Congressional committees prior to issuance**

The Secretary shall issue such regulations consistent with this chapter as the Secretary deems necessary or appropriate for the effective and efficient administration of the supplemental nutrition assistance program and shall promulgate all such regulations in accordance with the procedures set forth in section 553 of title 5. In addition, prior to issuing any regulation, the Secretary shall provide the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a copy of the regulation with a detailed statement justifying it.

7 of funds appropriated under section 2027 of this title, the Secretary is authorized to formulate and administer a supplemental nutrition assistance program under which, at the request of the State agency, eligible households within the State shall be provided an opportunity to obtain a more nutritious diet through the issuance to them of an allotment and, through an approved State plan, nutrition education, except that a State may not participate in the supplemental nutrition assistance program if the Secretary determines that State or local sales taxes are collected within that State on purchases of food made with benefits issued under this chapter. The benefits so received by such households shall be used only to purchase food from retail food stores which have been approved for participation in the supplemental nutrition assistance program. benefits <sup>1</sup> issued and used as provided in this chapter shall be redeemable at face value by the Secretary through the facilities of the Treasury of the United States.

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**(A) In general**

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**Huenemann, Rodney, K**

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**From:** Hill, Anthony  
**Sent:** Wednesday, May 31, 2017 9:25 AM  
**To:** Huenemann, Rodney, K  
**Subject:** FW: DES DBME RULES EXCEPTION REQUEST AND JUSTIFICATION  
**Attachments:** 5-11-2017 Req Approval to Proceed on Rulemaking.pdf

**From:** Garman, Larisa D  
**Sent:** Tuesday, May 16, 2017 3:28 PM  
**To:** Hill, Anthony  
**Cc:** Morales, Leticia  
**Subject:** FW: DES DBME RULES EXCEPTION REQUEST AND JUSTIFICATION

Please see the email string below; the rule making request has been approved by the Governor's Office.

Thank you! : )

**Have a great day!**

**Larisa Garman**  
Manager of Correspondence Control  
Office of the Director, DES  
Phone: (602) 542-5255  
Fax: (602) 542-5339

For all Correspondence Control questions, templates, etc., please click on the link below to access the **CCO SharePoint**:  
<https://azdes.sharepoint.com/sites/OPS001L1/ZFK92JRW/SitePages/Home.aspx>

**From:** Christina Corieri [<mailto:ccorieri@az.gov>]  
**Sent:** Tuesday, May 16, 2017 3:09 PM  
**To:** Garman, Larisa D; Price, Sean  
**Subject:** RE: DES DBME RULES EXCEPTION REQUEST AND JUSTIFICATION

The Governor's Office has approved your rule making request. Please proceed with the rule making process.

Thank you,

Christina Corieri  
Senior Policy Advisor  
Office of the Arizona Governor  
1700 W. Washington Street  
Phoenix, AZ 85007  
O: (602)542-3394

E: [ccorieri@az.gov](mailto:ccorieri@az.gov)



**From:** Garman, Larisa D [<mailto:LDGarman@azdes.gov>]  
**Sent:** Thursday, May 11, 2017 1:20 PM  
**To:** Christina Corieri  
**Subject:** DES DBME RULES EXCEPTION REQUEST AND JUSTIFICATION

Good Afternoon Ms. Corieri

In accordance with Executive Order 2017-02, the Department of Economic Security (Department) respectfully requests that an exception be granted to the rulemaking moratorium, to allow the Department to proceed with administrative rulemaking for the reasons described in the Order, as outlined in the Interoffice memo.

Please let me know if you have any questions.

Thank you! :)

**Have a great day!**

**Larisa Garman**

Manager of Correspondence Control  
Office of the Director, DES  
Phone: (602) 542-5255  
Fax: (602) 542-5339

For all Correspondence Control questions, templates, etc., please click on the link below to access the **CCO SharePoint**:  
<https://azdes.sharepoint.com/sites/OPS001L1/ZFK92JRW/SitePages/Home.aspx>

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DEPARTMENT OF ECONOMIC SECURITY

Your Partner For A Stronger Arizona

Douglas A. Ducey  
Governor

Henry Darwin  
Interim Director

MAY 11 2017

Ms. Christina Corieri, Policy Advisor  
Health and Human Services  
Office of the Governor  
1700 West Washington Street  
Phoenix, Arizona 85007

Dear Ms. Corieri:

*Christina*

On January 11, 2017, the Governor issued Executive Order 2017-02 re-imposing a requirement for prior written approval of the Office of the Governor to proceed with any rulemaking. The Department is submitting for your consideration a request for permission to proceed with rulemaking that revises 6 A.A.C. 14, Food Stamp program, currently the Nutrition Assistance program. The proposed rulemaking would incorporate into the rules options chosen by the state and waivers granted by the federal government, ensure the rules are consistent with federal and state law, and make the rules clear, concise, and understandable. A summary of the proposed rulemaking activity is included.

If you have any questions, please contact Sean Price, Interim Deputy Director of Programs, at your convenience at (602) 364-0940.

Sincerely,

Henry Darwin  
Interim Director

Enclosures

**NOTICE OF FINAL RULEMAKING**  
**TITLE 6. ECONOMIC SECURITY**  
**CHAPTER 14. DEPARTMENT OF ECONOMIC SECURITY**  
**FOOD STAMPS PROGRAM**

**PREAMBLE**

<b><u>1.</u></b>	<b><u>Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
	Article 3	New Article
	R6-14-301	New Section
	R6-14-302	New Section
	R6-14-303	New Section
	R6-14-304	New Section
	R6-14-305	New Section
	R6-14-306	New Section
	R6-14-307	New Section
	R6-14-308	New Section
	R6-14-309	New Section
	R6-14-310	New Section
	R6-14-311	New Section
	Article 4	New Article
	R6-14-401	New Section
	R6-14-402	New Section
	R6-14-403	New Section
	R6-14-404	New Section
	R6-14-405	New Section

R6-14-406	New Section
R6-14-407	New Section
R6-14-408	New Section
R6-14-409	New Section
R6-14-410	New Section
R6-14-411	New Section
R6-14-412	New Section
R6-14-413	New Section
R6-14-414	New Section
R6-14-415	New Section
R6-14-416	New Section
R6-14-417	New Section
Article 5	New Article
R6-14-501	New Section
R6-14-502	New Section
R6-14-503	New Section
R6-14-504	New Section
R6-14-505	New Section
R6-14-506	New Section
R6-14-507	New Section

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

Authorizing statute: A.R.S. §§ 41-1954(A)(3) and 46-134(1) and (10)

Implementing statute: A.R.S. §§ 41-1954(A)(1)(c) and (A)(8) and 46-136(B) and (C);  
7 U.S.C. 2013

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

[DATE OF FILING TO BE ENTERED BY CODE EDITOR]

**a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

The rules shall become effective immediately upon filing with the Secretary of State under A.R.S. § 41-1032(A)(2). The Code of Federal Regulations (CFR) requires the Arizona Department of Economic Security (Department) to implement procedures for claims against households (7 CFR 273.18), provide fair hearings to any household aggrieved by a Department action (7 CFR 273.15), and establish a system for conducting Intentional Program Violation disqualifications (7 CFR 273.16). The effective immediate date of the rule will permit the Department to comply with federal law and regulation.

**b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

Not applicable.

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

Notice of Emergency Rulemaking: 24 A.A.R. 2081, July 27, 2018

Notice of Rulemaking Docket Opening: 24 A.A.R. 2971, October 19, 2018

Notice of Proposed Rulemaking: 24 A.A.R. 2893, October 19, 2018

Notice of Emergency Rulemaking: 24 A.A.R. 3591, December 28, 2018

Notice of Termination of Rulemaking: 25 A.A.R. 413, February 22, 2019

Notice of Rulemaking Docket Opening: 25 A.A.R. 1739, July 5, 2019

Notice of Proposed Rulemaking: 25 A.A.R. 1721, July 5, 2019

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

Name: Rodney K. Huenemann

Address: Department of Economic Security

P.O. Box 6123, Mail Drop 1292

Phoenix, AZ 85005

or

Department of Economic Security

1789 W. Jefferson St., Mail Drop 1292

Phoenix, AZ 85007

Telephone: (602) 542-6159

Fax: (602) 542-6000

E-mail: [rhuenemann@azdes.gov](mailto:rhuenemann@azdes.gov)

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

The Department administers the Nutrition Assistance Program (Program), formerly called Food Stamps. The Program is authorized by the federal Supplemental Nutrition Assistance Program (SNAP) under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) and the Code of Federal Regulations (7 CFR 271 through 7 CFR 283). The rulemaking will amend Chapter 14, Food Stamps Program, of the Arizona Administrative Code and provide rules that are consistent with federal law and regulation.

Article Three establishes procedures for the Department to identify and collect overpayments from households. The rules establish categories of claims and criteria for identifying a claim's date of discovery. The Department may determine the cost effectiveness of pursuing or terminating the collection of an overpayment and provide the household a compromise agreement to settle a claim. The rules provide for acceptable payment and collection methods.

Article Four provides for an appeal and fair hearing to any household wishing to contest an adverse Department action. The household must file an appeal request within 90 days of receiving a notice of the adverse action. The Department shall stay any adverse action pending an appeal decision. The fair hearing procedure outlines the hearing schedule, duties of the hearing officer, and parties' rights. The hearing officer must issue a decision within 60 days after the appeal request is filed. The household can appeal the hearing officer's decision.

Article Five defines an Intentional Program Violation and establishes a procedure for disqualifying a household from further Program benefits. A household may waive the right to an administrative disqualification hearing. The administrative disqualification procedures outline the hearing schedule, hearing officer's responsibilities, and the parties' rights. Various sanctions may be imposed for any program violation found. A household may appeal the determination of a program violation. The Department will honor out-of-state sanctions and impose Program penalties in this 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 relevant to the rules.

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

Not applicable.

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

The Department anticipates that this rulemaking will have a minimal economic impact on the implementing agency, small businesses, and consumers. There is no additional cost to the Department or other state agencies anticipated by this rulemaking.

The persons directly impacted by this rulemaking are individuals or households who are applicants for, recipients of, or former recipients of the Nutrition Assistance program. These individuals and households will benefit from clear, concise, and understandable information regarding the overpayment and claims processes, and the rights and responsibilities afforded to individuals and households in the Fair Hearings, Appeals, and Intentional Program Violation processes.

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

In response to public comments received, the following changes have been made. These changes increase consistency across the rules and increase clarity for the public. None of the changes between the proposed rulemaking and the final rulemaking are substantial under the standard set forth A.R.S. § 41-1025.

- R6-14-303(A)(2) has been revised to provide more clarity regarding what “an error” means, both on the part of the Department and on the part of the applicant/recipient household, as pertains to the circumstances specific to this rule.
- R6-14-303(A)(2) has been revised by adding a new subsection (c) that specifies that the Department shall issue a supplement(s) when it is discovered that the household received less than the full amount of benefits due to Department error when rendering an eligibility determination and authorizing benefits.

- R6-14-308(D) has been revised to clarify that the Department shall not send the household a Financial Statement form when a compromise request is received for a claim for which an Appeal has been received and is pending.
- R6-8-311(C) has been revised to correct a typographical error by removing the word “the” prior to the word “Arizona”.
- R6-14-308(E) has been revised to clarify that the financial statement associated with resolving a claim under the rule is required to be provided by the thirtieth calendar day following the date that the Department mailed or otherwise transmitted the Financial Statement to the household or the agreed upon extension date by the household, unless the delay was for good cause.
- R6-14-409(C) has been revised to change the word “work” to “working” to be consistent with the wording in R6-14-402(A)(2).
- R6-14-410 has been reformatted. The numerical listing of the Parties’ Rights has been changed to an alphabetical listing. There is no change to the verbiage in any of the Parties’ Rights specified in this rule.
- R6-14-417(B) and (C) have been revised to clarify that only the household appellant adversely affected by an Appeals Board decision may seek further judicial review.
- R6-14-502(C)(2) has been revised to be consistent with the language in R6-14-410(B) regarding the receipt of a free copy of any document in the individual’s case file, with certain restrictions.
- R6-14-502(C)(11) has been revised by adding a subsection (c) to include a third option in the waiver notice of the Administrative Disqualification Hearing that the

person may check stating: "I do not admit that the facts as presented are correct in my Nutrition Assistance case. I do not waive my right to require an Administrative Disqualification Hearing where the Department must prove by clear and convincing evidence that I committed and intended to commit an Intentional Program Violation."

- R6-14-503(D)(3) has been revised to be consistent with the language in R6-14-410 (B) and R6-14-502(C)(2) regarding the receipt of a free copy of any document in the individual’s case file, with certain restrictions.
- R6-14-503(G) has been revised to remove the language "and the consequences of exercising that right” pertaining to the person’s right to remain silent.
- R6-14-503(I) has been revised to include the language “and intended to commit” to add clarity to the rule.
- R6-14-503(J) has been revised to add “and appeal rights” to the items that are contained in the written decision notice that is sent by the Hearing Officer to an individual suspected of an Intentional Program Violation.
- R6-14-505(H) has been revised to add the relevant federal regulation citation to add clarity.

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

	<b>SECTION REFERENCE</b>	<b>COMMENT FROM COMMENTOR</b>	<b>DEPARTMENT RESPONSE</b>
<i>Article 3. Claims Against Households</i>			
1	R6-14-301. <b>Purpose and Definitions</b> (B)(1) and	DES’ definitions for “agency error” in subsection (B)(1) and “inadvertent household error” in subsection (B)(4) continue to be incomplete. Both definitions fail to link errors	The additional language “required by federal regulation” is not needed as the Department administers the Nutrition

	(B)(4)	to action or inaction required by federal regulation.	<p>Assistance program in accordance with the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 et seq), the Code of Federal Regulations 7 CFR 271 through 7 CFR 283 including the state options allowed in the federal regulations, and any alternative policies and procedures that are approved under the waiver authority of the federal Food and Nutrition Service.</p> <p>The two definitions are taken from 7 CFR 273.18(a)(4)(b)</p>
2	R6-14-301. <b>Purpose and Definitions</b> (B)(2)	The definition of “claim” in subsection (B)(2) also must be linked to the agency or claimant taking an action or failing to take an action required by federal regulation. As drafted, the definition of “claim” occurs whenever food stamps were “overpaid.” That is not the definition of when an overpayment occurs.	<p>The definition of “claim” is based on the federal regulation at 7 CFR 273.18(a)(1) and (2). The federal regulation states, in part, that “A recipient claim is an amount owed because of benefits that are overpaid or benefits that are trafficked.”</p> <p>Not every overpayment of benefits results in a claim being established. Those overpayments that are not considered to be Cost Effective as allowed under 7 CFR 273.18(e)(2)(i) are not established as claims and collection activities are not initiated.</p>
3	R6-14-302. <b>Claim Calculation; Date of Discovery; Overpayment Period</b> (B)	DES' initial draft rules in 2017 had a look back period of 12 months for the collection of overpayments in agency error cases. In subsection (B), the proposed rule increases the collection period to 36 months for both agency error and inadvertent household error. From information DES provided to the Institute a few years ago, most overpayments in Arizona are caused by agency error. In those situations, the error was out of the control of the claimant. The longer collection period for agency error cases should be changed back to the initial draft proposal of 12 months. The further back DES goes for collection, the less likely the claimant will have the documents needed to challenge the overpayment. Several states, including Washington, limit the collection of agency errors to 12 months. Such a limitation on collection policy or practice is reasonable because the error is the fault of the agency and	<p>7 CFR 273.18(c)(1)(i) requires the Department to calculate an Agency Error or Inadvertent Household Error claim back to at least twelve months but no more than 6 years prior to when the Department became aware of the overpayment.</p> <p>The Department has chosen to calculate such claims back to 36 months from the Date of Discovery, as allowed in this regulation.</p>

		the agency may not keep any of the recovered overpayment. We continue to recommend that for agency errors DES only go back 12 months. We also continue to recommend that the 12-month time period is appropriate for inadvertent household errors as well. While collections may go back three years, in cases with no intent to obtain benefits the person was not eligible for, administrative time and effort would be better served ensuring the operation of the food stamp program complied with federal law.	
4	R6-14-302. <b>Claim Calculation; Date of Discovery; Overpayment Period (B)</b>	The federal regulation 7 C.F.R. § 273.18(d)(1) requires the agency to “establish a claim before the last day of the quarter following the quarter in which the overpayment or trafficking incident was discovered.” DES failed to include this requirement in the proposed rules. It must be included.	The Department complies with 7 CFR 273.18(d)(1) and does not use the option to develop and use a different standard, as allowed in this rule. Had we selected to deviate from the timeframe requirement in this regulation, a rule would have been included to specify the alternative timeframe. As required under 7 CFR 273.18(d)(3) the Department establishes all claims even if they cannot be established within the timeframes in 7 CFR 273.18(d)(1).
5a	R6-14-303. <b>Determining a Claim Amount</b>	In general, the Institute is concerned about what this section purports to cover and what it should cover: This section is entitled "determining a claim amount," by which DES appears to mean determining an "overpayment" amount. This section should be broader and address change reporting in general and the consequences of a report or a failure to report a change, which may result in an increase in benefits or a decrease in benefits and a potential overpayment. Or DES should have a separate change reporting section. By combining the two concepts, this section is very confusing and the wording is not clear. The Institute has tried to understand what DES intends and the legal basis for its proposed rule.	In a new rulemaking that will address other aspects of the Nutrition Assistance program that are not included in, or relevant to, this rulemaking, the Department will include an Article specific to Change Reporting and Change Processing.  The rules developed in this rulemaking address the change related issues specific to identifying and establishing Claims Against Households.
5b	R6-14-303. <b>Determining a Claim Amount (A)(2)</b>	The rule provides that when DES determines an "error occurred at the application, [DES] shall re-determine eligibility and the benefit amount ...using the application approval and denial policies and procedures that were in effect at the time eligibility was determined." The rule does not define an "error," and unless DES defines the word, it should be deleted. This issue goes back to the Institute's concerns discussed in R6-14-301, where agency error	As suggested, the Department has revised R6-14-303(A)(2) to provide more clarity regarding what “an error” means, both on the part of the Department and on the part of the applicant/recipient household, as pertains to the circumstances specific to this rule.

		and inadvertent household error are not linked to any action or inaction. These definitions must be linked to the agency or claimant taking or failing to take an action required by the federal regulation.	
6	R6-14-303. <b>Determining a Claim Amount</b> (A)(2)	Although subsection (A)(2) pertains to the calculation of benefits, the last sentence of the subsection specifically provides that DES "will not consider information that was not previously reported by the household that would have resulted in an increase in benefit allotment at the time of initial approval of benefits." At the public hearing on August 6, 2019, we asked the approximately 14 DES representatives present to give us the federal authority for this differential treatment and there was no response. We request that DES provide the specific federal regulation that allows DES to not consider information that would result in an increase in benefits. If there is no federal authority, then that sentence must be deleted.	<p>The subsection cited in the comment addresses "information that <u>was not previously reported by the household</u> that would have resulted in an increase in the benefit allotment at the time of initial approval of benefits".</p> <p>For changes that are reported by the household after the eligibility determination has been rendered and benefits have been issued, 7 CFR 273.12(c)(1), <i>Increase in benefits</i>, subsection (i) addresses the effective date of a reported change that results in an increase in a household's benefits: "the State agency shall make the change effective no later than the first allotment issued 10 days after the date the change was reported to the State agency."</p> <p>The Department has revised R6-14-303(A)(2) by adding a new subsection (c) that specifies that the Department shall issue a supplement(s) when it is discovered that the household received less than the full amount of benefits <u>due to Department error</u> when rendering an eligibility determination and authorizing benefits.</p>
7	R6-14-303. <b>Determining a Claim Amount</b> (A)(2)	Moreover, the subsection only pertains to when the household is either "ineligible," (A)(2)(a), or the household was eligible but received an overpayment. (A)(2)(b). Thus, this subsection only looks at situations when the household benefits are expected to decrease and fails to look at situations when the benefits will <i>increase</i> because of the change reporting. Further, we could not find any authority for this analysis in the federal regulation.	As noted in the Department response #6, R6-14-303(A)(2) has been revised to address this issue. When the department discovers that the household received less than the full amount of benefits <u>due to Department error</u> at the time an eligibility determination was rendered and when benefits were authorized, the department will issue a benefit supplement(s) and increase the benefit allotment for the remaining months in the certification for which benefits

			<p>have not yet been paid.</p> <p>See response #6 regarding the effective date of changes that are reported by the household after the eligibility determination has been rendered and benefits have been issued.</p>
8	R6-14-303. <b>Determining a Claim Amount (A)(2)</b>	<p>The federal regulation requires the agency to offset or reduce the overpayment by both any underissuance and expunged benefits. <i>See</i> 7 C.F.R. § 273.12 (c)(1)(ii)(D). In subsections (A)(2)(a) and (b), DES included expunged benefits but failed to include underissuances. Underissuances must be included. Otherwise, how does DES get to the correct amount of benefits that should have been paid during the relevant time period? This issue has come up in legal services cases, where in some months there was an overpayment but in other months there was an underissuance. In the overpayment calculation, DES staff ignored the underissuance months. If the underissuance months were taken into account, the amount of the overpayment would have been reduced. Of course, there may be situations where the amount of the underissuance may result in no overall overpayment and increased benefits being owed to the household.</p>	<p>The redetermination required in the rule includes consideration of appropriate overissuances and underissuances of benefits.</p> <p>As noted in Department response #6, the Department has revised R6-14-303(A)(2) by adding a new subsection (c) that specifies that the Department shall issue a supplement(s) when it is discovered that the household received less than the full amount of benefits <u>due to Department error</u> when rendering an eligibility determination and authorizing benefits.</p>
9	R6-14-303. <b>Determining a Claim Amount (A)(3)</b>	<p>Subsection (A)(3) pertains to changes that occur during the certification period. Subsection (A)(3)(a) pertains to a change that was required to be reported by the household and was reported. In those cases, under the rule, DES is required to recalculate benefits and determine whether an overpayment (i) or an underissuance (ii) (supplement is needed) occurred. We think the way this subsection is drafted is very unclear. We request that DES insert the following words at the beginning of subsection (a)(ii): "THE RESULT MAY BE THAT THERE IS NO OVERPAYMENT."</p>	<p>The rule clearly specifies that the result of processing the reported change(s) may result in either a claim being established for an overpayment of benefits or the issuance of supplemental benefits for each month the household was paid less than the new benefit amount.</p>
10	R6-14-303. <b>Determining a Claim Amount (A)(3)</b>	<p>Subsection (A)(3)(b) pertains to changes that were not reported by the household during certification. If the change was not required to be reported, DES will not recalculate benefits. (A)(3)(b)(i). Federal regulation 7 C.F.R. § 273.12(d) provides that if the household fails to report a change that it was not required to report, then there shall not be an overpayment. But the proposed rule fails to address what should happen if the failure to report would have increased benefits. DES must change subsection (A)(3)(B)(i) to</p>	<p>Please refer to the responses for numbers 6 through 9.</p> <p>This rule is consistent with the federal regulation requirements at 7 CFR 273.12(c) and (d).</p>

		read: "When the change was not required to be reported, the Department will not process the change for benefits that would result in an overpayment." A new (B)(ii) must be added that provides: "When the change was not required to be reported, the Department will process the change for benefits that would result in an underissuance."	
11	R6-14-303. <b>Determining a Claim Amount</b> (A)(3)	If the change was required to be reported, then DES will recalculate benefits and establish the overpayment. (A)(3)(b)(ii). There is no provision to recalculate benefits when an increase occurs. We do not understand how DES can hold the failure to report against the household to create an overpayment but will not recalculate benefits when the result is an underissuance. Here as well, at the August 6, 2019 public hearing we asked the approximately 14 DES employees present for the federal citation that allows this differential treatment and there was no response. The last sentence in subsection (A)(3)(b)(ii) must be revised to read with the new wording capitalized: "The Department shall establish a claim based on the amount of benefits that were paid in excess of the correct benefit amount in each month of the certification period minus the amount of benefits that the Department has expunged from the household's EBT benefit account AND ANY UNDERISSUANCES. THE RESULT MAY BE THAT THERE IS NO OVERPAYMENT. DEPARTMENT SHALL ISSUE A SUPPLEMENT FOR EACH MONTH THE HOUSEHOLD WAS PAID LESS THAN THE NEW BENEFIT AMOUNT." We have taken the last sentence from DES' subsection (A)(3)(a)(ii) to be consistent.	Please refer to the responses for numbers 6 through 10.  This rule is consistent with the federal regulation requirements at 7 CFR 273.12(c) and (d).
12	R6-14-303. <b>Determining a Claim Amount</b> (A)(3)	DES failed to articulate the steps to calculate a food stamp overpayment as required by 7 C.F.R. § 273.18(c)(1)(ii). DES should have a comprehensive rule on how to calculate an overpayment and should add the following: <i>New</i> subsection: The Department shall only count income that was reasonably certain under 7 C.F.R. § 273.10(c)(1) at the time that the initial calculation of benefits was made.	The process described in this rule complies with 7 CFR 273.18(c).  The details regarding an overpayment calculation are published in the Department's Cash and Nutrition Assistance Policy (CNAP) Manual which is available to the public via the Department's website at <a href="https://des.az.gov/">https://des.az.gov/</a> .  The CNAP policy reference is FAA6.E03C.

13	R6-14-303. <b>Determining a Claim Amount</b> (A)(3)	<p>Since most households are on simplified reporting, we will discuss the rule in that context. The only thing a household on simplified reporting must report during the certification period is if the household income goes above 130% of the FPL. 7 C.F.R. §273.12(a)(5)(v). Other changes such as household composition that must be reported at the recertification stage are not required to be reported during the certification period. Thus, we would add the following to the proposed rule.</p> <p><i>New subsection: The Department uses simplified reporting in most cases and unless the household's income exceeds 130 % of the federal poverty guidelines, a report of change is not required until the six-month point in certification period and does not constitute an overpayment.</i></p>	<p>The Department processes all changes that are reported by a household, as allowed under 7 CFR 273.12(c).</p> <p>When the Department discovers a change that was not reported by the household, the rule specifies that only changes that are required to be reported will be evaluated when determining whether an overpayment occurred.</p>
14	R6-14-303. <b>Determining a Claim Amount</b> (A)(3)	<p>During the certification period, the agency must act when the household's gross income exceeds the monthly gross income limits for the household size. 7 C.F.R. §273.12(a)(5)(v).*</p> <p>We could not find other times when the agency must act to decrease benefits under simplified reporting in the federal regulation. If DES has found such a provision, we request that DES provide the citation to us.</p> <p><i>* The federal regulation was amended on April 15, 2019.</i></p>	As stated in the Department response #13, the Department processes all changes that are reported by a household, regardless if the change was required to be reported, as allowed under 7 CFR 273.12(c).
15	R6-14-303. <b>Determining a Claim Amount</b> (A)(3)	DES uses the term "correct benefit amount" but the term is not defined. If this term is going to be used, DES should define it.	The phrase "correct benefit amount" as used in this rule is consistent with the language in 7 CFR 273.18(c)(1)(ii) – "correct amount of benefits".
16	R6-14-307. <b>Collection Methods</b> (C)	DES includes the option that it "may" collect overpayments from unemployment insurance ("UI") benefits through an intercept or a repayment agreement. DES previously stated it would not collect from UI benefits. In meetings, DES staff reiterated that DES does not currently collect overpayments from UI benefits. Collection from UI benefits is not required, <i>see</i> 7 C.F.R. § 273.18 (g)(6)(i) and(ii), and we request that DES not collect from UI payments. Recipients of UI benefits are persons and families who have had a life altering event, the loss of a job through no fault of their own and are in financial crisis. Add to this situation the fact that Arizona has	While the Department does not currently utilize this collection method, nor is it required to, it is an allowable option under 7 CFR 273.18 (g)(6), and is included in this rule in order for this option to be retained.

		<p>the second lowest UI weekly amount in the country, and the further loss of benefits will lead many households into being homeless. DES should not intentionally add to the financial stress these vulnerable families are facing.</p>	
17	R6-14-308. <b>Claim Compromise (C)</b>	<p>DES limits a household's ability to obtain a claim compromise to one time. There is no such limitation in the federal regulation, and this is an example where DES' proposed rule <i>is</i> more restrictive than the federal regulation. Under the federal regulation, 7 C.F.R. § 273.18 (e)(7), a household is entitled "compromising claims." There is no limitation to only compromising a claim one time.</p>	<p>7 CFR 273.18(e)(7) allows states the <u>option</u> to compromise a claim. Compromising a claim is not a requirement under federal regulation and thus a household is not entitled to a Compromise.</p> <p>Also, 7 CFR 273.18(e)(7)(iii) allows states to reinstate any compromised portion of a claim if a claim becomes delinquent.</p> <p>Since the Department has opted to allow a Compromise, any rules and subsequent procedures the Department adopts for a Claim Compromise are not more restrictive than the federal regulation.</p>
18	R6-14-308. <b>Claim Compromise (E)</b>	<p>In subsection (E), the rule should be clarified that an untimely submission of the documents excludes the situations where the person asked for more time or asked for help from DES. We request that DES insert after the sentence "A household may request additional time or help from the Department" the following sentence "A household that requests additional time or help from the Department shall not be required to submit the Financial Statement with requested information and verification within the thirty calendar days following the mailing or transmittal of the Financial Statement to the household."</p>	<p>As suggested, the Department has revised R6-14-308(E) to clarify that the Financial Statement is required to be provided by the thirtieth calendar day or the agreed upon extension date by the household, unless the delay was for good cause.</p> <p>The revised rule also adds a provision that when the household requests additional time or assistance from the Department, the Department shall allow an additional 30 calendar days.</p>
19	R6-14-309. <b>Reinstatement of a Compromise Claim</b>	<p>The Institute does not object to subsections (1) and (2), except that the proposed rule fails to address what happens when the default or delinquency of the compromised claim is the result of changed circumstances and renegotiation of the repayment plan is needed because of a hardship. The federal regulation, 7 C.F.R. § 73.18(e)(5)(iii), provides for the renegotiation of the repayment agreement and DES' current policies contain a renegotiation provision as well. DES policy "FAA 6. E Overpayments, .06 Methods of NA Overpayment Collection - Recoupment</p>	<p>This rule is consistent with 7 CFR 273.18(e)(7)(iii) which allows states to reinstate any compromised portion of a claim if a claim becomes delinquent.</p>

		<p>Collection Notices" provides that when the household fails to make a payment pursuant to the payment schedule, DES sends a notice that the household "may negotiate the payment schedule," and DES may "renegotiate the repayment schedule." We are dismayed that while DES currently renegotiates repayment plans it continues to fail to include the policy and practice in the proposed rules. Therefore, we request the following be added as a new section:</p> <p><i>New Section: Delinquency and Renegotiation of a Repayment Plan</i></p> <p>A. If the household is in default or delinquency of the repayment plan, the department shall send a notice to the household advising the household of the delinquency. The notice shall inform the household how to apply for a renegotiated payment plan, and specify the documentation they will need to submit.</p> <p>B. If the household's circumstances have changed, and it can no longer make the agreed upon payments, they may apply for a renegotiated payment plan based on the hardship.</p> <p>C. The household has the right to appeal the agency's failure to renegotiate a new repayment plan and the terms of any renegotiated repayment plan.</p>	
<b>Article 4. Appeals and Fair Hearings</b>			
20	R6-14-403. <b>Request for Hearing; Form; Time Limits; Presumption (E)</b>	<p>In subsection (E), the reasons DES will consider when an untimely submission of an appeal will be considered timely continue to be too limited. In every other section of the rules there is a general "good cause" exception. There should be a general good cause exception in this rule as well. The Institute requests the addition of a new subsection (F)(4) that provides: "For other good cause as defined in subsection R6-14-412(B)."</p>	<p>This rule is consistent with 7 CFR 273.15(g) and due process requirements.</p> <p>We think it is important to note that a person has 90 days to file for a Fair Hearing and there are additional protections including that a recipient can appeal the current level of benefits at any time within a certification period.</p>
21	R6-14-403. <b>Request for Hearing; Form; Time Limits; Presumption Proposed (J)</b>	<p>The following sentence should be added to subsection (J): "The notice of hearing shall include information on the person's rights to reasonable accommodations under the Americans with Disabilities Act ("ADA") and how an accommodation may be requested."* DES recognizes this obligation in proposed rule R6-14-503(F) for Administrative Disqualification Hearings where the rule provides that "The time and place for the hearing shall be arranged so the hearing is</p>	<p>The Department does not agree with this comment. The Department complies with all federal Americans with Disabilities Act requirements in the administration of Department programs and services. The rule need not set forth in detail the ADA related duties of the Department.</p>

		<p>accessible ... including making reasonable accommodations for a person with a disability." While, as explained in R6-14-503(F), we do not think this provision is adequate, it highlights that DES understands its obligation to provide this information to persons.</p> <p><i>* Although beyond the rules, we also want to state that DES must immediately stop burying information concerning the household's rights under the ADA in tiny font at the end of all of its notices. In addition to tiny font which is not readable for persons with visual impairments, the text starts off referring to other federal laws. Several years ago, the Institute and legal services worked on the notices with the Appellate Services Administration and the notices had a separate section in at least 12 font with a heading on Americans with Disabilities Act rights. We request that DES immediately go back to that format.</i></p>	
22	R6-14-405. <b>Hearings; Location; Notice; Time (A)</b>	<p>In subsection (A) the rule should affirmatively state that: "The notice of hearing shall inform the appellant that he or she may request to appear in person before an administrative law judge and specify the steps to take to make this request." DES' Appellate Services Administration has been very reluctant to have in-person hearings even though claimants have a right to one. <i>See</i> discussion below in parties' rights, R6-14-410, concerning the parties' rights to appear in person.</p>	<p>The rule states that the Notice of Hearing shall include information on how to request an in-person hearing. The Department believes that this requirement adequately addresses this comment.</p>
23	R6-14-405. <b>Hearings; Location; Notice; Time (D)</b>	<p>In the proposed rule, DES has conflated two rights: (1) the right to look at the person's whole file and get copies of the file and (2) the right to examine and get copies of the documents to be used at the hearing. The wording in subsection D(5)(a) provides that the notice shall inform the person of the right to "Examine the case file prior to the hearing ... If requested ... the Department shall provide a free copy of the portions of the case file that are relevant to the hearing." As explained below, DES must segregate the two rights and not conflate them.</p> <p>Federal regulation 7 C.F.R. § 273.15(1) lists the information that must be in a notice of a hearing as part of the person's pre-hearing rights. The fourth item is: "Explain that the household or representative may examine the</p>	<p>The provisions in R6-14-405 (D)(5)(a) conform in full to the following federal regulations:</p> <p>7 CFR 273.15(i)(1): "Upon request, the State agency shall make available without charge the specific materials necessary for a household or its representative to determine whether a hearing should be requested or to prepare for a hearing."</p> <p>7 CFR 273.15(l)(4): "Explain that the household or representative may examine the case file prior to the hearing."</p>

		case file prior to the hearing." 7 C.F.R. § 273.15(1)(4). This is a right to review the whole case file and get a copy of the whole file. The right is not limited to "portions" of the case file. We request DES list this right separately as subsection (5)(a). "Explain that the household or representative may examine the case file prior to the hearing and obtain a copy of the whole case file."	7 CFR 273.15(p)(1): "If requested by the household or its representative, the State agency shall provide a free copy of the portions of the case file that are relevant to the hearing."
24	R6-14-405. <b>Hearings; Location; Notice; Time (D)</b>	Under 7 C.F.R. § 273.15(p)(l), the household must be given an opportunity to "[ e ]xamine all documents and records to be used at the hearing at a reasonable time before the hearing." (emphasis added). Any documents that will be used at the hearing and documents that are "relevant' to the hearing, must be provided to the household without charge. We propose listing this right separately as 5(b) and then renumbering the rest of rights listed in the subsection. That subsection would read: "Examine all documents and records to be used at the hearing and all relevant documents to the hearing and get copies of those documents without charge both prior to the hearing and during the hearing."	R6-14-405(D)(5)(a) conforms with the federal regulation requirement at 7 CFR 273.15(l)(4).  Additionally, R6-14-410 addresses this issue per 7 CFR 273(p)(1).
25	R6-14-405. <b>Hearings; Location; Notice; Time</b>	The federal regulation provides for agency conferences in situations beyond the denial of expedited services. 7 C.F.R. § 273. 15 (d). DES offers the conferences and DES should affirmatively explain this in the notice. Legal services utilizes these conferences to settle cases without going to a hearing. The conferences present legal services the opportunity to explain the problems with DES' factual and legal analysis of the case. The same applies to unrepresented claimants. Ultimately, agency conferences can save DES' resources as well by increasing the opportunities for settlement. Moreover, this information falls squarely under DES' obligation to include in the notice "any other information that would provide the household with an understanding of the proceedings and that would contribute to the effective presentation of the household's case." 7 C.F.R. § 273. 15 (1)(3).	The Department does not agree with this comment. The federal regulations do not require this information to be included.  The Department provides the information and it is not necessary to repeat the information in the Notice of Hearing. No change is needed.
26	R6-14-409. <b>Subpoenas (C)</b>	In subsection (C), the word "work" should be changed to "working," as that is the wording in R-6-14-402(A)(2).	As suggested, the Department has revised R6-14-409(C) by changing "work" to "working".
27	R6-14-410.	The Institute requests that DES add the right to	The Department is unaware of

	<b>Parties' Rights</b>	appear in person at the hearing before an administrative law judge; the right to bring family and friends to the hearing; and the right to review the whole case file to the list of a party's rights. Federal regulation 7 C.F.R. § 273.15 (o) specially provides for "attendance" at the hearing of the household, as well as friends and relatives of the household, "if the household so chooses" unless there are space limitations. The friends and relatives of the household do not need to be witnesses to attend the hearing.	any legal authority that provides that there is a right to an in-person hearing. The section of the federal regulations cited by the commenter only provides that the household has a right to attend the hearing. Attendance by telephone is no less an exercise of the right to attend the hearing than attendance in-person. No change is needed.  R6-14-405(D)(1) stipulates that the Notice of hearing shall include information on how to request an in-person hearing.  The right to bring friends and relative to the hearing is specified in the federal regulations. It is not necessary to reiterate this right in these state rules. No change is needed.
28	R6-14-413. <b>Hearing Proceedings</b>	DES added at our request that 7 C.F.R. § 273.15(p)(4) requires the state agency to honor a party's right to "advance" arguments without undue interference. The Institute also requests that DES put back in the proposed rule, the right to make an oral opening and closing argument with the consent of the hearing officer. We think both rights are important.	This rule conforms with the federal regulation requirements at 7 CFR 273.15(p) and does not need to be revised.
29	R6-14-416 <b>Further Administrative Appeal</b> or R6-14-417. <b>Appeals Board</b>	This section needs to be clarified pursuant to 7 CFR 273.15(q)(2) that the Appeals Board Decision is binding on the Agency and that is our understanding that DES agrees with that, but the way it is worded we think it talks about both parties.	R6-14-417(B) and (C) have been revised to clarify that only the household appellant adversely affected by an Appeals Board decision may seek further judicial review.
<b>Article 5. Intentional Program Violation</b>			
		We propose adding the following new subsections to the Intentional Program Violation sections:	
30	R6-14-501. <b>Intentional Program Violations (IPV); Defined</b>	<i>New subsection (C) in R6-14-501</i> The Department shall inform the household in writing of the disqualification penalties for Intentional Program Violation each time the household applies for Nutrition Assistance. The penalties shall be in clear, prominent, and boldface lettering on the application form as required by 7 C.F.R. § 273.16 (d).	The Department agrees that it must provide this information as a part of the application process. However, this requirement is adequately set forth in the federal regulations at 7 CFR 273.16(d). It is not necessary to reiterate it in these rules. No change is needed.
31	R6-14-502.	<i>New subsection (A) in R6-14-502</i>	Reporting and clarification of

	<b>IPV Administrative Disqualification Hearings; Hearing Waiver</b>	The Department may only require reporting and the clarification of unclear information as provided for in 7 C.F.R. §273.12.	information is adequately set forth in federal regulations at 7 CFR 273.12. It is not necessary to reiterate that information in these rules. No change is needed.
32	R6-14-502. <b>IPV Administrative Disqualification Hearings; Hearing Waiver</b>	<i>New</i> subsection (B) in R6-14-502  A person is not required to cooperate with a fraud investigation for continued eligibility.	The Department does not agree with this comment. Any provision dealing with the requirement for an individual to cooperate with a fraud investigation should be included in rules concerning eligibility requirements, not in the rules concerning Administrative Disqualification Hearings. No change is needed.
33	R6-14-502. <b>IPV Administrative Disqualification Hearings; Hearing Waiver</b>	<i>New</i> subsection (C) in R6-14-502  In determining whether an IPV occurred, the Department must investigate whether:  1. The person knew about the Department program rule in question and intended to act dishonestly. 2. The person has a mental or cognitive disability that prevents him or her from forming an intent to violate program rules or act dishonestly. 3. The person did not understand the Department rule because of literacy problems, limited English proficiency or a disability. 4. The person reported information but the Department failed to act on the information or the Department recorded the information incorrectly. 7 C.F.R. §273.2(b)(1)(v). 5. The Department told the person their actions were legal or failed to explain the reporting requirements. <i>See</i> 7 C.F.R. § 273.2(e)(1). 6. The Department failed to provide reasonable accommodations to a person with a disability that led to an unintentional violation of a program rule.	The Department is unaware of any existing legal authority that specifies the items that must be investigated in an Intentional Program Violation investigation. It is not appropriate to specify such items in these rules because it is important to allow the investigator to focus the investigation on the relevant factual matters, given the unique circumstances of the individual case. The list of items proposed by the commenter would cause the Department to use resources inefficiently to investigate matters for which there is no evidentiary basis. While it may be useful to include such a list in internal policy or training material as areas of potential inquiry, the list is not appropriate for inclusion in these rules. No change is needed.
34	R6-14-502. <b>IPV Administrative Disqualification Hearings; Hearing Waiver (C)(2)</b>	In subsection (C)(2), the conflation of rights noted in R6-14-405 also occurs in this proposed rule. The rule provides "notification that the individual ... has the right to examine the case file prior to the hearing and, when requested ... be provided a free copy of the portions of the requested portions of the case file." The person must be allowed to obtain a copy of their whole file, not just portions of the file. DES' continued efforts to make it difficult for the person to see their	As suggested, the language in R6-14-502(C)(2) has been revised to be consistent with the language in R6-14-410(B) regarding the receipt of a free copy of any document in the individual's case file, with certain restrictions.

		complete file is unlawful. We request that DES segregate out the two rights as we set forth in our comments to section R6-14-405 above.	
35	R6-14-502. <b>IPV Administrative Disqualification Hearings; Hearing Waiver (C)(11)</b>	In subsection (C)(II)(c), we request that DES include a third option in the notice that the persons may check. "I do not admit that the facts as presented are correct in my Nutrition Assistance case. I do not waive my right to require an Administrative Disqualification Hearing where the Department must prove by clear and convincing that I committed and intended to commit an Intentional Program Violation." The correct criteria should be disclosed to the person receiving the notice. 7 C.F.R. § 273.16(v)(6).	As requested, the Department has revised R6-14-502(C)(11) by adding a subsection (c) to include a third option in the notice that the persons may check: "I do not admit that the facts as presented are correct in my Nutrition Assistance case. I do not waive my right to require an Administrative Disqualification Hearing where the Department must prove by clear and convincing evidence that I committed and intended to commit an Intentional Program Violation."
36	R6-14-503. <b>Administrative Disqualification Hearings (D)(3)</b>	The notice of the disqualification hearing must contain the rights listed in 7 C.F.R. § 273.1S(p) which under subsection (1) includes the right to look at the person's complete case file. DES must include this right in its notice. The person also has a right to a copy of the person's complete file. Subsection (D)(3) is not adequate and incorrectly conflates these rights. That subsection provides the person "has a right to examine the case file prior to the hearing. When requested the Department shall provide a free copy of the requested portions of the case file." The rule improperly limits the documents to "requested portions of the case file." We request that DES use our proposed wording in R6-14-405 above.	As suggested, the Department has revised R6-14-503(D)(3) to be consistent with the language in R6-14-410(B) and R6-14-502 (C)(2) regarding the receipt of a free copy of any document in the individual's case file, with certain restrictions.
37	R6-14-503. <b>Administrative Disqualification Hearings (D)</b>	In subsection (D), the hearing notice should also include: (1) the person has the right to not attend the hearing or attend the hearing and remain silent	The Department does not agree with this comment. Although it is true that an individual is permitted to remain silent and that anything said can be used against him, the federal regulations do not require that this statement be included in the Notice of Hearing. Adding the statement would make the Notice of Hearing longer and more difficult to read and understand. No change is needed.
38	R6-14-503. <b>Administrative Disqualification Hearings (D)</b>	In subsection (D), the hearing notice should also include: (2) the person's right to remain silent and that anything said or signed by the person can be used against them.	The Department does not agree with this comment. Although it is true that the standard of proof is clear and convincing evidence, the federal regulations do not

			require that this statement be included in the Notice of Hearing. Adding the statement would make the Notice of Hearing longer and more difficult to read and understand. No change is needed.
39	R6-14-503. <b>Administrative Disqualification Hearings (D)</b>	In subsection (D), the hearing notice should also include: (3) if the person does not attend the hearing, the ALJ will make findings based on the record produced by DES.	The Department does not agree with this comment. The suggested language is already covered adequately under R6-14-503(D)(4). No change is needed.
40	R6-14-503. <b>Administrative Disqualification Hearings (D)</b>	In subsection (D), the hearing notice should also include: (4) that the standard of proof to find a violation is clear and convincing evidence that the person “committed and intended to commit an IPV.” 7 C.F.R. § 273.16(v)(6). It is important that persons understand the heightened proof that DES must satisfy in these cases.	The Department does not agree with this comment. Although it is true that the standard of proof is clear and convincing evidence, the federal regulations do not require that this statement be included in the Notice of Hearing. Adding the statement would make the Notice of Hearing longer and more difficult to read and understand. No change is needed.
41	R6-14-503. <b>Administrative Disqualification Hearings (F)</b>	Subsection (F) is an Americans with Disabilities Act provision but it should be revised to be clearer. We request that DES use our proposal in R6-14-403(J).	The Department does not agree with this comment. The rule as drafted is clear and unambiguous. The rule need not set forth in detail the ADA related duties of the Department.
42	R6-14-503. <b>Administrative Disqualification Hearings (G)</b>	Subsection (G) provides that in addition to informing the person at the beginning of the disqualification hearing that she can remain silent, the proposed rule also requires the ALJ to state "the consequences of exercising that right." The right to remain silent is absolute and there is no "consequence" to exercising that right and the ALJ cannot make any inference about the person asserting their constitutional and statutory right to remain silent. See 7 C.F.R. § 273.16(e)(2)(iii) and (f)(1)(ii)(B). <sup>1</sup> The words "the consequences of exercising that right" must be deleted.  <sup>1</sup> Arizona courts have recognized that the protection against self-incrimination includes the freedom from adverse consequences flowing from defendant's exercise of his Fifth amendment rights. <i>State v. Bravo</i> , 158 Ariz.	As suggested, the Department has revised R6-14-503(G) to remove the language "and the consequences of exercising that right".

		364, 378, 762 P.2d 1318, 1332 (1988); <i>State v. Carrillo</i> , 156 Ariz. 125, 750 P.2d 883 (1988). Normally, any reference by a judge or a prosecutor about a defendant's protected silence will constitute fundamental error. <i>State v. Anderson</i> , 110 Ariz. 238, 517P.2d 508 (1973). <i>Miranda</i> warnings carry an implicit assurance that a defendant's choice to remain silent will carry no penalties. <i>Carrillo</i> , 156 Ariz. at 134, 750 P.2d at 892 (citing <i>Doyle v. Ohio</i> , 426 U.S. 610, 618–19, 96 S.Ct. 2240, 2245, 49 L.Ed.2d 91, 96 (1976)).	
43	R6-14-503. <b>Administrative Disqualification Hearings (I)</b>	In subsection (I), the wording should include the capitalized words to read: "The Department shall prove by clear and convincing evidence that the household "INTENDED TO COMMIT and committed an IPV."	As suggested, the Department has revised R6-14-503(I) to include the language "and intended to commit".
44	R6-14-503. <b>Administrative Disqualification Hearings</b>	The Institute suggests the following subsections be added for when an ALJ finds the person committed and intended to commit an IPV.  <i>New (L):</i> If the hearing officer finds that the person did commit and intend to commit an IPV, the hearing officer shall provide a written notice that informs the person of the decision pursuant to 7 C.F.R. §273.16(e)(9)(ii) and explains the right to appeal to state court and the appeal process.	To address this comment, rather than adding a new subsection to the rule, the Department has revised subsection (J) of the rule to add "and include appeal rights" to the items that are contained in the written decision notice that is sent by the Hearing Officer to the individual suspected of the IPV.
45	R6-14-505. <b>Disqualification Sanctions; Notice</b>	The Institute requests that subsection (G) include the following words at the beginning of the subsection:  The department shall provide a separate written notice to the remaining household members, if any, of the disqualification period, including any explanation of any deferment of disqualification; the allotment they will receive during the disqualification period or that they must they must reapply because the certification period has expired. <i>See</i> 7 C.F.R. §273.16(e)(9)(ii) and (f)(3).	The Department disagrees that subsection (G) needs to be revised, as it conforms to the federal regulations requirements as cited in the subsection, However, for additional clarity, the department has added the federal regulation citation provided in the comment to subsection (H).
46	R6-14-506. <b>Administrative Disqualification Hearings or Waiver of the Right to a Hearing: Appeal</b>	We would add that pursuant to 7 CFR 273.15(q)(2) that the Appeals Board Administrative Decision is binding on the Agency.	The Department does not agree with the comment. The rule limits further review to "an individual adversely affected." The Department is not an individual.

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

No other matters are prescribed.

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

The rules do not require a permit.

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

Article Three - Claims Against Households. Federal law at 7 U.S.C. 2022 is applicable to this rule. This federal law is implemented in the SNAP program at 7 CFR 273.18.

This rule is not more stringent than federal law or regulation.

Article Four – Appeals and Fair Hearings. Federal law at 7 U.S.C. 2020 is applicable to this rule. This federal law is implemented in the SNAP program at 7 CFR 273.15. This rule is not more stringent than federal law or regulation.

Article Five – Intentional Program Violation. Federal law at 7 U.S.C. 2015 is applicable to this rule. This federal law is implemented in the SNAP at 7 CFR 273.16. This rule is not more stringent than federal law or regulation.

**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 rules:**

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:**

This rule was previously published as an emergency rule as cited below. The emergency rules in both publications contained identical text.

Notice of Emergency Rulemaking: 24 A.A.R. 2081, July 27, 2018

Notice of Emergency Rulemaking: 24 A.A.R. 3591, December 28, 2018

The following rules in the Notice of Emergency Rulemaking have been revised, renumbered, or both in the Notice of Final Rulemaking:

**R6-14-302. Calculating a Claim Amount**

In the final rulemaking, this rule has been revised by separating the rule out into two rules:

- R6-14-302. Claim Calculation; Date of Discovery; Overpayment Period addresses the ‘date of discovery’ for each of the 4 types of claims that may be established and the specific period of time that will be used for each of the claim types when calculating a claim amount.

- R6-14-303. Determining A Claim Amount addresses the policies and procedures the Department uses to determine the amount of a claim.

**R6-14-303. Pre-establishment Cost Effectiveness Determination**

In the final rulemaking, this rule has been renumbered to R6-14-304. Pre-establishment Cost Effectiveness Determination.

**R6-14-304. Claim Compromise**

In the final rulemaking, this rule has been renumbered to R6-14-308. Claim Compromise and has been extensively revised to provide detailed policies and procedures that the Department uses when determining whether an entire claim or any portion of a claim may be compromised.

**R6-14-305. Terminating and Writing Off a Claim**

In the final rulemaking, this rule has been renumbered to R6-14-310. Terminating and Writing Off a Claim.

**R6-14-307. Collection Methods**

In the final rulemaking, this rule has been revised to provide more detailed information about the various methods the Department is allowed to use when collecting an established claim. The revised rule provides more clarity that will enable the household to better understand their responsibilities when requesting and utilizing a negotiated repayment agreement.

**R6-14-308. Notice of Claim**

In the final rulemaking, this rule has been renumbered to R6-14-305. Notice of Claim.

**R6-14-401. Entitlement to a Fair Hearing; Appealable Action**

In the final rulemaking, this rule has been slightly revised by clarifying that any action or inaction taken by the Department, that “affects the participation of the household in the program”, may result in a request for hearing. This provides a reasonable limitation on the matters that are subject to appeal.

**R6-14-403. Request for Hearing: Form; Time Limits; Presumptions**

In the final rulemaking, this rule has been revised to further clarify the Department’s responsibilities as required by federal regulations and to more closely align with the language used in the pertinent federal regulations.

**R6-14-405. Hearings: Location; Notice; Time**

In the final rulemaking, this rule has been revised to further clarify the Department’s responsibilities as required by federal regulations and to more closely align with the language used in the pertinent federal regulations.

**R6-14-407. Hearing Officer: Duties and Qualifications**

In the final rulemaking, this rule has been revised to further clarify the duties of a Hearing Officer as required by federal regulations and to more closely align with the language used in the pertinent federal regulations.

**R6-14-409. Subpoenas**

In the final rulemaking, this rule has been revised to remove the requirement for a party to first attempt to obtain a desired witness or evidence by voluntary means prior to asking the assigned Hearing Officer to issue a subpoena. The rule also was revised further to specify that a party may request a postponement of the hearing when the party is unable to request a subpoena at least five days before the hearing date.

**R6-14-412. Failure to Appear; Default; Reopening**

In the final rulemaking, this rule has been revised to change the “good cause” definition in section (B) to align with the expanded “good cause” circumstances in section (E). The methods available to an appellant to request that a hearing be reopened were also expanded.

**R6-14-413. Hearing Proceedings**

In the final rulemaking, this rule has been revised to stipulate that a party may advance arguments without undue interference.

**R6-14-415. Effect of the Decision**

In the final rulemaking, this rule has been revised by adding a new section (C) that specifies the time frames for Department implementation of hearing decisions as set forth in federal regulations.

**R6-14-417. Appeals Board**

In the final rulemaking, this rule has been revised by stipulating that the complete record that the Appeals Board decision is based on includes the audio recording or the transcript of the hearing. For clarity, the rule was further revised to specify that only the household appellant, and not the Department, may seek further judicial review when adversely affected by an Appeals Board decision.

**R6-14-502. IPV Administrative Disqualification Hearings; Hearing Waiver**

In the final rulemaking, this rule has been revised to require that the waiver notice of the Administrative Disqualification Hearing informs the individual that they both committed and intended to commit an Intentional Program Violation (IPV). The revised rule now specifies that, when requested, a free copy of any document in the household’s case record may be provided, with certain restrictions. Additionally, the rule was further revised to clarify that the individual be informed that the standard of proof for having committed an IPV is “clear and convincing evidence”.

**R6-14-503. Administrative Disqualification Hearings**

In the final rulemaking, several revisions were made to this rule, including:

- Regarding the Hearing Notice, the revised rule now specifies that, when requested, a free copy of any document in the household’s case record may be provided, with certain restrictions in section (D)(3).
- The opening sentence in section (G) was revised by removing the language "and the consequences of removing that right".

- In section (I), the language "and intended to commit" was added to clarify that an IPV consists of two parts: Committing an IPV and Intending to commit the IPV.
- In section (J), the language "and appeal rights" was added as an item that will be included in the written decision notice that is sent to the person suspected of the IPV.

**R6-14-504. Failure to Appear; Default; Reopening**

In the final rulemaking, the definition of "Good Cause" in section (B) has been revised.

**R6-14-505. Disqualification Sanctions; Notice**

In the final rulemaking:

- Section (F) now contains the requirements for written disqualification notice that is sent to the individual found to have committed the IPV. This information had been contained in section (G) in the NER.
- Section (G) now contains the information regarding the Department's treatment of the income and resources of the disqualified person when the Department determines the eligibility and benefit amount for the remaining eligible members of the household. This information had been found in section (F) in the NER.
- A new section (H) has been added to state the Department's requirements to notify the remaining members of the household of their eligibility and benefit level at the same time that the excluded member is notified of his or her disqualification.

**R6-14-506. Administrative Disqualification Hearings or Waiver of the Right to a Hearing; Appeal**

In the final rulemaking, section (B) has been revised to clarify that a party may appeal a Hearing Officer's Disqualification Hearing decision to the Appeals Board and provides the appropriate cross-references to the Appeals rules in Article 4.

In the final rulemaking, a new section (C) has been added to stipulate that an individual adversely affected by an Appeals Board decision may seek further review and provides the authorizing state law citation.

In the final rulemaking, the Department has added the following two rules which were not included in the Notice of Emergency Rulemaking:

**R6-14-309. Reinstatement of a Compromised Claim.** This rule establishes when the Department may reinstate any compromised portion of a claim.

**R6-14-311. Claims Established in Another State.** This rule establishes under what circumstances the Department may accept a claim from another state if the household subject to the claim receives Nutrition Assistance benefits in Arizona.

**15.    The full text of the rules follows:**

**TITLE 6. ECONOMIC SECURITY**

**CHAPTER 14. DEPARTMENT OF ECONOMIC SECURITY**

**FOOD STAMPS PROGRAM NUTRITION ASSISTANCE PROGRAM**

**Article 3. ~~EXPIRED~~ CLAIMS AGAINST HOUSEHOLDS**

- R6-14-301. ~~Expired~~ Purpose and Definitions
- R6-14-302. ~~Expired~~ Claim Calculation; Date of Discovery; Overpayment Period
- R6-14-303. ~~Expired~~ Determining a Claim Amount
- R6-14-304. ~~Expired~~ Pre-establishment Cost Effectiveness Determination
- R6-14-305. ~~Expired~~ Notice of Claim
- R6-14-306. ~~Expired~~ Acceptable Forms of Payment
- R6-14-307. ~~Expired~~ Collection Methods
- R6-14-308. ~~Expired~~ Claim Compromise
- R6-14-309. ~~Expired~~ Reinstatement of a Compromised Claim
- R6-14-310. ~~Expired~~ Terminating and Writing Off a Claim
- R6-14-311. ~~Expired~~ Claims Established in Another State

**Article 4. ~~EXPIRED~~ APPEALS AND FAIR HEARINGS**

- R6-14-401. ~~Expired~~ Entitlement to a Fair Hearing; Appealable Action
- R6-14-402. ~~Expired~~ Computation of Time
- R6-14-403. Request for Hearing: Form; Time Limits; Presumptions
- R6-14-404. Stay of Action Pending Appeal
- R6-14-405. Hearings: Location; Notice; Time

- R6-14-406. Postponing the Hearing
- R6-14-407. Hearing Officer: Duties and Qualifications
- R6-14-408. Change of Hearing Officer; Challenges for Cause
- R6-14-409. Subpoenas
- R6-14-410. Parties' Rights
- R6-14-411. Withdrawal of an Appeal
- R6-14-412. Failure to Appear; Default; Reopening
- R6-14-413. Hearing Proceedings
- R6-14-414. Hearing Decision
- R6-14-415. Effect of the Decision
- R6-14-416. Further Administrative Appeal
- R6-14-417. Appeals Board

**Article 5. ~~EXPIRED~~ INTENTIONAL PROGRAM VIOLATION**

- R6-14-501. ~~Expired~~ Intentional Program Violations (IPV); Defined
- R6-14-502. ~~Expired~~ IPV Administrative Disqualification Hearings; Hearing Waiver
- R6-14-503. ~~Expired~~ Administrative Disqualification Hearings
- R6-14-504. ~~Expired~~ Failure to Appear; Default; Reopening
- R6-14-505. ~~Expired~~ Disqualification Sanctions; Notice
- R6-14-506. ~~Expired~~ Administrative Disqualification Hearings or Waiver of the Right to a Hearing; Appeal
- R6-14-507. ~~Expired~~ Honoring Out-of-State IPV Determinations and Sanctions

### Article 3. Claims Against Households

#### R6-14-301. Purpose and Definitions

- A. The Department establishes and collects claims under 7 CFR 273.18, Claims against households. This Article clarifies the Department’s policies and procedures as permitted in federal regulation.
- B. The definitions in section R6-14-111 and the following definitions apply to this Article:
1. “Agency error” or “AE claim” means any claim for an overpayment caused by an action or failure to take action by the Department.
  2. “Claim” means the amount of a federal debt owed because Nutrition Assistance benefits were overpaid or benefits were trafficked.
  3. “Household” means one of the following individuals or groups of individuals, unless otherwise specified under 7 CFR 273.1(b):
    - a. Except as contained in (b):
      - i. An individual living alone;
      - ii. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
      - iii. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.
    - b. Specific to the Claim Compromise process in R6-14-308, the following persons who are residing together:

- i. Adults who were members of the Nutrition Assistance household for which the claim was established, and who were adults at the time the claim was established, and
  - ii. Minor children for whom adult household members are responsible.
- 4. “Inadvertent household error” or “IHE claim” means any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the Nutrition Assistance household. This includes instances when the household received more benefits than it was entitled to receive because the household requested a continuation of benefits, pending a fair hearing decision.
- 5. “Intentional Program Violation” or “IPV claim” means any claim for an overpayment resulting from an individual committing and intending to commit, an IPV under 7 CFR 273.16.
- 6. “Trafficking claim” means any claim for the value of benefits that are trafficked, under 7 CFR 273.18. Trafficking is defined under 7 CFR 271.2.

**R6-14-302. Claim Calculation; Date of Discovery; Overpayment Period**

Under 7 CFR 273.18, the Department shall calculate an overpayment of benefits claim by:

- A. Date of discovery. The date of discovery is determined when the Department becomes aware of the overpayment.
  - 1. For AE claims, the date of discovery is the date the overpayment has been verified or the date the household ultimately fails to respond to or satisfy an overpayment inquiry.

2. For IHE and IPV claims, the date that the Department obtains verification used to calculate the over-issuance.
  3. For claims resulting from trafficking, the date of the court decision, or the date the household signed a waiver of administrative disqualification hearing form or a disqualification consent agreement.
- B. For AE and IHE claims, calculate a claim for the month of the date of discovery and for each prior month, not to exceed 36 months prior to the date of discovery.
- C. For an IPV claim not related to trafficking, calculate a claim back to the month that the IPV first occurred, not to exceed 72 months prior to the date of discovery.
- D. For a claim resulting from trafficking, calculate a claim for the value of the trafficked benefits, as determined under 7 CFR 273.18(c)(2).

**R6-14-303. Determining a Claim Amount**

- A. For all claims other than a claim resulting from trafficking:
1. The Department shall determine whether the overpayment of benefits occurred at the time an eligibility determination was rendered for a new or recertification application or whether the overpayment occurred during an eligible certification period.
  2. When it is discovered that the Department rendered an incorrect eligibility determination or issued an incorrect benefit amount because the Department failed to correctly act on information provided on the application or reported by the applicant, or because the applicant failed to provide correct information on the application or prior to application approval, the Department shall re-determine eligibility and a benefit amount for that application and for the months in the

certification period, using the application approval or denial policies and procedures that were in effect at the time the eligibility determination for the application was rendered. The Department will not consider information that was not previously reported by the household that would have resulted in an increase in the benefit allotment at the time of initial approval of benefits.

- a. When it is determined that the household was ineligible, the Department shall establish a claim based on the amount of benefits issued for each month during the certification period that was established when the application was originally approved, minus the amount of benefits that the Department has expunged from the household's EBT benefit account, for each of the corresponding overpaid months.
- b. When it is determined that the household was eligible, the Department shall establish a claim based on the amount of benefits that were paid in excess of the correct benefit amount in each month of the certification period, minus the amount of benefits that the Department has expunged from the household's EBT benefit account, for each of the corresponding overpaid months.
- c. When it is determined that the household was eligible and received a smaller benefit amount than it was eligible to receive because the Department failed to correctly act on information provided on the application or reported by the applicant prior to application approval, the Department shall issue a supplement for each month in the certification

period that the household was paid less than the correct benefit amount as provided in 7 CFR 273.17.

3. When a change occurred during an eligible certification period:

a. The Department shall process any change that was reported and re-determine a new benefit allotment amount for each affected month in the certification period using the change processing policies and procedures that were in effect for those months under 7 CFR 273.12(c).

i. The Department shall establish a claim based on the amount of benefits that were paid in excess of the new benefit amount in each affected month of the certification period, minus the amount of benefits that the Department has expunged from the household's EBT benefit account.

ii. The Department shall issue a supplement for each month the household was paid less than the new benefit amount.

b. When the Department discovers a change which was not reported by the household, the Department shall determine whether the change was required to be reported based on the change reporting requirement assigned to the household for the certification period.

i. When the change was not required to be reported the Department shall not process the change for the months in the certification period.

ii. When the change was required to be reported the Department shall re-determine eligibility and a new benefit allotment amount for

each affected month in the certification period using the change processing policies and procedures that were in effect for those months under 7 CFR 273.12(c). The Department shall establish a claim based on the amount of benefits that were paid in excess of the correct benefit amount in each month of the certification period, minus the amount of benefits that the Department has expunged from the household's EBT benefit account.

B. For a claim resulting from trafficking, the Department shall calculate a claim amount based on the entire value of the trafficked benefits.

**R6-14-304. Pre-establishment Cost Effectiveness Determination**

The Department shall not establish an overpayment that is not cost effective using the threshold at 7 CFR 273.18(e)(2)(ii), unless the Department establishes and collects claims under a cost-effectiveness plan approved by the Food and Nutrition Service of the U.S. Department of Agriculture under 7 CFR 273.18(e)(2)(i) that establishes a different threshold.

**R6-14-305. Notice of Claim**

To begin collection on a claim, the Department shall send the household a Notice of Claim. At a minimum, the notice shall include all elements required under 7 CFR 273.18(e)(3)(iv).

**R6-14-306. Acceptable Forms of Payment**

The Department may accept all forms of payment, including the methods listed in 7 CFR 273.18(f) to collect a claim.

**R6-14-307. Collection Methods**

A. Allotment reduction. When a household is receiving Nutrition Assistance benefits, the Department may use the allotment reduction in 7 CFR 273.18(g)(1).

- B. As provided under 7 CFR 273.18(g)(5), the Department may allow a household that is not participating in the Nutrition Assistance program to pay a claim in equal monthly payments in a negotiated repayment agreement. The household shall be responsible to pay a monthly payment in one of the following amounts until the claim is paid in full:
1. An amount equal to the balance of the claim at the time the negotiated repayment agreement is made, divided by 36.
  2. When the amount in (1) is equal to or less than \$10.00, the monthly repayment amount shall be \$10.00.
- C. Under 7 CFR 273.18(g)(6), the Department may arrange with a liable individual to intercept his or her unemployment compensation benefits. This collection option may be included as part of a repayment agreement. The Department may also intercept an individual's unemployment compensation benefits by obtaining a court order.
- D. Under 7 CFR 273.18(g)(8), the Department may use other collection methods that include:
1. Submitting the claim to the Arizona Department of Revenue for payment through a state tax refund.
  2. Submitting the claim to the Arizona Lottery Commission for payment through a lottery winnings offset.
  3. Submitting the claim to the federal Treasury Offset Program under 7 CFR 273.18(n).
  4. A wage garnishment established through a civil judgment or criminal restitution order. When the Department has obtained a judgment or order, the Department shall:

- a. Send the household a Pre-Garnishment Notice to allow the household to agree to pay the claim in a manner other than wage garnishment; and
  - b. If the household fails to arrange for payment in response to the Pre-Garnishment Notice, the Department may request the Arizona Attorney General's Office to initiate a wage garnishment under A.R.S. Title 12, Chapter 9, Article 4.1, and that garnishment may continue until the claim is paid in full.
5. Garnishment or levy of monies or property per A.R.S. Title 12, Chapter 9, Article 4.
6. Imposition or enforcement of all liens, including judgment liens imposed under A.R.S. § 33-961.
7. Any other legal or equitable remedy for the collection of debts and judgments.
- E. Under 7 CFR 273.18(j) and at the Arizona Attorney General's direction, the Department shall act on behalf of the Food and Nutrition Service of the U.S. Department of Agriculture in any bankruptcy proceeding against a household subject to a claim.

**R6-14-308. Claim Compromise**

- A. In accordance with the Department's Claim Compromise policy and procedures as contained in the Arizona Cash and Nutrition Assistance Policy manual, the Department may compromise an entire claim or any portion of a claim if it can be reasonably determined that a household's economic circumstances dictate that the claim will not be paid in three years.
- B. For purposes of a claim compromise "household" means the following persons who are residing together:

1. Adults who were members of the Nutrition Assistance household for which the claim was established, and who were adults at the time the claim was established, and
2. Minor children for whom adult household members are responsible.

C. When a household reports that it is unable to pay the claim in the equal monthly increments specified in R6-14-307(A) or (B), the Department shall inform the household that it may request a one-time compromise of the claim and shall provide the household with instructions for requesting a compromise. The Department may compromise the claim by reducing the claim amount and the resulting monthly payment amount when:

1. The household contacts the Department, orally or in writing, and requests a compromise of the claim,
2. The claim was established as an Agency Error claim or an Inadvertent Household Error claim,
3. There is no pending Appeal of the claim,
4. The Department has not previously approved a compromise of the claim, and
5. The Department approves the compromise request as provided in this rule.

D. When the Department receives a compromise request, and there is no pending appeal of the claim for which the compromise is requested, the Department shall send the household a Financial Statement form requesting necessary information and verification required for the Department to determine eligibility for a claim compromise.

- E. The household must return the completed Financial Statement with requested information and verification to the Department no later than the thirtieth calendar day following the date that the Department mailed or otherwise transmitted the Financial Statement to the household. When the household requests assistance or additional time, the Department shall allow an additional thirty calendar days for the household to provide a completed Financial Statement. The Department shall deny the compromise claim request when the Financial Statement is not provided by the household by the thirtieth calendar day or the agreed upon extension date, unless the delay was for good cause. Good cause includes circumstances beyond the household's reasonable control such as illness, illness of another household member requiring the presence of the adult member, or a household emergency.
- F. When the Financial Statement is timely provided to the Department, and all information and verification is complete, the Department shall complete the determination of eligibility for a compromise and send a notice no later than the twentieth working day, as defined in R6-14-402, following the date that the Department received the Financial Statement and all required information and verification.
- G. When the compromise request is approved the Department shall notify the household of the compromised claim amount, the repayment plan for the new claim amount, and the household's right to file an appeal of the Department's action. The compromised claim amount shall be final unless modified by an appeal hearing decision.
1. The household shall pay a monthly payment in one of the following amounts until the compromised claim balance is paid in full:

- a. An amount equal to the balance of the compromised claim amount, divided by 36.
  - b. When the amount in (1)(a) is equal to or less than \$10.00, the monthly payment shall be \$10.00.
  - c. When the household is currently participating in the Nutrition Assistance program, the Department shall reduce the household's monthly Nutrition Assistance benefit allotment by the greater of \$10 or 10 percent.
  - d. When the household is no longer participating in the Nutrition Assistance program, the household shall be responsible to pay the original claim compromise monthly payment amount calculated in accordance with R6-14-308(G)(1)(a) and (b). The Department shall notify the household of the claim compromise monthly payment obligation.
2. The approval of a compromise request shall apply only to the household that requested the compromise and does not affect the responsibility of any person:
    - a. Who is not a member of the household that requested the compromise, and
    - b. Who is responsible for paying the claim under 7 CFR 273.18(a)(4).
- H. When the compromise request is denied the Department shall notify the household of the denial and the household's right to file an appeal of the Department's action.
- I. The household may appeal the following actions or inaction related to a request for a compromise:
1. The Department's inaction or untimely action on processing the compromise request;
  2. The amount of the approved compromise balance; or

3. A denial of the compromise request.

**R6-14-309. Reinstatement of a Compromised Claim**

The Department shall reinstate any compromised portion of a claim when either of the following occurs:

1. A claim becomes delinquent under 7 CFR 273.18(e)(5).
2. The Department approved a compromise for a claim that was originally established as an Inadvertent Household Error claim and the original claim is later determined to have resulted from an Intentional Program Violation, as evidenced by a signed waiver of an Administrative Disqualification Hearing, an Administrative Disqualification Hearing decision, or a decision rendered by a State or Federal court in a civil or criminal action.

**R6-14-310. Terminating and Writing Off a Claim**

The Department shall terminate and write off a claim as required under 7 CFR 273.18(e)(8)(ii)(A through E), and may terminate and write off a claim as allowed under 7 CFR 273.18(e)(8)(ii)(F) and (G).

**R6-14-311. Claims Established in Another State**

Under 7 CFR 273.18(i)(2), the Department may accept a claim from another state if the household subject to the claim receives Nutrition Assistance benefits in Arizona, when:

- A. The Department confirms that the household was notified by the other state of the overpayment; and
- B. There is no pending or unresolved Fair Hearing or Appeal of the overpayment in the other state, and

C. The Department determines with reasonable certainty that the household is able to repay the outstanding claim balance in full within the Nutrition Assistance certification period assigned to the household in Arizona.

## **Article 4. Appeals and Fair Hearings**

### **R6-14-401. Entitlement to a Fair Hearing; Appealable Action**

Any applicant or recipient who disagrees with any action or inaction by the Department which affects the participation of the household in the program has the right to challenge the action or inaction by requesting an administrative or fair hearing. Administrative hearings are conducted by the Department's Office of Appeals. In this Article, "hearing" refers to a Fair Hearing as required in 7 CFR 273.15.

### **R6-14-402. Computation of Time**

A. In computing any time period:

1. "Day" means a calendar day;
2. "Working day" means Monday through Friday, excluding federal or Arizona state holidays;
3. The Department does not count the date of the act, event, notice, or default from which a designated time period begins to run as part of the time period; and
4. The Department counts the last day of the designated time period. When the day is a Saturday, Sunday, federal holiday or Arizona state holiday, the last day is the first working day following that day.

B. Documents sent by the Department are received by an applicant or recipient on the date sent to the applicant or recipient's last known street or e-mail address, plus an additional five calendar days only when sent by U.S. mail. The send date is the date shown on the document unless the facts show otherwise.

### **R6-14-403. Request for Hearing: Form; Time Limits; Presumptions**

- A. As contained in 7 CFR 273.15(h) a request for a hearing is defined as a clear expression, oral or written, by the household or its representative to the effect that it wishes to appeal a decision or that an opportunity to present its case to a higher authority is desired.
- B. An applicant or recipient who wishes to appeal an action or inaction shall make an oral or written request for a hearing to the Department within 90 days of the notice date advising the applicant or recipient of the action, except that a recipient may appeal the current level of benefits at any time within a certification period. Action by the Department shall include a denial of a request for restoration of any benefits lost more than 90 days but less than one year prior to the request for a hearing. An applicant or recipient may file a request for hearing in-person or by mail, fax, phone, or Internet. The Department shall provide a form for this purpose. Upon request, the Department shall help an applicant or recipient to file an appeal. If the applicant or recipient makes an oral request for a hearing, the Department shall accept the oral request, record in writing the date of the request and the stated reasons for the hearing, and forward the request to the Office of Appeals. The freedom to make a request for a hearing shall not be limited or interfered with in any way.
- C. An appellant is an applicant or recipient who files an appeal.
- D. The Department shall process any oral or written request for a hearing that contains sufficient information for the Department to determine the appellant's identity.
- E. The Department deems a request for hearing filed:
1. If the appellant sends the request for hearing by first-class mail through the United States Postal Service to the Department:
    - a. On the mailing date as shown by the postmark;



K. The Department shall offer an agency conference as provided by 7 CFR 273.15(d) to those persons denied expedited service and to any person who requests a conference.

**R6-14-404. Stay of Action Pending Appeal**

As provided by 7 CFR 273.15(k), if the appellant timely requests a fair hearing, the Department shall stay the implementation of an action until the hearing officer renders a final decision on the appeal and the person receives the decision, unless the appellant signs a waiver of continuation of benefits.

**R6-14-405. Hearings: Location; Notice; Time**

A. The Office of Appeals shall schedule the hearing. The Office of Appeals may schedule a telephonic hearing instead of an in-person hearing or permit a witness or party, upon request, to appear telephonically.

B. Unless the appellant requests an earlier hearing date, the Office of Appeals shall schedule the hearing no earlier than 20 days from the date the Department receives the appellant's request for hearing.

C. The Office of Appeals shall send a notice of hearing to all parties at least 20 days before the hearing date, unless a request for an earlier hearing date is granted under subsection B.

D. The notice of hearing shall be in writing and shall:

1. Include information on how to request an in-person hearing;
2. Advise the appellant or the appellant's representative of the name, address, and phone number to notify the Office of Appeals in the event it is not possible for the appellant to attend the hearing;

3. Specify that the Office of Appeals will dismiss the hearing request if the appellant or the appellant's representative fails to appear for the hearing without good cause;
4. Include the Office of Appeals hearing procedures and any other information that would provide the appellant with an understanding of the proceedings and that would contribute to the effective presentation of the appellant's case; which shall include a pre-hearing summary prepared by the Department, and
5. Explain that the appellant or the appellant's representative shall be given adequate opportunity to:
  - a. Examine the case file prior to the hearing. The contents of the case file including the application form and documents of verification used by the Department to establish the household's ineligibility or eligibility and allotment shall be made available, provided that confidential information, such as the names of individuals who have disclosed information about the household without its knowledge or the nature or status of pending criminal prosecutions, is protected from release. If requested by the household or its representative, the Department shall provide a free copy of the portions of the case file that are relevant to the hearing. Confidential information that is protected from release and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decision.
  - b. Present the case or have it presented by legal counsel or another person.

- c. Bring witnesses.
  - d. Advance arguments without undue interference.
  - e. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.
  - f. Submit evidence to establish all pertinent facts and circumstances in the case.
6. The notice shall include information about the availability of free legal services.

**R6-14-406. Postponing the Hearing**

- A. The appellant may request and is entitled to receive one postponement of the first scheduled hearing. The postponement shall not exceed 30 days and the time limit for action on the decision may be extended for as many days as the hearing is postponed. The Office of Appeals may grant subsequent postponements upon a showing of good cause.
- B. When the Office of Appeals reschedules a hearing under this Section, the Office of Appeals shall send the notice of rescheduled hearing at least 11 days prior to the date of the rescheduled hearing, unless the appellant agrees to shorter notice.

**R6-14-407. Hearing Officer: Duties and Qualifications**

- A. An impartial hearing officer in the Office of Appeals shall conduct all hearings.
- B. The hearing officer shall:
  - 1. Administer oaths and affirmations;
  - 2. Regulate the conduct and course of the hearing consistent with due process to insure an orderly hearing;
  - 3. Consider all relevant issues;

4. Request, receive, and admit into the record all evidence determined necessary to decide the issues being raised;
5. Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the Department. The hearing officer shall decide on the source of the medical assessment or professional evaluation when the household and the Department are unable to agree on a mutually satisfactory source. The Department shall pay for the medical assessment or professional evaluation when such services are not available to the household as part of the household's current health insurance coverage;
6. As provided under 7 CFR 273.15(m)(2)(vi), render a hearing decision and issue a written decision reversing, affirming, modifying or remanding the agency's decision; and
7. Issue subpoenas under R6-14-409.

**R6-14-408. Change of Hearing Officer; Challenges for Cause**

- A. A party may request a change of hearing officer as prescribed in A.R.S. § 41-1992(B) by filing an affidavit that includes:
  1. The case name and number;
  2. The hearing officer assigned to the case; and
  3. The name and signature of the party requesting the change.
- B. The party requesting the change shall file the affidavit with the Office of Appeals and send a copy to all other parties at least five days before the hearing date.

- C. A party shall request only one change of hearing officer unless that party is challenging a hearing officer for cause under subsection (E).
- D. A party may not request a change of hearing officer once the hearing officer has heard and decided a motion except as provided in subsection (E).
- E. At any time before a hearing officer renders a final decision under R6-14-414, a party may challenge a hearing officer on the grounds that the hearing officer is not impartial or disinterested in the case.
- F. A party who brings a challenge for cause shall file an affidavit as provided in subsection (A) and send a copy of the affidavit to all other parties. The affidavit shall explain the reason why the assigned hearing officer is not impartial or disinterested.
- G. When a party files an affidavit for a change in hearing officer as provided in subsection (F), the Office of Appeals shall assign another hearing officer to determine whether the hearing officer being challenged shall be removed, unless the hearing officer recuses himself or herself.
- H. The Office of Appeals shall transfer the case to another hearing officer when:
1. A party requests a change as provided in subsections (A) through (D); or
  2. The hearing officer is removed for cause, as provided in subsections (E) through (G).
- I. The Office of Appeals shall send the parties written notice of the new hearing officer assignment.

**R6-14-409. Subpoenas**

- A. A party may ask the assigned hearing officer to issue a subpoena for a witness, document, or other physical evidence or to otherwise obtain the requested evidence. Subpoena forms are available to the appellant under R6-14-410(D).
- B. The party seeking the subpoena shall send the hearing officer a written request for a subpoena. The request shall include:
1. The case name and number;
  2. The name of the party requesting the subpoena;
  3. The name and address of any person to be subpoenaed;
  4. A description of any documents or physical evidence the appellant desires the hearing officer to subpoena, including the title, appearance, and location of the item if the appellant knows its location, and the name and address of the person in possession of the item; and
  5. A statement about the expected substance of the testimony or other evidence as well as the relevance and importance of the requested testimony or other evidence.
- C. A party shall request a subpoena at least five working days before the hearing date. A party who is unable to request a subpoena at least five days before the hearing date may request a postponement of the hearing. A party may raise the denial of a subpoena request in a petition for review to the Appeals Board, pursuant to R6-14-416.
- D. The hearing officer shall deny the request if the witness's testimony or the physical evidence is not relevant to an issue in the case or is duplicative.

- E. The Office of Appeals shall prepare all subpoenas and serve them by mail, except that the Office of Appeals may serve subpoenas on state employees who are appearing in the course of their jobs, by regular mail, hand-delivered mail, e-mail, or interoffice mail.

**R6-14-410. Parties' Rights**

The appellant and the Department have the following rights:

- A. The right to request a postponement of the hearing;
- B. The right to receive before and during the hearing documents the Department may use at the hearing and a free copy of any documents in the Department's file on the appellant, except documents protected by the attorney-client or work-product privilege or as otherwise protected by federal or state confidentiality laws;
- C. The right to request a change of hearing officer;
- D. The right to request subpoenas for witnesses and evidence;
- E. The right to be represented by an authorized representative, subject to any limitations on the unauthorized practice of law in the Rules of the Supreme Court of Arizona, Rule 31;
- F. The right to bring witnesses, present evidence and to confront and cross-examine adverse witnesses;
- G. The right to advance arguments without undue interference, to question or refute any testimony or evidence; and
- H. The right to further appeal, as provided in R6-14-416 and R6-14-417, if dissatisfied with the Office of Appeals decision.

**R6-14-411. Withdrawal of an Appeal**

- A. An appellant may withdraw an appeal at any time prior to the time the hearing officer issues a decision.

1. An appellant may withdraw an appeal orally, either in person or by telephone. The Department may record the audio of the withdrawal. The Department is prohibited from coercion or actions that would influence the person or their representative to withdraw the fair hearing request. The Department must provide a written notice within 10 days of the oral request confirming the withdrawal request and providing the person an opportunity to request to reinstate the hearing within 10 days of the date the notice is received as provided in R6-14-402(B).
  2. An appellant may withdraw an appeal by signing a written statement expressing the intent to withdraw. The Department shall make a withdrawal form available for this purpose.
- B. The Office of Appeals shall dismiss the appeal when the appellant or the appellant's representative provides a signed withdrawal request to the Department or to the hearing officer prior to the issuance of a hearing decision or when the appellant or the appellant's representative makes such a request on the record during a hearing, or orally as provided in (A)(1).

**R6-14-412. Failure to Appear; Default; Reopening**

- A. If an appellant fails to appear at the hearing, the hearing officer shall:
1. Enter a default and issue a decision dismissing the appeal, except as provided in subsection (B);
  2. Rule summarily on the available record; or
  3. Adjourn the hearing to a later date and time.
- B. The hearing officer shall not enter a default or rule summarily if the appellant notifies the Office of Appeals before the scheduled time of hearing that the appellant cannot attend

the hearing because of good cause and still desires a hearing or wishes to have the matter considered on the available record. Good cause includes circumstances beyond the household's reasonable control such as, but not limited to, illness, illness of another household member requiring the presence of the adult member, or a household emergency.

C. A party who did not appear at the hearing may file a request to reopen the proceedings no later than 10 days after the hearing. The request shall be in writing, by mail or e-mail, or be made in person or by telephone and shall demonstrate good cause for the party's failure to appear.

D. If the hearing officer finds that the party had good cause for failure to appear, the hearing officer shall reopen the proceedings and schedule a new hearing with notice to all interested parties as prescribed in R6-14-405.

E. If the hearing officer cannot grant or deny the request to reopen the proceedings based on the information provided, the hearing officer shall set the matter for a hearing to determine whether the party had good cause for failure to appear.

F. Good cause, for the purpose of reopening a hearing, is established if the failure to appear at the hearing and the failure to timely notify the hearing officer were beyond the reasonable control of the nonappearing party. Good cause also exists when the nonappearing party demonstrates excusable neglect, as used in Arizona Rules of Civil Procedure, Rule 60(b)(1) for both the failure to appear and the failure to timely notify the hearing officer. "Excusable neglect" means an action involving an error such as might be made by a reasonably prudent person who attempts to handle a matter in a prompt and diligent fashion.

**R6-14-413. Hearing Proceedings**

- A. The hearing is a de novo proceeding. The Department has the initial burden of presenting the evidence to support the adverse action being appealed.
- B. The standard of proof is a preponderance of the evidence.
- C. The Arizona Rules of Evidence do not apply at the hearing. The hearing officer may admit and give probative effect to evidence as prescribed in A.R.S. § 41-1062(A).
- D. The Office of Appeals shall audio record all hearings. The Office of Appeals shall also transcribe the proceedings when a transcription is requested by the Appeals Board or when a transcription is required for judicial review under A.R.S. § 41-1993. If a transcript is prepared for any purpose, the appellant is entitled to a copy of the transcription at no cost.
- E. A party may, at the party's own expense, arrange to have a court reporter present to transcribe the hearing, provided that such transcription does not delay or interfere with the hearing. The Office of Appeal's recording of the hearing shall constitute the official record of the hearing.
- F. The hearing officer shall call the hearing to order and dispose of any prehearing motions or issues.
- G. With the consent of the hearing officer, the parties may stipulate to factual findings or legal conclusions.
- H. A party may advance arguments without undue interference.
- I. A party may testify, present evidence, call witnesses, cross-examine adverse witnesses, and object to evidence. The hearing officer may also take witness testimony or admit evidence on the hearing officer's own motion.

- J. The hearing officer shall keep a complete record of all proceedings in connection with an appeal.
- K. The hearing officer may request the parties to submit memoranda on issues in the case if the hearing officer finds that the memoranda would assist the hearing officer in deciding the case. The hearing officer shall establish a briefing schedule for any required memoranda.
- L. The recording of the hearing, all the evidence presented at the hearing and all papers and requests filed shall constitute the record and shall be available to the household or its representative at any reasonable time for copying and inspection.

**R6-14-414. Hearing Decision**

- A. No later than 60 days after the date the appellant files a request for hearing with the Department, the hearing officer shall render a decision based solely on the evidence and testimony produced at the hearing and the applicable law. The 60-day time limit is extended for any delay necessary to accommodate hearing continuances or extensions, or postponements requested by a party.
- B. The hearing decision shall include:
  - 1. Findings of fact concerning the issue on appeal;
  - 2. Citations to the law and authority applicable to the issue on appeal;
  - 3. A statement of the conclusions derived from the controlling facts and law and the reasons for the conclusions;
  - 4. The name of the hearing officer;
  - 5. The date of the decision;

- 6. A statement of further appeal rights, a statement of the process required to initiate a further appeal, and the time period for exercising those rights; and
- 7. That an appeal may result in a reversal of the decision.
- C. The Office of Appeals shall send a copy of the decision to each party or the party's representative.
- D. When requested by the appellant, the Department, or upon the hearing officer's own motion, the Office of Appeals may amend or vacate a decision to correct clerical errors, including typographical and computational errors.

**R6-14-415. Effect of the Decision**

- A. If the hearing officer affirms the adverse action against the appellant, the adverse action is effective as of the date of the initial determination of adverse action by the Department. The adverse action remains effective until the appellant appeals and obtains a higher administrative or judicial decision reversing or vacating the hearing officer's decision.
- B. If the hearing officer vacates or reverses the Department's decision to take adverse action, the Department shall not take the action or shall reverse any adverse action, unless the Department appeals and obtains a higher administrative or judicial decision reversing or vacating the hearing officer's decision.
- C. As specified in 7 CFR 273.15(c) the Department shall:
  - 1. For decisions that result in an increase in household benefits:
    - a. Authorize and deposit a benefit supplement in the household's EBT benefit account within 10 days of the receipt of the hearing decision; or
    - b. The Department may take longer than 10 days if it elects to make the decision effective in the household's normal issuance cycle, provided that

the issuance will occur within 60 days from the household's request for the hearing.

2. For decisions that result in a decrease in household benefits the Department shall authorize and deposit a decreased benefit amount in the household's EBT benefit account for the next scheduled issuance following receipt of the hearing decision.

#### **R6-14-416. Further Administrative Appeal**

A. A party can appeal an adverse decision issued by a hearing officer to the Department's Appeals Board as prescribed in A.R.S. § 41-1992(C) and (D) by filing a written petition for review with the Office of Appeals within 15 days of the mailing or transmittal date of the hearing officer's decision.

B. The petition for review shall:

1. Be in writing and filed in person or by mail or fax;
2. Describe why the party disagrees with the hearing officer's decision; and
3. Be signed and dated by the party or the party's representative.

#### **R6-14-417. Appeals Board**

A. The Appeals Board shall conduct proceedings in accordance with A.R.S. §§ 41-1992(D) and 23-672.

B. The Appeals Board shall issue to all parties a final written decision affirming, reversing, setting aside, or modifying the hearing officer's decision based on the complete record, including the audio recording or the transcript of the hearing. The decision of the Appeals Board shall specify the right to further review and the time for filing an application for appeal.

C. A household appellant adversely affected by an Appeals Board decision may seek judicial review under A.R.S. § 41-1993.

## **Article 5. Intentional Program Violation**

### **R6-14-501. Intentional Program Violations (IPV); Defined**

- A. An Intentional Program Violation (IPV) consists of having intentionally:
1. Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
  2. Committed any act that constitutes a violation of the Food and Nutrition Act, the Supplemental Nutrition Assistance Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of Supplemental Nutrition Assistance Program benefits or Electronic Benefit Transfer (EBT) cards. In Arizona, the name of the Supplemental Nutrition Assistance Program is the Nutrition Assistance Program.
- B. For the purpose of imposing sanctions as prescribed in R6-14-505, a person is considered to have committed an IPV if:
1. A person signs a waiver of an Administrative Disqualification Hearing,
  2. A person is found to have committed an IPV by an Administrative Disqualification Hearing, or
  3. A person is convicted of a criminal offense the elements of which would constitute an IPV under subsection A above or enters into a disqualification consent agreement for deferred prosecution for fraud in a court of law.

### **R6-14-502. IPV Administrative Disqualification Hearings; Hearing Waiver**

- A. Upon receipt of sufficient documentary evidence substantiating that a person has committed an IPV, the Department shall initiate either an Administrative Disqualification Hearing, or a referral for prosecution.

- B. When the Department initiates an Administrative Disqualification Hearing, the Department shall mail the person suspected of an IPV written notice of the right to waive the Administrative Disqualification Hearing. This notice shall be sent either by first class mail or certified mail – return receipt requested.
- C. The waiver notice of the Administrative Disqualification Hearing shall include the following information as well as the information described in R6-14-503(D):
1. A statement that the Department has determined that the individual suspected of the IPV committed, and intended to commit, one or more acts described in R6-14-501(A) and that the Department has initiated an Administrative Disqualification Hearing against the individual suspected of the IPV.
  2. A summary of the allegations and evidence against the individual suspected of the IPV and notification that the individual suspected of the IPV has the right to examine the case file prior to the hearing and, when requested by the individual or representative, be provided a free copy of any documents in the case file, except documents protected by the attorney-client or work-product privilege or as otherwise protected by federal or state confidentiality laws.
  3. A statement of the right of the individual suspected of the IPV to remain silent concerning the allegation of an IPV, and that anything said or signed by the individual concerning the allegations can be used against the individual suspected of the IPV in a court of law, including signing any part of the waiver.
  4. A statement that signing a waiver of the Administrative Disqualification Hearing will result in disqualification periods as determined by section R6-14-505, a statement of the penalty the Department believes is applicable to the case

scheduled for a hearing and a reduction in benefits for the period of disqualification, even if the individual suspected of the IPV does not admit to the facts as presented by the Department.

5. A statement that the individual suspected of the IPV does not have to sign a waiver of the Administrative Disqualification Hearing, return the waiver form to the Department or speak to anyone at the Department.
6. A statement of the fair hearing rights of the individual suspected of the IPV and notification that these rights are waived when the individual suspected of the IPV submits a signed waiver of the Administrative Disqualification Hearing form.
7. A statement that waiver of the Administrative Disqualification Hearing does not preclude the State or Federal Government from prosecuting the individual suspected of the IPV for the IPV in a civil or criminal court action, or from collecting any over issuance of Nutrition Assistance benefits.
8. A statement that the individual suspected of the IPV may wish to consult an attorney and a list of any individuals or organizations that provide free legal representation.
9. A statement that Nutrition Assistance benefits will continue and will only be terminated if the following occurs:
  - a. The individual suspected of the IPV signs a notice to waive their rights to an Administrative Disqualification Hearing.
  - b. There is an Administrative Disqualification Hearing decision that the individual suspected of the IPV is disqualified.
  - c. The individual is determined to no longer be eligible on other grounds, or

- d. The individual requests that the Nutrition Assistance benefits not be continued in order to avoid a potential over issuance of benefits.
10. A statement that the remaining adult household members, if any, will be held responsible for repayment of the resulting over issuance claim.
11. An opportunity for the individual suspected of the IPV to specify whether or not the individual admits to the facts as presented by the Department. This opportunity shall consist of the following statements, and a method for the individual suspected of the IPV to designate the individual's waiver choice:
- a. I admit to the facts as presented and understand that a disqualification penalty will be imposed if I sign this waiver. I understand that if I sign this waiver, there will not be an Administrative Disqualification Hearing; or
  - b. I do not admit that the facts as presented are correct in my Nutrition Assistance case. However, I have chosen to sign this waiver of the Administrative Disqualification Hearing. I also understand that a disqualification penalty will be imposed. I understand that if I mark this box, I will not be able to submit additional evidence, have an Administrative Disqualification Hearing, or have the right to administrative appeal; or
  - c. I do not admit that the facts as presented are correct in my Nutrition Assistance case. I do not waive my right to require an Administrative Disqualification Hearing where the Department must prove by clear and convincing evidence that I committed, and intended to commit, an Intentional Program Violation.

12. A statement that if the individual suspected of the IPV does not waive their right to an Administrative Disqualification Hearing, then the Department must prove by clear and convincing evidence that the person committed and intended to commit, an Intentional Program Violation. The statement shall also advise the person that they may attend the hearing but are not required to attend. If the person opts to attend the hearing, they may talk to the judge about what happened and present additional evidence to the judge if they want to. The person also has the right to remain silent. The judge will decide if the person will be disqualified from participating in the Nutrition Assistance program.
13. The telephone number of the appropriate Department unit that the individual may contact to obtain additional information.
14. A due date that the signed waiver of an Administrative Disqualification Hearing must be provided to the Department so that a hearing will not be held and a signature block for the individual suspected of the IPV, along with a statement that the head of household must also sign the waiver if the individual suspected of the IPV is not the head of household, with an appropriately designated signature block.
15. If the signed waiver of the Administrative Disqualification Hearing is not returned by the due date, the Department shall schedule the Administrative Disqualification Hearing and shall send the individual suspected of the IPV a written hearing notice as contained in R6-14-503(C).

D. For the purpose of imposing sanctions as prescribed in R6-14-505, a timely signed waiver of an Administrative Disqualification Hearing shall have the same effect as an administrative adjudication that an IPV occurred.

**R6-14-503. Administrative Disqualification Hearings**

A. The rules on fair hearings contained in Article 4 of this Chapter apply to Intentional Program Violation (IPV) Administrative Disqualification Hearings, except as provided in this Article.

B. All IPV Administrative Disqualification Hearings are conducted by the Department's Office of Appeals.

C. If the individual suspected of an IPV does not sign and return the waiver of Administrative Disqualification Hearing by the return date set in the waiver notice, or returns the waiver notice stating they do not waive the Administrative Disqualification Hearing, the Office of Appeals shall send the individual a written hearing notice. The Office of Appeals shall send the notice by first class mail, certified mail - return receipt requested, or any other reliable method, no later than 30 days before the scheduled hearing date.

D. The hearing notice shall include the following information:

1. The date, time, and place of the hearing;
2. The allegations of an IPV against the individual;
3. A summary of the evidence, how and where the evidence can be examined, and that the individual suspected of the IPV has the right to examine the case file prior to the hearing. When requested by the household or its representative, the Department shall provide a free copy of any documents in the case file, except

documents protected by the attorney-client or work-product privilege or as otherwise protected by federal or state confidentiality laws.

4. A notice that the decision will be based solely on information provided by the Department if the individual suspected of the IPV fails to appear at the hearing;

5. A statement that the individual or representative will, upon receipt of the notice, have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;

6. A warning that a determination of IPV will result in disqualification periods as defined by section R6-14-505, and a statement of which penalty the Department believes is applicable to the case scheduled for a hearing;

7. A listing of the individual's rights as contained in R6-14-410;

8. A statement that the Administrative Disqualification Hearing does not preclude the State or Federal Government from prosecuting the individual for the IPV in a civil or criminal court action, or from collecting any over issuance of Nutrition Assistance benefits; and

9. A statement that the individual suspected of the IPV may consult with an attorney and a list of any individuals or organizations known to the Department that provide free legal representation.

10. A notice that the individual suspected of the IPV has the right to obtain a copy of the Department's published hearing procedures together with an explanation of how the individual suspected of the IPV can obtain these procedures.

E. The hearing officer shall postpone a hearing for up to 30 days if the individual suspected of the IPV files a written or oral request for postponement with the hearing officer no

later than 10 days before the hearing date. Any such postponement shall increase the time by which the hearing officer shall issue a decision, as provided in subsection (J) below.

F. The time and place for the hearing shall be arranged so that the hearing is accessible to the individual suspected of the IPV, including making reasonable accommodations for a person with a disability.

G. At the start of the Administrative Disqualification Hearing, the hearing officer shall advise the individual suspected of the IPV or representative of the right to remain silent during the hearing. The hearing officer shall also advise that if the individual suspected of the IPV or representative chooses not to exercise the right to remain silent, anything they say may be used against them.

H. A hearing officer, as prescribed in R6-14-407, shall conduct the Administrative Disqualification Hearing pursuant to the procedures set forth in R6-14-408, R6-14-409, R6-14-410 and R6-14-413, except as prescribed in this subsection.

I. The Department shall prove by clear and convincing evidence that the household member committed, and intended to commit, an IPV.

J. No later than 90 days from the date of the notice of hearing, as increased by any postponement days, the hearing officer shall send to the individual suspected of the IPV a written decision. The hearing officer shall find whether the evidence shows by clear and convincing evidence that the person committed, and intended to commit, an IPV. The decision shall specify the reasons for the decision, identify the supporting evidence, identify the pertinent regulation, respond to reasoned arguments made by the individual suspected of the IPV or representative, and include appeal rights.

**R6-14-504. Failure to Appear; Default; Reopening**

- A. If the individual suspected of the IPV fails to appear at the Administrative Disqualification Hearing without good cause, the hearing officer shall conduct the hearing.
- B. The hearing officer shall not conduct the hearing if the individual suspected of the IPV notifies the Office of Appeals before the hearing that the individual cannot attend the hearing because of good cause and still desires a hearing. Good cause includes circumstances beyond the household's reasonable control such as illness, illness of another household member requiring the presence of the adult member, or a household emergency.
- C. An individual suspected of the IPV who did not appear at the hearing may file a request to reopen the Administrative Disqualification Hearing. The request shall be in writing and shall demonstrate good cause for the party's failure to appear.
1. The individual suspected of the IPV has 30 days after the date of the written notice of the hearing decision to file a request to reopen the Administrative Disqualification Hearing if the individual did not receive a hearing notice.
  2. In all other instances, the individual suspected of the IPV has 10 days from the hearing date to show good cause why the individual failed to appear.
- D. The hearing officer shall review the good cause reason submitted by the individual suspected of the IPV and unless the hearing officer can grant or deny the request based on the information provided, shall set the matter for a hearing to determine whether the individual suspected of the IPV had good cause for failing to appear.

- E. If the hearing officer finds that the individual suspected of the IPV had good cause for failure to appear, the previous decision shall be vacated and the hearing officer shall reopen the Administrative Disqualification Hearing and schedule a new hearing with notice to all parties. The hearing officer must enter the good cause decision on the record.
- F. Good cause, for the purpose of reopening an Administrative Disqualification Hearing, is established if the failure to appear at the hearing and the failure to timely notify the hearing officer were beyond the reasonable control of the individual suspected of the IPV. Good cause also exists when the individual suspected of the IPV demonstrates excusable neglect for both the failure to appear and the failure to timely notify the hearing officer. “Excusable neglect” means an action involving an error such as might be made by a reasonably prudent person who attempts to handle a matter in a prompt and diligent fashion.

**R6-14-505. Disqualification Sanctions; Notice**

- A. A person found to have committed an IPV is disqualified from program participation:
1. For a period of 12 months for the first IPV, except as provided under subsections (B) through (E) of this section.
  2. For a period of 24 months for the second IPV, except as provided in subsections (B ) through (E) of this section; and
  3. Permanently for the third IPV.
  4. The same act of IPV repeated over a period of time shall not be separated so that separate penalties can be imposed.

- B. Individuals found by any court to have used or received benefits in a transaction involving the sale of a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), shall be ineligible to participate in the program:
1. For a period of 24 months for the first violation; and
  2. Permanently upon the second violation.
- C. Individuals found by any court to have used or received benefits in a transaction involving the sale of firearms, ammunition or explosives shall be permanently ineligible to participate in the program upon the first violation.
- D. An individual convicted by any court of having trafficked benefits for an aggregate amount of \$500 or more shall be permanently ineligible to participate in the program upon the first violation.
- E. Except as provided under subsection (A)(3) of this section, an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple Nutrition Assistance benefits simultaneously shall be ineligible to participate in the program for 10 years.
- F. Upon a determination of IPV, the Department shall notify the disqualified person in writing of the pending disqualification. The written notice shall:
1. Inform the disqualified person of the decision and the reasons for the decision; and
  2. Inform the disqualified person of the date the disqualification will take effect and the duration of the disqualification.
- G. Under 7 CFR 273.11(c)(1), when determining the eligibility and benefit level for the remaining eligible members of the household, the Department shall count the income and

resources of the disqualified person in their entirety and the entire household's allowable earned income, standard, medical, dependent care, child support, and excess shelter deductions shall continue to apply to the remaining household members. The Department shall not include the ineligible member when determining the household's size for the purposes of:

1. Assigning a benefit level to the household;
2. Assigning a standard deduction to the household;
3. Comparing the household's monthly income with the income eligibility standards;  
or
4. Comparing the household's resources with the resource eligibility limits.

H. Under 7 CFR 273.11 (c)(4) and 7 CFR §273.16(e)(9)(ii) and (f)(3), the Department shall notify the remaining members of their eligibility and benefit level at the same time the excluded member is notified of his or her disqualification.

**R6-14-506. Administrative Disqualification Hearings or Waiver of the Right to a Hearing;**

**Appeal**

- A. Upon a determination of IPV through a signed waiver of an Administrative Disqualification Hearing, the individual has no right to further administrative appeal. The individual may seek relief in a court having jurisdiction and may seek a stay or other injunctive relief of a period of disqualification.
- B. A party may appeal a Hearing Officer's Administrative Disqualification Hearing decision as provided in R6-14-416(A) to the Appeals Board as provided in R6-14-417.
- C. An individual adversely affected by an Appeals Board decision may seek judicial review under A.R.S. § 41-1993.

**R6-14-507. Honoring Out-of-State IPV Determinations and Sanctions**

The Department shall honor sanctions imposed against an applicant or recipient by the agency of another state that administers the Supplemental Nutrition Assistance Program and shall consider prior violations committed in another state when determining the appropriate sanction.

# **Economic, Small Business, and Consumer Impact Statement**

## **Title 6. Economic Security**

### **Chapter 14. Department of Economic Security – Food Stamps Program**

#### **Article 3. Claims Against Households**

#### **Article 4. Appeals and Fair Hearings**

#### **Article 5. Intentional Program Violation**

#### **1. Identification of the rulemaking:**

The Arizona Department of Economic Security (Department), Division of Benefits and Medical Eligibility, is amending Title 6, Chapter 14, by adding three new Articles. The rulemaking will provide rules that are consistent with federal Supplemental Nutrition Assistance Program (SNAP, formerly called Food Stamps) laws and regulations. Further, this rulemaking will add rules that are clear, concise and understandable.

Article Three, Claims Against Households, establishes procedures for the Department to identify overpayments, determine the amount of overpayments (claims), and to collect overpayments from households. The Department may determine the cost effectiveness of collecting an overpayment and provide the household an opportunity for a compromise agreement to mitigate a claim. The rules provide for acceptable payment and collection methods.

Article Four, Appeals and Fair Hearings, provides a household the right to contest an adverse Department action by requesting a fair hearing and further appeal of a fair

hearing decision. The rules specify a household's responsibilities when filing for a fair hearing or appeal and the Department's responsibilities when processing the request, including a stay of any adverse action pending a fair hearing or appeal decision. The fair hearing procedures in this Article outline the hearing schedule, the duties of the hearing officer, and the parties' rights.

Article Five defines an Intentional Program Violation (IPV) and details the procedures for an Administrative Disqualification Hearing, or waiver of such hearing by a person suspected of an IPV, that are required to determine whether a person has committed an IPV. The rules provide a person who is found to have committed an IPV through an Administrative Disqualification Hearing decision the right to appeal the decision to the Appeals Board. The mandatory disqualification sanctions that the Department imposes for IPV's are included in this Article.

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

Name: Rodney K. Huenemann  
Address: Department of Economic Security  
P.O. Box 6123, Mail Drop 1292  
Phoenix, AZ 85005  
Or  
Department of Economic Security  
1789 W Jefferson St., Mail Drop 1292

Phoenix, AZ 85007

Telephone: (602) 542-6159

Fax: (602) 542-6000

E-mail: [rhuenemann@azdes.gov](mailto:rhuenemann@azdes.gov)

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

The purpose of this rulemaking is to promulgate rules that are clear, concise, and understandable and will conform Department practice and terminology in the Nutrition Assistance Program. The public will benefit from this rulemaking, as administrative rules that are consistent with current federal and state law and regulations are easier for program participants and other stakeholders to understand allowing for a consistent and informative client experience.

The Department's Family Assistance Administration (FAA) is responsible for the eligibility and case maintenance functions in the Nutrition Assistance program. This includes determining an overpayment amount when it is discovered that benefits have been issued in excess of the amount a household was eligible to receive and referring those claims to the Office of Accounts Receivable and Collections (OARC) for collection and repayment activities. During Federal Fiscal Year 2018, the Department reported \$742,974 in total SNAP collections.

The Department's OARC is responsible for the processes and procedures for collecting claims in the Nutrition Assistance program, as contained in Article 3.

The Department's Appellate Services Administration is responsible for the Fair Hearings and Appeals processes, including IPV Administrative Disqualification Hearings. In State Fiscal Year 2018 there were 4,588 SNAP-related appeal hearings and 34 Intentional Program Violation hearings.

The Department anticipates that this rulemaking will have a minimal economic impact on the implementing agency, small businesses, and consumers. There is no anticipation of the need for an increase in employees because of this rulemaking.

**4. Cost-benefit analysis:**

**a. Costs and benefits to state agencies directly affected by the rulemaking:**

These proposed rules contain additions to state administrative code that are consistent with and in compliance with federal regulations. There is no additional cost to the Department or other state agencies anticipated by this rulemaking. The Department will benefit from the rulemaking as the processes in the three Articles involve multiple Department administrations and will facilitate in the effective operation of the Nutrition Assistance program, allowing staff to more effectively handle inquiries, grievances, and appeals.

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

This program has no economic impact on political subdivisions; therefore, there is no cost or benefits to political subdivisions by this rulemaking.

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

Not applicable

**5. Impact on private and public employment:**

This rulemaking is not expected to impact public and private employment.

**6. Impact on small businesses:**

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

This rulemaking does not impact small businesses.

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

There are no administrative or other costs required to comply with this rulemaking.

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

**i. Establish less costly or less stringent compliance or reporting requirements:**

Not applicable

**ii. Establish less costly schedules or less stringent deadlines for compliance:**

Not applicable

**iii. Consolidate or simplify compliance or reporting requirements:**

Not applicable

**iv. Establish separate performance standards:**

Not applicable

**v. Exempt small businesses from any or all requirements:**

Not applicable

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

The persons directly impacted by this rulemaking are individuals or households who are applicants for, recipients of, or former recipients of the Nutrition Assistance program.

These individuals and households will benefit from clear, concise, and understandable information regarding the overpayment and claims processes, and the rights and responsibilities afforded to individuals and households in the Fair Hearings, Appeals, and Intentional Program Violation processes.

**8. Probable effects on state revenues:**

None

**9. Less intrusive or less costly alternative methods considered:**

There is no less intrusive or less costly method of achieving the objectives of the rulemaking.

**a. Monetizing of the costs and benefits for each option:**

Not applicable

**b. Rationale for not using non-selected alternatives:**

Not applicable

**10. Description of any data on which the rule is based:**

Not applicable

# William E. Morris Institute for Justice

3707 North Seventh Street, Suite 300, Phoenix, Arizona 85014-5014

Phone 602-252-3432

Fax 602-257-8138

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August 8, 2019

## VIA EMAIL

Attn: Rodney K. Huenemann  
E-mail: rhuenemann@azdes.gov

Arizona Department of Economic Security  
1789 West Jefferson Street, Mail Drop 1292  
Phoenix, Arizona 85007

Re: Comments to Proposed Final Food  
Stamp Administrative Rules, Articles 3,  
4 and 5

Dear Mr. Huenemann:

The William E. Morris Institute for Justice (“Institute”), submits these comments to the Arizona Department of Economic Security’s (“DES”) proposed Supplemental Nutrition Assistance Program (“SNAP” or food stamps) administrative rules. On July 5, 2019, DES published proposed administrative rules for three Articles: Article 3, Claims Against Households; Article 4, Appeals and Fair Hearings; and Article 5, Intentional Program Violations. DES administers SNAP and the proposed SNAP administrative rules will replace emergency rules concerning the same three articles DES published last year. The Institute works on access to food stamps for the vulnerable populations eligible for and served by the food stamp program.

Initially, we note that in these proposed rules DES has made many of the changes we requested after the originally proposed rules were pulled. We commend DES for making those changes. Unfortunately, additional changes are needed. As we stated at the public hearing on August 6, 2019, rulemaking is semi-permanent and can only be changed by subsequent rulemaking. Rules cannot be changed as easily as policies and manuals and DES must ensure that its rules comply with federal law. In paragraph 5 of the preamble section, DES states the proposed rules “are consistent with federal law and regulation.” In paragraph 11(b), DES claims the proposed rules are “no more stringent than the federal law or regulation.” However, as explained below, in some respects DES’

proposed rules are stricter than the federal requirements and may have the effect of preventing eligible persons from participating in the food stamp program.

Any review of the proposed rules must start with the understanding that eligible persons have a legal entitlement to participation in the SNAP program. 7 U.S.C. § 2014(a) (“Assistance under this program shall be furnished to all eligible households who make application for such participation.”). Moreover, the state cannot as a condition of eligibility “impose additional application or application processing requirements. . . [and] must base food stamp eligibility solely on the criteria contained in the Act and this part.” 7 C.F.R. § 273.2(a)(1).

In submitting these comments, the Institute does not waive its right to object to the proposed rules on other bases in the future. We will address each article separately.

### **Article 3: Claims Against Households**

#### **R6-14-301: Purpose and Definitions**

DES’ definitions for “agency error” in subsection (B)(1) and “inadvertent household error” in subsection (B)(4) continue to be incomplete. Both definitions fail to link errors to action or inaction required by federal regulation. The definition of “claim” in subsection (B)(2) also must be linked to the agency or claimant taking an action or failing to take an action required by federal regulation. As drafted, the definition of “claim” occurs whenever food stamps are “overpaid,” no matter the circumstances. That is not the correct definition of when an overpayment occurs.

#### **R6-14-302: Claim Calculation; Date of Discovery; Overpayment Period**

DES’ initial draft rules in 2017 had a look back period of 12 months for the collection of overpayments in agency error cases. In subsection (B), the proposed rule increases the collection period to 36 months for both agency error and inadvertent household error. From information DES provided to the Institute a few years ago, most overpayments in Arizona are caused by agency error. In those situations, the error was out of the control of the claimant. The longer collection period for agency error cases should be changed back to the initial draft proposal of 12 months. The further back DES goes for collection, the less likely the claimant will have the documents needed to challenge the overpayment. Several states, including Washington, limit the collection of agency errors to 12 months. Such a limitation on collection policy or practice is reasonable because the error is the fault of the agency and the agency may not keep any of the recovered overpayment. We continue to recommend that for agency errors DES

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only go back 12 months. We also continue to recommend that the 12-month time period is appropriate for inadvertent household errors as well. While collections may go back three years, in cases with no intent to obtain benefits the person was not eligible for, administrative time and effort would be better served ensuring the operation of the food stamp program complied with federal law.

Also, federal regulation 7 C.F.R. § 273.18(d)(1) requires the agency to “establish a claim before the last day of the quarter following the quarter in which the overpayment or trafficking incident was discovered.” DES continues to fail to include this requirement in the proposed rules. It must be included.

### **R6-14-303: Determining a Claim Amount**

In general, the Institute is concerned about what this section purports to cover and what it should cover: This section is entitled “determining a claim amount,” by which DES appears to mean determining an “overpayment” amount. This section should be broader and address change reporting in general and the consequences of a report or a failure to report a change, which may result in an increase in benefits or a decrease in benefits and a potential overpayment. Or DES should have a separate change reporting section. By combining the two concepts, this section is very confusing and the wording is not clear. The Institute has tried to understand what DES intends and the legal basis for its proposed rule. Despite the confusion and the drafting, the Institute raises the following concerns.

Under subsection (A)(2), the rule provides that when DES determines an “error occurred at the application, [DES] shall re-determine eligibility and the benefit amount ... using the application approval and denial policies and procedures that were in effect at the time eligibility was determined.” The rule does not define an “error,” and unless DES defines the word, it should be deleted. This issue goes back to the Institute’s concerns discussed in R6-14-301, where agency error and inadvertent household error are not linked to any action or inaction. These definitions must be linked to the agency or claimant taking or failing to take an action required by the federal regulation.

Although subsection (A)(2) pertains to the calculation of benefits, the last sentence of the subsection specifically provides that DES “will not consider information that was not previously reported by the household that would have resulted in an increase in benefit allotment at the time of initial approval of benefits.” At the public hearing on August 6, 2019, we asked the approximately 14 DES representatives present to give us the federal authority for this differential treatment and there was no response. We request that DES provide the specific federal regulation that allows DES to not consider

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information that would result in an increase in benefits. If there is no federal authority, then that sentence must be deleted.

Moreover, the subsection only pertains to when the household is either “ineligible,” (A)(2)(a), or the household was eligible but received an overpayment. (A)(2)(b). Thus, this subsection only looks at situations when the household benefits are expected to decrease and fails to look at situations when the benefits will *increase* because of the change reporting. Further, we could not find any authority for this analysis in the federal regulation.

In addition, the federal regulation requires the agency to offset or reduce the overpayment by both any underissuance and expunged benefits. *See* 7 C.F.R. § 273.12 (c)(1)(ii)(D). In subsections (A)(2)(a) and (b), DES included expunged benefits but failed to include underissuances. Underissuances must be included. Otherwise, how does DES get to the correct amount of benefits that should have been paid during the relevant time period? This issue has come up in legal services cases, where in some months there was an overpayment but in other months there was an underissuance. In the overpayment calculation, DES staff ignored the underissuance months. If the underissuance months were taken into account, the amount of the overpayment would have been reduced. Of course, there may be situations where the amount of the underissuance may result in no overall overpayment and increased benefits being owed to the household.

Subsection (A)(3) pertains to changes that occur during the certification period. Subsection (A)(3)(a) pertains to a change that was required to be reported by the household and was reported. In those cases, under the rule, DES is required to recalculate benefits and determine whether an overpayment (i) or an underissuance (ii) (supplement is needed) occurred. We think the way this subsection is drafted is very unclear. We request that DES insert the following words at the beginning of subsection (a)(ii): “THE RESULT MAY BE THAT THERE IS NO OVERPAYMENT.”

Subsection (A)(3)(b) pertains to changes that were not reported by the household during certification. If the change was not required to be reported, DES will not recalculate benefits. (A)(3)(b)(i). Federal regulation 7 C.F.R. § 273.12(d) provides that if the household fails to report a change that it was not required to report, then there shall not be an overpayment. But the proposed rule fails to address what should happen if the failure to report would have increased benefits. DES must change subsection (A)(3)(B)(i) to read: “When the change was not required to be reported, the Department will not process the change for benefits that would result in an overpayment.” A new (B)(ii)

must be added that provides: “When the change was not required to be reported, the Department will process the change for benefits that would result in an underissuance.”

If the change was required to be reported, then DES will recalculate benefits and establish the overpayment. (A)(3)(b)(ii). There is no provision to recalculate benefits when an increase occurs. We do not understand how DES can hold the failure to report against the household to create an overpayment but will not recalculate benefits when the result is an underissuance. Here as well, at the August 6, 2019 public hearing we asked the approximately 14 DES employees present for the federal citation that allows this differential treatment and there was no response. The last sentence in subsection (A)(3)(b)(ii) must be revised to read with the new wording capitalized: “The Department shall establish a claim based on the amount of benefits that were paid in excess of the correct benefit amount in each month of the certification period minus the amount of benefits that the Department has expunged from the household’s EBT benefit account AND ANY UNDERISSUANCES. THE RESULT MAY BE THAT THERE IS NO OVERPAYMENT. DEPARTMENT SHALL ISSUE A SUPPLEMENT FOR EACH MONTH THE HOUSEHOLD WAS PAID LESS THAN THE NEW BENEFIT AMOUNT.” We have taken the last sentence from DES’ subsection (A)(3)(a)(ii) to be consistent.

DES failed to articulate the steps to calculate a food stamp overpayment as required by 7 C.F.R § 273.18(c)(1)(ii). DES should have a comprehensive rule on how to calculate an overpayment and should add the following:

*New subsection:* The Department shall only count income that was reasonably certain under 7 C.F.R. § 273.10(c)(1) at the time that the initial calculation of benefits was made.

Since most household are on simplified reporting, we will discuss the rule in that context. The only thing a household on simplified reporting must report during the certification period is if the household income goes above 130% of the FPL. 7 C.F.R. § 273.12(a)(5)(v). Other changes such as household composition that must be reported at the recertification stage are not required to be reported during the certification period. Thus, we would add the following to the proposed rule.

*New subsection:* The Department uses simplified reporting in most cases and unless the household’s income exceeds 130 % of the federal poverty guidelines, a report of change is not required until the six-month point in the

certification period and does not constitute an overpayment.  
7 C.F.R. § 273.12(a)(6).

During the certification period, the agency must act when the household's gross income exceeds the monthly gross income limits for the household size. 7 C.F.R. §273.12(a)(5)(v).<sup>1</sup> We could not find other times when the agency must act to decrease benefits under simplified reporting in the federal regulation. If DES has found such a provision, we request that DES provide the citation to us.

Finally, DES uses the term "correct benefit amount" but the term is not defined. If this term is going to be used, DES should define it.

#### **R6-14-307: Collection Methods**

In subsection (C), DES includes the option that it "may" collect overpayments from unemployment insurance ("UI") benefits through an intercept or a repayment agreement. DES previously stated it would not collect from UI benefits and in its initial draft rules, DES stated it would not collect from UI benefits. In meetings, DES staff reiterated that DES does not currently collect overpayments from UI benefits. Collection from UI benefits is not required, *see* 7 C.F.R. § 273.18 (g)(6)(i) and(ii), and we request that DES not collect from UI payments. Recipients of UI benefits are persons and families who have had a life altering event, the loss of a job through no fault of their own and are in financial crisis. Add to this situation the fact that Arizona has the second lowest UI weekly amount in the country, and the further loss of benefits will lead many households into being homeless. DES should not intentionally add to the financial stress these vulnerable families are facing.

#### **R6-14-308: Claim Compromise**

In subsection (C), DES limits a household's ability to obtain a claim compromise to one time. There is no such limitation in the federal regulation, and this is an example where DES' proposed rule *is* more restrictive than the federal regulation. Under the federal regulation, 7 C.F.R. § 273.18 (e)(7), a household is entitled "compromising claims." There is no limitation to only compromising a claim one time.

In subsection (E), the rule should be clarified that an untimely submission of the documents excludes the situations where the person asked for more time or asked for help from DES. We request that DES insert after the sentence "A household may request

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<sup>1</sup> The federal regulation was amended on April 15, 2019.

additional time or help from the Department” the following sentence “A household that requests additional time or help from the Department shall not be required to submit the Financial Statement with requested information and verification within the thirty calendar days following the mailing or transmittal of the Financial Statement to the household.”

**R6-14-309: Reinstatement of a Compromise Claim**

The Institute does not object to subsections (1) and (2), except that the proposed rule fails to address what happens when the default or delinquency of the compromised claim is the result of changed circumstances and renegotiation of the repayment plan is needed because of a hardship. The federal regulation, 7 C.F.R. § 273.18(e)(5)(iii), provides for the renegotiation of the repayment agreement and DES’ current policies contain a renegotiation provision as well. DES policy “FAA 6. E Overpayments, .06 Methods of NA Overpayment Collection – Recoupment Collection Notices” provides that when the household fails to make a payment pursuant to the payment schedule, DES sends a notice that the household “may negotiate the payment schedule,” and DES may “renegotiate the repayment schedule.” We are dismayed that while DES currently renegotiates repayment plans it continues to fail to include the policy and practice in the proposed rules.

Therefore, we request the following be added as a new section:

*New Section: Delinquency and Renegotiation of a Repayment Plan*

- A. If the household is in default or delinquency of the repayment plan, the department shall send a notice to the household advising the household of the delinquency. The notice shall inform the household how to apply for a renegotiated payment plan, and specify the documentation they will need to submit.
- B. If the household’s circumstances have changed, and it can no longer make the agreed upon payments, they may apply for a renegotiated payment plan based on the hardship.
- C. The household has the right to appeal the agency’s failure to renegotiate a new repayment

plan and the terms of any renegotiated repayment plan.

#### **Article 4: Appeals and Fair Hearings**

##### **R6-14-403: Request for Hearing; Form; Time Limits; Presumptions**

In subsection (E), the reasons DES will consider when an untimely submission of an appeal will be considered timely continue to be too limited. In every other section of the rules there is a general “good cause” exception. There should be a general good cause exception in this rule as well. The Institute requests the addition of a new subsection (F)(4) that provides: “For other good cause as defined in subsection R6-14-412(B).”

Moreover, the following sentence should be added to subsection (J): “The notice of hearing shall include information on the person’s rights to reasonable accommodations under the Americans with Disabilities Act (“ADA”) and how an accommodation may be requested.”<sup>2</sup> DES recognizes this obligation in proposed rule R6-14-503(F) for Administrative Disqualification Hearings where the rule provides that “The time and place for the hearing shall be arranged so the hearing is accessible ... including making reasonable accommodations for a person with a disability.” While, as explained in R6-14-503(F), we do not think this provision is adequate, it highlights that DES understands its obligation to provide this information to persons.

##### **R6-14-405: Hearings; Location; Notice; Time**

In subsection (A) the rule should affirmatively state that: “The notice of hearing shall inform the appellant that he or she may request to appear in person before an administrative law judge and specify the steps to take to make this request.” DES’ Appellate Services Administration has been very reluctant to have in-person hearings

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<sup>2</sup> Although beyond the rules, we also want to state that DES must immediately stop burying information concerning the household’s rights under the ADA in tiny font at the end of all of its notices. In addition to tiny font which is not readable for persons with visual impairments, the text starts off referring to other federal laws. Several years ago, the Institute and legal services worked on the notices with the Appellate Services Administration and the notices had a separate section in at least 12 font with a heading on Americans with Disabilities Act rights. We request that DES immediately go back to that format.

even though claimants have a right to one. *See* discussion below in parties' rights, R6-14-410, concerning the parties' rights to appear in person.

In the proposed rule, DES has conflated two rights: (1) the right to look at the person's whole file and get copies of the file and (2) the right to examine and get copies of the documents to be used at the hearing. The wording in subsection D(5)(a) provides that the notice shall inform the person of the right to "Examine the case file prior to the hearing ... If requested ... the Department shall provide a free copy of the portions of the case file that are relevant to the hearing." As explained below, DES must segregate the two rights and not conflate them.

Federal regulation 7 C.F.R. § 273.15(1) lists the information that must be in a notice of a hearing as part of the person's pre-hearing rights. The fourth item is: "Explain that the household or representative may examine the case file prior to the hearing." 7 C.F.R. § 273.15(1)(4). This is a right to review the whole case file and get a copy of the whole file. The right is not limited to "portions" of the case file. We request DES list this right separately as subsection (5)(a). "Explain that the household or representative may examine the case file prior to the hearing and obtain a copy of the whole case file."

In addition, under 7 C.F.R. § 273.15(p)(1), the household must be given an opportunity to "[e]xamine all documents and records to be used at the hearing at a reasonable time before the hearing." (emphasis added). Any documents that will be used at the hearing and documents that are "relevant" to the hearing, must be provided to the household without charge. We propose listing this right separately as 5(b) and then re-numbering the rest of rights listed in the subsection. That subsection would read: "Examine all documents and records to be used at the hearing and all relevant documents to the hearing and get copies of those documents without charge both prior to the hearing and during the hearing."

Finally, the federal regulation provides for agency conferences in situations beyond the denial of expedited services. 7 C.F.R. § 273.15 (d). DES offers the conferences and DES should affirmatively explain this in the notice. Legal services utilizes these conferences to settle cases without going to a hearing. The conferences present legal services the opportunity to explain the problems with DES' factual and legal analysis of the case. The same applies to unrepresented claimants. Ultimately, agency conferences can save DES' resources as well by increasing the opportunities for settlement. Moreover, this information falls squarely under DES' obligation to include in the notice "any other information that would provide the household with an understanding of the proceedings and that would contribute to the effective presentation of the household's case." 7 C.F.R. § 273.15 (1)(3).

### **R6-14-409: Subpoenas**

In subsection (C), the word “work” should be changed to “working,” as that is the wording in R-6-14-402(A)(2).

### **R6-14-410: Parties’ Rights**

The Institute requests that DES add the right to appear in person at the hearing before an administrative law judge; the right to bring family and friends to the hearing; and the right to review the whole case file to the list of a party’s rights. Federal regulation 7 C.F.R. § 273.15 (o) specially provides for “attendance” at the hearing of the household, as well as friends and relatives of the household, “if the household so chooses” unless there are space limitations. The friends and relatives of the household do not need to be witnesses to attend the hearing.

### **R6-14-413: Hearing Proceedings**

DES added at our request that 7 C.F.R. § 273.15(p)(4) requires the state agency to honor a party’s right to “advance” arguments without undue interference. The Institute also requests that DES put back in the proposed rule, the right to make an oral opening and closing argument with the consent of the hearing officer. We think both rights are important.

### **R6-14-416: Further Administrative Appeal**

The rule should be clarified to add that pursuant to 7 C.F.R. § 273.15(q)(2), the Appeals Board administrative decision is binding on the agency.

## **Article 5: Intentional Program Violation**

The Institute proposes adding the following new subsections to the Intentional Program Violation sections:

*New subsection (C) in R6-14-501*

The Department shall inform the household in writing of the disqualification penalties for Intentional Program Violation each time the household applies for

Nutrition Assistance. The penalties shall be in clear, prominent, and boldface lettering on the application form as required by 7 C.F.R. § 273.16 (d).

*New subsection (A) in R6-14-502*

The Department may only require reporting and the clarification of unclear information as provided for in 7 C.F.R. §273.12.

*New subsection (B) in R6-14-502*

A person is not required to cooperate with a fraud investigation for continued eligibility.

*New subsection (C) in R6-14-502*

In determining whether an IPV occurred, the Department must investigate whether:

1. The person knew about the Department program rule in question and intended to act dishonestly.
2. The person has a mental or cognitive disability that prevents him or her from forming an intent to violate program rules or act dishonestly.
3. The person did not understand the Department rule because of literacy problems, limited English proficiency or a disability.
4. The person reported information but the Department failed to act on the information or the Department recorded the information incorrectly. 7 C.F.R. §273.2(b)(1)(v).
5. The Department told the person their actions were legal or failed to explain the reporting requirements. *See* 7 C.F.R. § 273.2(e)(1).
6. The Department failed to provide reasonable accommodations to a person with a disability

that led to an unintentional violation of a program rule.

### **R6-14-502: Administrative Disqualification Hearings; Hearing Waiver**

In subsection (C)(2), the conflation of rights noted in R6-14-405 also occurs in this proposed rule. The rule provides “notification that the individual ... has the right to examine the case file prior to the hearing and, when requested ... be provided a free copy of the portions of the requested portions of the case file.” The person must be allowed to obtain a copy of their whole file, not just portions of the file. DES’ continued efforts to make it difficult for the person to see their complete file is unlawful. We request that DES segregate out the two rights as we set forth in our comments to section R6-14-405 above.

In subsection (C)(11)(c), we request that DES include a third option in the notice that the persons may check. “I do not admit that the facts as presented are correct in my Nutrition Assistance case. I do not waive my right to require an Administrative Disqualification Hearing where the Department must prove by clear and convincing that I committed and intended to commit an Intentional Program Violation.” The correct criteria should be disclosed to the person receiving the notice. 7 C.F.R. § 273.16(v)(6).

### **R6-14-503: Administrative Disqualification Hearings**

The notice of the disqualification hearing must contain the rights listed in 7 C.F.R. § 273.15(p) which under subsection (1) includes the right to look at the person’s complete case file. DES must include this right in its notice. The person also has a right to a copy of the person’s complete file. Subsection (D)(3) is not adequate and incorrectly conflates these rights. That subsection provides the person “has a right to examine the case file prior to the hearing. When requested . . . the Department shall provide a free copy of the requested portions of the case file.” The rule improperly limits the documents to “requested portions of the case file.” We request that DES use our proposed wording in R6-14-405 above

In subsection (D), the hearing notice should also include: (1) the person has the right to not attend the hearing or attend the hearing and remain silent; (2) the person’s right to remain silent; (3) that anything said or signed by the person can be used against them; (4) if the person does not attend the hearing, the ALJ will make findings based on the record produced by DES, and (5) that the standard of proof to find a violation is clear and convincing evidence that the person “committed and intended to commit an IPV.” 7

C.F.R. § 273.16(v)(6). It is important that persons understand the heightened proof that DES must satisfy in these cases.

Subsection (F) is an Americans with Disabilities Act provision but it should be revised to be clearer. We request that DES use our proposal in R6-14-403(J).

Subsection (G) provides that in addition to informing the person at the beginning of the disqualification hearing that she can remain silent, the proposed rule also requires the ALJ to state “the consequences of exercising that right.” The right to remain silent is absolute and there is no “consequence” to exercising that right and the ALJ cannot make any inference about the person asserting their constitutional and statutory right to remain silent. The federal regulation protects the right to remain silent. *See* 7 C.F.R. § 273.16(e)(2)(iii) and (f)(1)(ii)(B).<sup>3</sup> The words “the consequences of exercising that right” must be deleted.

In subsection (I), the wording should include the capitalized words to read: “The Department shall prove by clear and convincing evidence that the household “INTENDED TO COMMIT and committed an IPV.”

In addition, the Institute suggests the following subsections be added for when an ALJ finds the person committed and intended to commit an IPV.

*New (L):* If the hearing officer finds the person did commit and intended to commit an IPV, the hearing officer shall provide a written notice that informs the person of the decision pursuant to 7 C.F.R. §273.16(e)(9)(ii) and explains the right to appeal to state court and the appeal process.

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<sup>3</sup> Arizona courts have recognized that the protection against self-incrimination includes the freedom from adverse consequences flowing from defendant's exercise of his Fifth Amendment rights. *State v. Bravo*, 158 Ariz. 364, 378, 762 P.2d 1318, 1332 (1988); *State v. Carrillo*, 156 Ariz. 125, 750 P.2d 883 (1988). Normally, any reference by a judge or a prosecutor about a defendant's protected silence will constitute fundamental error. *State v. Anderson*, 110 Ariz. 238, 517P.2d 508 (1973). *Miranda* warnings carry an implicit assurance that a defendant's choice to remain silent will carry no penalties. *Carrillo*, 156 Ariz. at 134, 750 P.2d at 892 (citing *Doyle v. Ohio*, 426 U.S. 610, 618–19, 96 S.Ct. 2240, 2245, 49 L.Ed.2d 91, 96 (1976)).

**R6-14-505: Disqualification Sanctions; Notice**

The Institute requests that subsection (G) include the following words at the beginning of the subsection:

The department shall provide a separate written notice to the remaining household members, if any, of the disqualification period, including any explanation of any deferment of disqualification; the allotment they will receive during the disqualification period or that they must reapply because the certification period has expired. *See* 7 C.F.R. §273.16(e)(9)(ii) and (f)(3).

**Conclusion**

The Institute thanks DES for making changes to the proposed rules in response to our prior comments made in the fall of 2018. Thank you for the opportunity to submit our comments to the proposed rules. The Institute requests that DES modify the proposed food stamp rules as discussed above. Staff from legal services and the Institute are willing to meet with DES to discuss or clarify our concerns if such a meeting would be helpful. Please contact me at (602) 252-3432 or eskatz@qwestoffice.net if you have any questions or need any clarification concerning our requests.

Sincerely,

/s/

Ellen Sue Katz

#### 41-1954. Powers and duties

A. In addition to the powers and duties of the agencies listed in section 41-1953, subsection E, the department shall:

1. Administer the following services:

(a) Employment services, including manpower programs and work training, field operations, technical services, unemployment compensation, community work and training and other related functions in furtherance of programs under the social security act, as amended, the Wagner-Peyser act, as amended, the federal unemployment tax act, as amended, 33 United States Code, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(b) Individual and family services, which shall include a section on aging, services to children, youth and adults and other related functions in furtherance of social service programs under the social security act, as amended, title IV, except parts B and E, grants to states for aid and services to needy families with children and for child welfare services, title XX, grants to states for services, the older Americans act, as amended, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(c) Income maintenance services, including categorical assistance programs, special services unit, child support collection services, establishment of paternity services, maintenance and operation of a state case registry of child support orders, a state directory of new hires, a support payment clearinghouse and other related functions in furtherance of programs under the social security act, title IV, grants to states for aid and services to needy families with children and for child welfare services, title XX, grants to states for services, as amended, and other related federal acts and titles.

(d) Rehabilitation services, including vocational rehabilitation services and sections for the blind and visually impaired, communication disorders, correctional rehabilitation and other related functions in furtherance of programs under the vocational rehabilitation act, as amended, the Randolph-Sheppard act, as amended, and other related federal acts and titles.

(e) Administrative services, including the coordination of program evaluation and research, interagency program coordination and in-service training, planning, grants, development and management, information, legislative liaison, budget, licensing and other related functions.

(f) Manpower planning, including a state manpower planning council for the purposes of the federal-state-local cooperative manpower planning system and other related functions in furtherance of programs under the comprehensive employment and training act of 1973, as amended, and other related federal acts and titles.

(g) Economic opportunity services, including the furtherance of programs prescribed under the economic opportunity act of 1967, as amended, and other related federal acts and titles.

(h) Intellectual disability and other developmental disability programs, with emphasis on referral and purchase of services. The program shall include educational, rehabilitation, treatment and training services and other related functions in furtherance of programs under the developmental disabilities services and facilities construction act (P.L. 91-517) and other related federal acts and titles.

(i) Nonmedical home and community based services and functions, including department-designated case management, housekeeping services, chore services, home health aid, personal care, visiting nurse services, adult day care or adult day health, respite sitter care, attendant care, home delivered meals and other related services and functions.

2. Provide a coordinated system of initial intake, screening, evaluation and referral of persons served by the department.

3. Adopt rules it deems necessary or desirable to further the objectives and programs of the department.
4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.
5. Employ and determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons subject to chapter 4, article 4 and, as applicable, article 5 of this title as may be necessary in the performance of its duties, contract for the services of outside advisors, consultants and aides as may be reasonably necessary and reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business.
6. Make contracts and incur obligations within the general scope of its activities and operations subject to the availability of funds.
7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of its purposes, objectives and programs.
8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.
9. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.
10. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of its duties subject to the departmental rules on the confidentiality of information.
11. Establish and maintain separate financial accounts as required by federal law or regulations.
12. Advise and make recommendations to the governor and the legislature on all matters concerning its objectives.
13. Have an official seal that is judicially noticed.
14. Annually estimate the current year's population of each county, city and town in this state, using the periodic census conducted by the United States department of commerce, or its successor agency, as the basis for such estimates and deliver such estimates to the economic estimates commission before December 15.
15. Estimate the population of any newly annexed areas of a political subdivision as of July 1 of the fiscal year in which the annexation occurs and deliver such estimates as promptly as is feasible after the annexation occurs to the economic estimates commission.
16. Establish and maintain a statewide program of services for persons who are both hearing impaired and visually impaired and coordinate appropriate services with other agencies and organizations to avoid duplication of these services and to increase efficiency. The department of economic security shall enter into agreements for the utilization of the personnel and facilities of the department of economic security, the department of health services and other appropriate agencies and organizations in providing these services.
17. Establish and charge fees for deposit in the department of economic security prelayoff assistance services fund to employers who voluntarily participate in the services of the department that provide job service and retraining for persons who have been or are about to be laid off from employment. The department shall charge only those fees necessary to cover the costs of administering the job service and retraining services.
18. Establish a focal point for addressing the issue of hunger in this state and provide coordination and assistance to public and private nonprofit organizations that aid hungry persons and families throughout this state. Specifically such activities shall include:

- (a) Collecting and disseminating information regarding the location and availability of surplus food for distribution to needy persons, the availability of surplus food for donation to charity food bank organizations, and the needs of charity food bank organizations for surplus food.
- (b) Coordinating the activities of federal, state, local and private nonprofit organizations that provide food assistance to the hungry.
- (c) Accepting and disbursing federal monies, and any state monies appropriated by the legislature, to private nonprofit organizations in support of the collection, receipt, handling, storage and distribution of donated or surplus food items.
- (d) Providing technical assistance to private nonprofit organizations that provide or intend to provide services to the hungry.
- (e) Developing a state plan on hunger that, at a minimum, identifies the magnitude of the hunger problem in this state, the characteristics of the population in need, the availability and location of charity food banks and the potential sources of surplus food, assesses the effectiveness of the donated food collection and distribution network and other efforts to alleviate the hunger problem, and recommends goals and strategies to improve the status of the hungry. The state plan on hunger shall be incorporated into the department's state comprehensive plan prepared pursuant to section 41-1956.
- (f) Establishing a special purpose advisory council on hunger pursuant to section 41-1981.

19. Establish an office to address the issue of homelessness and to provide coordination and assistance to public and private nonprofit organizations that prevent homelessness or aid homeless individuals and families throughout this state. These activities shall include:

- (a) Promoting and participating in planning for the prevention of homelessness and the development of services to homeless persons.
- (b) Identifying and developing strategies for resolving barriers in state agency service delivery systems that inhibit the provision and coordination of appropriate services to homeless persons and persons in danger of being homeless.
- (c) Assisting in the coordination of the activities of federal, state and local governments and the private sector that prevent homelessness or provide assistance to homeless people.
- (d) Assisting in obtaining and increasing funding from all appropriate sources to prevent homelessness or assist in alleviating homelessness.
- (e) Serving as a clearinghouse on information regarding funding and services available to assist homeless persons and persons in danger of being homeless.
- (f) Developing an annual state comprehensive homeless assistance plan to prevent and alleviate homelessness.
- (g) Submitting an annual report to the governor, the president of the senate and the speaker of the house of representatives on the status of homelessness and efforts to prevent and alleviate homelessness. The department shall provide a copy of this report to the secretary of state.

20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

21. Exchange information, including case specific information, and cooperate with the department of child safety for the administration of the department of child safety's programs.

B. If the department of economic security has responsibility for the care, custody or control of a child or is paying the cost of care for a child, it may serve as representative payee to receive and administer social security and United States department of veterans affairs benefits and other benefits payable to such child.

Notwithstanding any law to the contrary, the department of economic security:

1. Shall deposit, pursuant to sections 35-146 and 35-147, such monies as it receives to be retained separate and apart from the state general fund on the books of the department of administration.

2. May use such monies to defray the cost of care and services expended by the department of economic security for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.

3. Shall maintain separate records to account for the receipt, investment and disposition of funds received for each child.

4. On termination of the department of economic security's responsibility for the child, shall release any funds remaining to the child's credit in accordance with the requirements of the funding source or in the absence of such requirements shall release the remaining funds to:

(a) The child, if the child is at least eighteen years of age or is emancipated.

(b) The person responsible for the child if the child is a minor and not emancipated.

C. Subsection B of this section does not pertain to benefits payable to or for the benefit of a child receiving services under title 36.

D. Volunteers reimbursed for expenses pursuant to subsection A, paragraph 5 of this section are not eligible for workers' compensation under title 23, chapter 6.

E. In implementing the temporary assistance for needy families program pursuant to Public Law 104-193, the department shall provide for cash assistance to two-parent families if both parents are able to work only on documented participation by both parents in work activities described in title 46, chapter 2, article 5, except that payments may be made to families who do not meet the participation requirements if:

1. It is determined on an individual case basis that they have emergency needs.

2. The family is determined to be eligible for diversion from long-term cash assistance pursuant to title 46, chapter 2, article 5.

F. The department shall provide for cash assistance under temporary assistance for needy families pursuant to Public Law 104-193 to two-parent families for no longer than six months if both parents are able to work, except that additional assistance may be provided on an individual case basis to families with extraordinary circumstances. The department shall establish by rule the criteria to be used to determine eligibility for additional cash assistance.

G. The department shall adopt the following discount medical payment system for persons who the department determines are eligible and who are receiving rehabilitation services pursuant to subsection A, paragraph 1, subdivision (d) of this section:

1. For inpatient hospital admissions and outpatient hospital services the department shall reimburse a hospital according to the rates established by the Arizona health care cost containment system administration pursuant to section 36-2903.01, subsection G.

2. The department's liability for a hospital claim under this subsection is subject to availability of funds.

3. A hospital bill is considered received for purposes of paragraph 5 of this subsection on initial receipt of the legible, error-free claim form by the department if the claim includes the following error-free documentation in legible form:

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

4. The department shall require that the hospital pursue other third-party payors before submitting a claim to the department. Payment received by a hospital from the department pursuant to this subsection is considered payment by the department of the department's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For inpatient hospital admissions and outpatient hospital services rendered on and after October 1, 1997, if the department receives the claim directly from the hospital, the department shall pay a hospital's rate established according to this section subject to the following:

- (a) If the hospital's bill is paid within thirty days of the date the bill was received, the department shall pay ninety-nine 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 department 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 department 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. For medical services other than those for which a rate has been established pursuant to section 36-2903.01, subsection G, the department shall pay according to the Arizona health care cost containment system capped fee-for-service schedule adopted pursuant to section 36-2904, subsection K or any other established fee schedule the department determines reasonable.

H. The department shall not pay claims for services pursuant to this section that are submitted more than nine months after the date of service for which the payment is claimed.

I. To assist in the location of persons or assets for the purpose of establishing paternity, establishing, modifying or enforcing child support obligations and other related functions, the department has access, including automated access if the records are maintained in an automated database, to records of state and local government agencies, including:

- 1. Vital statistics, including records of marriage, birth and divorce.
- 2. State and local tax and revenue records, including information on residence address, employer, income and assets.

3. Records concerning real and titled personal property.
4. Records of occupational and professional licenses.
5. Records concerning the ownership and control of corporations, partnerships and other business entities.
6. Employment security records.
7. Records of agencies administering public assistance programs.
8. Records of the motor vehicle division of the department of transportation.
9. Records of the state department of corrections.
10. Any system used by a state agency to locate a person for motor vehicle or law enforcement purposes, including access to information contained in the Arizona criminal justice information system.

J. Notwithstanding subsection I of this section, the department or its agents shall not seek or obtain information on the assets of an individual unless paternity is presumed pursuant to section 25-814 or established.

K. Access to records of the department of revenue pursuant to subsection I of this section shall be provided in accordance with section 42-2003.

L. The department also has access to certain records held by private entities with respect to child support obligors or obligees, or individuals against whom such an obligation is sought. The information shall be obtained as follows:

1. In response to a child support subpoena issued by the department pursuant to section 25-520, the names and addresses of these persons and the names and addresses of the employers of these persons, as appearing in customer records of public utilities, cable operators and video service providers.
2. Information on these persons held by financial institutions.

M. Pursuant to department rules, the department may compromise or settle any support debt owed to the department if the director or an authorized agent determines that it is in the best interest of this state and after considering each of the following factors:

1. The obligor's financial resources.
2. The cost of further enforcement action.
3. The likelihood of recovering the full amount of the debt.

N. Notwithstanding any law to the contrary, a state or local governmental agency or private entity is not subject to civil liability for the disclosure of information made in good faith to the department pursuant to this section.

#### 46-134. Powers and duties; expenditure; limitation

The state department shall:

1. Administer all forms of public relief and assistance except those that by law are administered by other departments, agencies or boards.
2. Develop a section of rehabilitation for the visually impaired that shall include a sight conservation section, a vocational rehabilitation section in accordance with the federal vocational rehabilitation act, a vending stand section in accordance with the federal Randolph-Sheppard act and an adjustment service section that shall include rehabilitation teaching and other social services deemed necessary, and shall cooperate with similar agencies already established. The administrative officer and staff of the section for the blind and visually impaired shall be employed only in the work of that section.
3. Assist other departments, agencies and institutions of the state and federal governments, when requested, by performing services in conformity with the purposes of this title.
4. Act as agent of the federal government in furtherance of any functions of the state department.
5. Carry on research and compile statistics relating to the entire public welfare program throughout this state, including all phases of dependency and defectiveness.
6. Cooperate with the superior court in cases of delinquency and related problems.
7. Develop plans in cooperation with other public and private agencies for the prevention and treatment of conditions giving rise to public welfare and social security problems.
8. Make necessary expenditures in connection with the duties specified in paragraphs 5, 6, 7, 13 and 14 of this subsection.
9. Have the power to apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this chapter.
10. Make rules, and take action necessary or desirable to carry out the provisions of this title, that are not inconsistent with this title.
11. Administer any additional welfare functions required by law.
12. If a tribal government elects to operate a cash assistance program in compliance with the requirements of the United States department of health and human services, with the review of the joint legislative budget committee, provide matching monies at a rate that is consistent with the applicable fiscal year budget and that is not more than the state matching rate for the aid to families with dependent children program as it existed on July 1, 1994.
13. Furnish a federal, state or local law enforcement officer, at the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the recipient and notifies the agency that the recipient is a fugitive felon or a probation, parole or community supervision violator or has information that is necessary for the officer to conduct the official duties of the officer and the location or apprehension of the recipient is within these official duties.
14. In conjunction with Indian tribal governments, request a federal waiver from the United States department of agriculture that will allow tribal governments that perform eligibility determinations for temporary assistance for needy families programs to perform the food stamp eligibility determinations for persons who apply for services pursuant to section 36-2901, paragraph 6, subdivision (a). If the waiver is approved, the state shall provide the

state matching monies for the administrative costs associated with the food stamp eligibility based on federal guidelines. As part of the waiver, the department shall recoup from a tribal government all federal fiscal sanctions that result from inaccurate eligibility determinations.

46-136. Powers of state department regarding work projects for unemployed persons

- A. The state department may institute work projects for the employment of needy unemployed persons being granted public assistance. The nature of the work projects shall be determined by the state department and the governing body of the county, municipal government or school district involved to be projects necessary and desirable to the community including projects designed to improve health and public safety. County or municipal governments, including school districts, shall cooperate in such projects by furnishing supervision, transportation and payment of industrial commission insurance.
- B. The state department shall act as the official agency for the state in any social welfare activity initiated by the federal government and shall administer state funds appropriated or made available for the relief of dependent persons, except as otherwise provided by law.
- C. The state department shall expend from any amounts otherwise available by law amounts that, in the discretion of the director, are determined necessary for such purpose in conjunction with any agency or department of the federal government for the purpose of receiving and distributing food stamps offered to public welfare agencies for needy persons. The amount so determined may be expended by the department in payment of expenses necessarily incurred by reason of the receipt or distribution of such food stamps.

## 7 USCS § 2013

Current through Public Law 116-90, approved December 13, 2019.

*United States Code Service > TITLE 7. AGRICULTURE (Chs. 1 — 115) > CHAPTER 51. FOOD STAMP PROGRAM (§§ 2011 — 2036d)*

### § 2013. Establishment of supplemental nutrition assistance program

**(a) In general.** Subject to the availability of funds appropriated under section 18 of this Act [[7 USCS § 2027](#)], the Secretary is authorized to formulate and administer a supplemental nutrition assistance program under which, at the request of the State agency, eligible households within the State shall be provided an opportunity to obtain a more nutritious diet through the issuance to them of an allotment, except that a State may not participate in the supplemental nutrition assistance program if the Secretary determines that State or local sales taxes are collected within that State on purchases of food made with benefits issued under this Act [[7 USCS §§ 2011](#) et seq.]. The benefits so received by such households shall be used only to purchase food from retail food stores which have been approved for participation in the supplemental nutrition assistance program. Benefits issued and used as provided in this Act [[7 USCS §§ 2011](#) et seq.] shall be redeemable at face value by the Secretary through the facilities of the Treasury of the United States.

#### **(b) Food distribution program on Indian reservations.**

**(1)**In general. Distribution of commodities, with or without the supplemental nutrition assistance program, shall be made whenever a request for concurrent or separate food program operations, respectively, is made by a tribal organization.

#### **(2)**Administration.

**(A)**In general. Subject to subparagraphs (B) and (C), in the event of distribution on all or part of an Indian reservation, the appropriate agency of the State government in the area involved shall be responsible for the distribution.

**(B)**Administration by tribal organization. If the Secretary determines that a tribal organization is capable of effectively and efficiently administering a distribution described in paragraph (1), then the tribal organization shall administer the distribution.

**(C)**Prohibition. The Secretary shall not approve any plan for a distribution described in paragraph (1) that permits any household on any Indian reservation to participate simultaneously in the supplemental nutrition assistance program and the program established under this subsection.

**(3)**Disqualified participants. An individual who is disqualified from participation in the food distribution program on Indian reservations under this subsection is not eligible to participate in the supplemental nutrition assistance program under this Act [[7 USCS §§ 2011](#) et seq.] for a period of time to be determined by the Secretary.

#### **(4) Administrative costs.**

**(A) In general.** Subject to subparagraph (B), the Secretary shall pay not less than 80 percent of administrative costs and distribution costs on Indian reservations as the Secretary determines necessary for effective administration of such distribution by a State agency or tribal organization.

**(B) Waiver.** The Secretary shall waive up to 100 percent of the non-Federal share of the costs described in subparagraph (A) if the Secretary determines that—

## 7 USCS § 2013

(i) the tribal organization is financially unable to provide a greater non-Federal share of the costs; or

(ii) providing a greater non-Federal share of the costs would be a substantial burden for the tribal organization.

**(C) Limitation.** The Secretary may not reduce any benefits or services under the food distribution program on Indian reservations under this subsection to any tribal organization that is granted a waiver under subparagraph (B).

**(D) Tribal contribution.** The Secretary may allow a tribal organization to use funds provided to the tribal organization through a Federal agency or other Federal benefit to satisfy all or part of the non-Federal share of the costs described in subparagraph (A) if that use is otherwise consistent with the purpose of the funds.”,

**(5) Bison meat.** Subject to the availability of appropriations to carry out this paragraph, the Secretary may purchase bison meat for recipients of food distributed under this subsection, including bison meat from—

**(A)** Native American bison producers; and

**(B)** producer-owned cooperatives of bison ranchers.

**(6) Traditional and locally- and regionally-grown food fund.**

**(A)** In general. Subject to the availability of appropriations, the Secretary shall establish a fund for use in purchasing traditional and locally- and regionally-grown foods for recipients of food distributed under this subsection.

**(B)** Native American producers. Where practicable, of the food provided under subparagraph (A), at least 50 percent shall be produced by Native American farmers, ranchers, and producers.

**(C)** Definition of traditional and locally- and regionally-grown. The Secretary shall determine the definition of the term “traditional and locally-grown” with respect to food distributed under this paragraph.

**(D) Purchase of foods.** In carrying out this paragraph, the Secretary shall purchase or offer to purchase those traditional foods that may be procured cost-effectively.”,

**(E)** Authorization of appropriations. There is authorized to be appropriated to the Secretary to carry out this paragraph \$5,000,000 for each of fiscal years 2008 through 2023.

**(F)** [Redesignated]

**(7) Availability of funds.**

**(A) In general.** Funds made available for a fiscal year to carry out this subsection shall remain available for obligation for a period of 2 fiscal years.

**(B) Administrative costs.** Funds made available for a fiscal year to carry out paragraph (4) shall remain available for obligation by the State agency or tribal organization for a period of 2 fiscal years.”.

**(c) Regulations; transmittal of copy of regulations to Congressional Committees prior to issuance.** The Secretary shall issue such regulations consistent with this Act [[7 USCS §§ 2011](#) et seq.] as the Secretary deems necessary or appropriate for the effective and efficient administration of the supplemental nutrition assistance program and shall promulgate all such regulations in accordance with the procedures set forth in [section 553 of title 5 of the United States Code \[5 USCS § 553\]](#). In addition, prior to issuing any regulation, the Secretary shall provide the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a copy of the regulation with a detailed statement justifying it.

## History

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### HISTORY:

Act Aug. 31, 1964, [P. L. 88-525](#), § 4, [78 Stat. 704](#); Jan. 11, 1971, [P. L. 91-671](#), § 3, [84 Stat. 2049](#); Sept. 29, 1977, [P. L. 95-113](#), Title XIII, § 1301, [91 Stat. 961](#); Dec. 23, 1985, [P. L. 99-198](#), Title XV, Subtitle A, §§ 1505(a), 1506, [99 Stat. 1567](#); May 22, 2008, [P. L. 110-234](#), Title IV, Subtitle A, Part I, §§ 4001(b), 4002(a)(1), Part III, §§ 4111(a), 4115(b)(2), Subtitle B, Part II, § 4211(a), [122 Stat. 1092](#), 1102, 1106, 1122; June 18, 2008, [P. L. 110-246](#), § 4(a), Title IV, Subtitle A, Part I, §§ 4001(b), 4002(a)(1), Part III, §§ 4111(a), 4115(b)(2), Subtitle B, Part II, § 4211(a), [122 Stat. 1664](#), 1853, 1863, 1867, 1884; Dec. 13, 2010, [P. L. 111-296](#), Title II, Subtitle D, § 241(b)(1), [124 Stat. 3236](#); Feb. 7, 2014, [P. L. 113-79](#), Title IV, Subtitle A, §§ 4004(a), 4030(b), [128 Stat. 785](#), 814; Dec. 20, 2018, [P.L. 115-334](#), Title IV, Subtitle A, § 4003(a), [132 Stat. 4624](#).

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**D-4**

**DEPARTMENT OF CHILD SAFETY (R20-0103)**

Title 21, Chapter 5, Article 2, Independent Living and Transitional Independent Living Programs

**Amend:** R21-5-201, R21-5-205



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** January 7, 2020

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

**FROM:** Council Staff

**DATE:** December 10, 2019

**SUBJECT: DEPARTMENT OF CHILD SAFETY (R20-0103)**  
Title 21, Chapter 5, Department of Child Safety - Permanency and Support Services

**Amend:** R21-5-201 and R21-5-205

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### Summary

This is a regular rulemaking from the Department of Child Safety relating to Rules in Title 21, Chapter 5 regarding the Independent Living and Transitional Independent Living Program. These programs provide services to youth who are in the custody of the Department, and help prepare them for adulthood. Currently, the rules offer adjudicated dependent foster youth to have the option of entering into the voluntary extended foster care program up to their 18th birthday. The Department is seeking to amend R21-5-201 (Definitions) and R21-5-205 (Services for Foster Youth 18 through 20 Years of Age) in order to extend the same option to youth who are dually adjudicated (dependent and delinquent) to be placed in a secure setting up to their 19th birthday.

The Department received an exemption from the rulemaking moratorium to conduct this rulemaking on August 9, 2019.

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

Yes, the Department cites both general and specific statutory authority for these rules.

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

No. 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 did not review or rely on any study in conducting this rulemaking

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

The rulemaking pertains to services and supports the Department provides to children who are or were placed in out-of-home care and have reached an age where the Department provides important services and support to assist foster youth transition to adulthood. The purpose of the rule is to provide information about the services available, eligibility criteria, and outlines the processes for when a service is being denied or terminated. Services and supports provided to youth include individual assistance in obtaining or removing barriers to getting a high school diploma, enrollment in post-secondary, education, career exploration, vocational training, job placement and retention, and training opportunities to practice daily living skills. The Department indicates that the costs and number of young adults that will opt-in to receive and benefit from the services being offered from this rulemaking is unknown at this time. Stakeholders include the Department, children in out-of-home care, young adults (between the ages of 18-20) previously in or currently in out-of-home care, and businesses contracted to provide support and services to young adults.

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 Department states there is no less intrusive or less costly alternative method for achieving the purpose of the proposed amendments to the existing rules.

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

The Department anticipates that this rulemaking will have minimal economic impact on the implementing agency, small businesses, and consumers. There is no additional cost to other state agencies anticipated. In addition, there is no known direct impact on private and public employment, businesses and political subdivisions. The persons directly impacted by the rulemaking are youth who are dually adjudicated as dependent and delinquent and foster youth and placed in a secure setting prior to their 18th birthday. The

Department believes these youth will benefit from the option to enter into extended foster care in order to receive services to aid in their preparation for adulthood. The Department believes through receipt of services these youth will have improved long-term outcomes and a reduced reliance on other social services.

7. **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 substantial changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking. The Department notes that it made a technical correction by removing the “(31)” in a reference to A.R.S. 8-201 (31) in R21-5-205(A), to conform with statute updates. This change does not result in a rule that is “substantially different” from the proposed rule pursuant to A.R.S. § 41-1025.

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

Yes. The Department received one comment on this rulemaking and adequately responded to the comment.

9. **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 a permit or 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?**

No. The Department indicates the rules are not more stringent than corresponding federal law, 42 U.S.C. 675 and 677.

11. **Conclusion**

This regular rulemaking from the Department of Child Safety seeks to amend two rules to provide dually adjudicated (dependent and delinquent) youth the option to be placed in a secure setting up to their 19th birthday. The Department accepts the usual 60-day delayed effective date for these rules. Council staff recommends approval of this rulemaking.



**ARIZONA**  
**DEPARTMENT**  
*of* **CHILD SAFETY**

Mike Faust, Director  
Douglas A. Ducey, Governor

November 15, 2019

**VIA EMAIL:** [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Ms. Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 North 15<sup>th</sup> Avenue, Suite 305  
Phoenix, Arizona 85007

RE: Title 21, Chapter 5 Article 2 Notice of Final Rulemaking

Dear Ms. Sornsin:

The attached final rulemaking package is respectfully submitted for review and approval by the Council. The following information is provided for your use in reviewing the rulemaking package:

A. Close of Record Date:

The rulemaking record closed on October 16, 2019, following the public comment period. This rulemaking package is being submitted within the 120 days allowed for Final Rulemaking. Oral proceedings were held on October 16, 2019 in Phoenix and Tucson, Arizona. One (1) written comment was received during the public comment period. No verbal or written comments were received at the oral proceedings.

B. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:

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

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

The rulemaking does not establish a new fee.

D. Whether the rule contains a fee increase:

The rulemaking does not contain a fee increase.

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

Recipient Name

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The Department of Child Safety is requesting an effective date 60 days from filing with the Secretary of State under A.R.S. § 41-1032(A).

F. A certification that the preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation or justification for the rule:

The Department certifies that the preamble accurately discloses that no study relevant to the rule was reviewed nor relied on in the agency's evaluation or justification of the rule.

G. If one or more full-time employees are necessary to implement and enforce the rule, a certification that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee (JLBC) of the number of new full-time employees necessary to implement and enforce the rule:

The Department of Child Safety is not required to make a certification to JLBC because the rule does not require any new full-time employees.

H. A list of all documents enclosed:

1. Copy of the authorizing and implementing statutes
2. Current rules
3. Copy of referenced statute
4. Notice of Final Rulemaking including preamble, table of contents for the rulemaking, and rule text.
5. Economic, Small Business, and Consumer Impact Statement
6. Governor's Office Approval via email from the Policy Advisor

If you have any questions, please contact Angie Trevino, Rules Development and Policy Specialist at (602) 255-2569 or by email at [angelica.trevino@azdcs.gov](mailto:angelica.trevino@azdcs.gov).

Sincerely,



Mike Faust  
Director

Enclosure

**NOTICE OF FINAL RULEMAKING**  
**TITLE 21. HEADING**  
**CHAPTER 5. DEPARTMENT OF CHILD SAFETY - PERMANENCY AND SUPPORT**  
**SERVICES**

**PREAMBLE**

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

R21-5-201	Amend
R21-5-205	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. § 8-453(A)(5)

Implementing statute: A.R.S. § 8-453(A)(9)(b)(iii), 8-453(A)(18), 8-521, and 8-521-01

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

The Department requests a regular 60-day delayed effective date.

**a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

Not applicable.

**b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

Not applicable.

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

Notice of Rulemaking Docket Opening: 25 A.A.R. 2374

Notice of Proposed Rulemaking: 25 A.A.R. 2347

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

Name: Magdalena Jorquez, Senior Legislative Liaison

Address: Department of Child Safety  
3003 N. Central Avenue,

Phoenix, AZ 85012  
Telephone: (602) 255-2527  
E-mail: Magdalena.Jorquez@azdcs.gov  
Or  
Name: Angie Trevino, Rules Development and Policy Specialist  
Address: Department of Child Safety  
3003 N. Central Avenue  
Phoenix, AZ 85012  
Telephone: (602) 255-2569  
E-Mail: angelica.trevino@azdcs.gov  
Web site: <https://dcs.az.gov/about/dcs-rule-rulemaking>

**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 rules proposed in this rulemaking pertain to the Independent Living and the Transitional Independent Living Program. For youth who are in the custody of the Department, these programs provide services to help them prepare for adulthood. The current rules offer youth who are adjudicated dependent foster youth, up to their 18th birthday, to have the option of entering into the voluntary extended foster care program. The rulemaking amends these rules in order to extend this same option to youth who are dually adjudicated (dependent and delinquent) and placed in a secure setting up to their 19th birthday. In state Fiscal Year 2018, A.R.S. § 8-202 was amended to extend the Arizona Department Juvenile Corrections' jurisdiction for detained delinquent youth to be served up to their 19th birthday.

**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:**

Not applicable.

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

Not applicable.

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

The Department anticipates that this rulemaking will have minimal economic impact on the implementing agency, small businesses, and consumers. There is no additional cost to other state agencies anticipated by this rulemaking. The persons directly impacted by this rulemaking are youth who are dually adjudicated as delinquent and dependent, and placed in a secure setting prior to their 18th birthday. These youth will benefit from the option to enter into extended foster care in order to receive services to aid in their preparation for adulthood. Through receipt of services these youth will have long term improved outcomes and a reduced reliance on other social services.

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

The amendment to R21-5-205(A) references "secure care" as defined in A.R.S. § 8-201(31) in the proposed rulemaking. Final rulemaking removes the "(31)" as a technical deletion to conform with statute updates.

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

The record closed at 5:00 PM on October 16, 2019. The Department received one comment during the open comment period. A joint written comment was received from Lori Ollom-Tighe with Fostering Advocates Arizona and Beth Rosenberg with Children's Action Alliance, advising that they "support the intent and language of this rule amendment..." The Department thanked them for their feedback.

**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 rules pertain to the Independent Living Program and Transitional Independent Program. A general permit is not used.

**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:**

42 U.S.C. 675 and 677. The rules are not more stringent than federal law.

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

No analysis was submitted.

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

Not applicable.

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

Notice of Emergency Rulemaking: 25 A.A.R. 771

Notice of Emergency Rulemaking (Renewal): 25 A.A.R. 2485

The amendment to R21-5-205(A) refers to "secure care" as defined in A.R.S. § 8-201(31) in the emergency rulemaking (initial and renewal). Final rulemaking removes the "(31)" as a technical deletion to conform with statute updates.

**15. The full text of the rules follows:**

**TITLE 21. CHILD SAFETY**

**CHAPTER 5. DEPARTMENT OF CHILD SAFETY – PERMANENCY AND SUPPORT SERVICES**

**ARTICLE 2. INDEPENDENT LIVING AND TRANSITIONAL INDEPENDENT LIVING PROGRAMS**

Section

R21-5-201. Definitions

R21-5-205. Out-of-home Care Services for Foster Youth 18 through 20 Years of Age ~~in Out-of-home Care~~

**ARTICLE 2. INDEPENDENT LIVING AND TRANSITIONAL INDEPENDENT LIVING  
PROGRAMS**

**R21-5-201. Definitions**

The following definitions apply to this Article:

1. “Active participation” means the foster youth is demonstrating efforts toward completion of case plan goals such as regular attendance at school or employment that results in school credits or earned wages.
2. “Aftercare services” means assistance and support available to eligible, former foster youth living in Arizona after the Department, tribal foster care, or other state foster care case is dismissed, and includes services available through the Transitional Independent Living Program.
3. “Age of majority” means that a person is at least 18 years old.
4. “Approved living arrangement” means a residence that has been reviewed by the assigned Child Safety Worker or other responsible agency staff and approved within the individual case plan.
5. “Arizona Young Adult Program” means a group of programs and services designed to assist eligible youth to make a successful transition to adulthood. The programs and services include Independent Living Services, the Independent Living Subsidy Program, Voluntary Out-of-home Care for Foster Youth 18 through 20 Years of Age, and the Transitional Independent Living Program.
6. “Child placing agency” means the same as in A.R.S. § 8-501(A)(1)(a)(iii), and includes a Child Welfare Agency that OLR licenses as a Placing Agency to place a child in a licensed foster home, or facility.
7. “Child Welfare Agency” means the same as in A.R.S. § 8-501.

8. "Child Safety Worker" means the same as in A.R.S. § 8-801.
9. "Custody of the Department" means that the foster youth:
  - a. Is in out-of-home care under the supervision of the Department while the subject of a dependency petition, as an adjudicated dependent, or placed voluntarily under A.R.S. § 8-806; or
  - b. Is 18, 19, or 20 years of age, a resident of Arizona, and has signed an individual case plan agreement for voluntary out-of-home care. This includes foster youth who were dually adjudicated (dependent and delinquent) and released from a secure setting prior to, or on the foster youth's ~~18th~~ 19th birthday.
10. "Department" or "DCS" means the Arizona Department of Child Safety.
11. "Eligible youth" means a person who meets the qualifications in A.R.S. § 8-521 for the Independent Living Program, the qualifications in A.R.S. § 8-521.01 for the Transitional Independent Living Program, or is a person who was formerly in another state's child welfare program who would otherwise be eligible.
12. "Employment" means:
  - a. Paid employment;
  - b. Participation in employment-readiness activities, which include career assessment and exploration, and part time enrollment in an employment or career readiness education program;
  - c. Volunteer positions;
  - d. Job-shadowing;
  - e. Internship; or

- f. Other paid or unpaid employment-related activities.
13. “Extraordinary purchase” means an expenditure by an eligible youth that impedes an eligible youth’s ability to meet the financial obligations outlined in the eligible youth’s budget.
  14. “Foster youth” means a person in the custody of the Department.
  15. “Full-time student” means an eligible youth enrolled in an education program identified by the program as being full-time due to the number of credits, credit hours, or other measure of enrollment.
  16. “Independent Living Program” means the program authorized by A.R.S § 8-521 to provide an Independent Living Subsidy and educational case management to a foster youth.
  17. “Independent Living Services” or “IL Services” means an array of assistance and support services, including those provided under the Independent Living Program, that the Departments provides, contracts, refers, or otherwise arranges that are designed to help a foster youth transition to adulthood by building skills and resources necessary to ensure personal safety, well-being, and permanency into adulthood.
  18. “Independent Living Subsidy” or “IL Subsidy” means a monthly stipend provided under the Independent Living Program to a foster youth, to assist in meeting monthly living expenses. This stipend replaces any foster care maintenance payment from the Department for support of the foster youth's daily living expenses.
  19. “Individual case plan” means an agreement between an eligible foster youth and the Department, directed by the foster youth that documents specific services and assistance that support the foster youth's goals in relation to:
    - a. Natural supports including permanent connections to and relationships with family and community, including peer and community mentors;

- b. A safe, stable, desired living arrangement, which may include a permanent arrangement such as guardianship or adoption;
- c. Daily living skills;
- d. Secondary and postsecondary education and training;
- e. Employment and career planning;
- f. Physical health, including reproductive health;
- g. Life care planning;
- h. Emotional health;
- i. Mental health;
- j. Spiritual or faith needs;
- k. Interpersonal relationships; and
- l. Age-appropriate extra-curricular, enrichment, and social activities.

20. “Individual service plan” means an agreement that is directed by an eligible youth in the TIL Program that documents specific services and assistance to support the eligible youth's goals including, as applicable:

- a. Financial,
- b. Housing,
- c. Counseling,
- d. Employment,
- e. Education, and

f. Other appropriate support and services.

21. “Life skills assessment” means a measure of an eligible youth’s ability to function in a variety of areas such as daily living skills, knowledge of community resources, and budgeting, as determined by a validated assessment tool.

22. “Medical professional” means a doctor of medicine or osteopathy, physician's assistant, or registered nurse practitioner licensed in A.R.S. Title 32, or a doctor of medicine licensed and authorized to practice in another state or foreign country. A medical professional from another state or foreign country must provide verification of valid and current licensure in that state or country.

23. “Misuse of funds” means that an eligible youth has expended money provided by the Department for specific purposes (such as education or living expenses) on an item that is not permitted by law (such as illegal drugs and alcohol), or on an extraordinary purchase that is not included in an approved budget or individual case or service plan, to the degree that the funds are not available for necessary items and purchases approved within the case plan, service plan, or budget.

24. “Natural supports” means relationships and connections that occur in everyday life, independent of formal services, with people or groups who provide personal or other support during a person’s lifetime.

25. “Out-of-home care” means a placement approved by the Department such as a licensed foster home, residential group care facility operated by a Child Welfare Agency, therapeutic residential facility, independent living setting, approved unlicensed independent living setting, or in a relative or non-relative placement. Out-of-home care excludes a detention facility, forestry camp, training school, or any other facility operated primarily for the detention of a child who is determined delinquent.

26. “Personal Crisis” means an unexpected event or series of events in an eligible youth’s life that prevents or impedes participation in scheduled services or activities.
27. “Residential group care facility” means a Child Welfare Agency that is licensed to receive more than five children for 24-hour social, emotional, or educational supervised care and maintenance at the request of a child, child placing agency, law enforcement agency, parent, guardian, or court. A residential group care facility provides care in a residential setting for children for an extended period of time.
28. “Responsible agency staff” means the assigned Child Safety Worker, another identified Department employee, or contracted staff.
29. “Service team members” means the eligible youth, the youth’s attorney(s), the Guardian ad Litem (GAL), the Court Appointed Special Advocate (CASA), tribal child welfare staff, other parties to the dependency case, contract, or other service providers, responsible agency staff, and other adults involved with the youth or supporting the youth’s activities or employment.
30. “Substantial non-compliance” means an eligible youth’s:
- a. Termination from an educational, vocational, or employment program due to lack of attendance or failure to make satisfactory progress as defined by the program for reasons unrelated to physical health including pregnancy, emotional, or mental health;
  - b. Persistent lack of communication during a 60-day period with the assigned Child Safety Worker or other responsible agency staff known to the youth that results in a loss of contact with the eligible youth, or interferes with the Department’s ability to provide services and supervision or to document individual case plan or service plan progress;
  - c. Persistent misuse of funds provided to support individual case plan or service plan goals; or

d. For an eligible foster youth, failure to communicate unexpected changes in the living arrangement as agreed to in the individual case plan or the Independent Living Subsidy agreement.

31. “Transitional Independent Living Program” or “TIL Program” means a program of services for residents of Arizona who are eligible youth under A.R.S. § 8-521.01, that provides assistance and support in counseling, education, vocation, employment, and the attainment or maintenance of housing.

32. “Transitional Independent Living Services” or “TIL Services” means those services the Department provides through the Transitional Independent Living Program under A.R.S. § 8-521.01, and may include assistance and support with health care, money management, housing, counseling, education, vocational training, and employment. The Department or its contractors provide services through a written agreement with the eligible youth.

33. “Validated assessment tool” means a written or verbal survey tool that can demonstrate empirical evidence for reliability and validity.

34. “Work day” means Monday through Friday, excluding Arizona state holidays.

35. “Young Adult Transitional Insurance” means a category of health care coverage under the state Medicaid program (Arizona Health Care Cost Containment System or AHCCCS) for Medicaid eligible youth who have reached the age of majority in foster care.

**R21-5-205. Out-of-home Care Services for Foster Youth 18 through 20 Years of Age ~~in Out-of-home Care~~**

A. The Department may provide out-of-home care services and supervision to a foster youth less than 21 years of age, who reached the age of 18 years while in the custody of the Department, and was either

in out-of-home care; or in secure care, as defined by A.R.S. § 8-201, through a delinquency action,

when the foster youth:

1. No change

2. No change

3. No change

4. No change

**B.** No change

1. No change

2. No change

3. No change

**C.** No change

1. No change

2. No change

3. No change

4. No change

**D.** No change

**E.** No change

1. No change

2. No change

3. No change



**ARIZONA DEPARTMENT OF CHILD SAFETY**

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**21 A.A.C. 5 Department of Child Safety – Permanency and Support Services**

**Article 2 - Independent Living and Transitional Independent Living Programs**

**ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT**

**November 2019**

**1. Identification of the proposed rule making**

The rules under this Chapter and Article pertain to services and supports the Department provides children who are or were placed in out-of-home care and have reached an age where the Department provides important services and support to assist foster youth transition to adulthood. The purpose of these rules is to provide information about the services available, eligibility criteria, and outlines the process for when a service is being denied or terminated.

Services and supports provided to the youth includes individual assistance in obtaining or removing barriers to getting a high school diploma, enrollment in post-secondary education, career exploration, vocational training, job placement and retention, training and opportunities to practice daily living skills. Additionally, for eligible youth ages 18 through 20 years old, the Department provides financial and housing assistance, counseling, employment readiness and obtainment, education and other support services to complement their own efforts to achieve self-sufficiency. The Department does not charge a fee to eligible youth for their participation in these services. The Department contracts for transitional living support services.

The current rules offer youth who are adjudicated dependent foster youth, up to their 18th birthday, to have the option of entering into voluntary extended foster care program. This rulemaking amends these rules in order to extend this same option to youth who are dually adjudicated (dependent and delinquent) and placed in a secure setting up to their 19th birthday. In state Fiscal year 2018, A.R.S. § 8-202 was amended to extend the Arizona Department Juvenile Corrections' jurisdiction for detained delinquent youth to be served up to their 19th birthday.

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

The Department anticipates that this rulemaking will have minimal economic impact on the implementing agency, small businesses, and consumers. There is no additional cost to other state agencies anticipated by this rulemaking. The persons directly impacted by this

rulemaking are youth who are dually adjudicated as delinquent and foster youth and placed in a secure setting prior to their 18th birthday. These youth will benefit from the option to enter into extended foster care in order to receive services to aid in their preparation for adulthood. Through receipt of services these youth will have long term improved outcomes and a reduced reliance on other Social Services.

**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: Magdalena Jorquez, Senior Legislative Counsel

Address: Department of Child Safety  
3003 N. Central Avenue  
Phoenix, AZ 85012

Telephone: 602-255-2527

Email: Magdalena.Jorquez@azdcs.gov

Or

Name: Angie Trevino, Rules Development and Policy Specialist

Telephone: 602-255-2569

Email: Angelica.Trevino@azdcs.gov

Web site: [www.azdcs.gov](http://www.azdcs.gov)

**4. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules.**

a. Cost bearers

- Department of Child Safety

b. Beneficiaries

- Children in out-of-home care
- Young adults (between the ages of 18-20) previously or in out-of-home care
- Business contracted to provide the support and services to young adults

**5. Cost/Benefit Analysis**

## 21 A.A.C. 5 ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

The cost bearers and beneficiaries from these rules are as listed in section four (4) above. The Permanency Youth Services is a program unit within the Department of Child Safety charged with the responsibilities that pertain to Title 21, Chapter 5, Article 2. The Department does not anticipate allotting any new full-time employee positions or making changes to those currently allotted as it pertains to this rulemaking. It is believed that the current staffing and organization is adequate to implement and enforce the rules.

Staff functions pertaining to the support and services provided to young adults per these rules include, but not limited to, the following:

- Participate in court hearings, case plan staffings, Team Decision Making Meetings, and other supportive meetings.
- Ensure the appropriate meetings are held to inform young adults of the supports and services under the Independent Living and Transitional Independent Living Programs.
- Meet and develop a case plan with the young adult addressing the appropriate support and services that would best support their goals.
- Refer to the appropriate vendors or community resources that will assist the young adult transition to adulthood. Resources may include housing or educational opportunities and vendors that will assist the young adult to build their skills in education, fiscal responsibility, money management, employment, and activities of daily living.
- Conduct monthly visits with the young adult.
- Provide supports and assist in attaining funding necessary to meet their educational needs.
- Assist young adults in connecting and engaging with dedicated adults that will provide a life-long connection.

Though the Department has some specialized units supporting these youth and young adults, it is not a statewide organizational structure; therefore, costs associated with providing these services and supports is not readily quantifiable.

The following information is based on the Independent Living and Transitional Independent Program as a whole and does not include information based on the proposed amendments. On December 31, 2017, there were 1,701 youths participating in these programs. Program services are funded through a combination of federal and state dollars. Federal dollars are awarded through the Chafee Program (formerly named the Chafee Foster Care Independence Program). \$5,138,520 was appropriated for the state of Arizona for FFY 2018. One of the services offered under this program is the Independent Living Subsidy or Maintenance. This subsidy is a monthly stipend to assist eligible youth with room and board costs while they pursue education and employment goals and is provided in lieu of any other foster care maintenance payment. In state fiscal year June 2017 to July 2018, the actual cost to provide Independent Living Subsidy was \$3,744,470.00. In FY 2018, the average monthly number of youth receiving the Independent Living Subsidy was 499. The average monthly subsidy stipend for FY 2018 was \$625. Funds to provide the Independent Living Subsidy are appropriated annually and are a combination of federal and state funding.

The amendments proposed in this rulemaking expand services to youth who are dually adjudicated (dependent and delinquent) up to the youth's 19th birthday. Services provided to youth under this expansion will be funded under General State funds. Costs and number of young adults that will opt-in to receive and benefit from the services being offered from this rulemaking is unknown at this time.

**6. A general description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking.**

There is no known direct impact on private and public employment in businesses and political subdivisions of this state directly affected by this rulemaking.

**7. A statement of the probable impact of the rules on small business.**

The probable impact of the rules on small businesses is unknown at this time; however, small businesses who contract with the Department may benefit from this rulemaking anticipating referrals to their business.

**7.1. Identification of the small businesses subject to the rules.**

There is no direct impact of the rules on small business as the rules pertain to services offered to youth and young adults. Indirectly small businesses may benefit through contracting with the Department in providing services to the youth or young adults who are subject to these rules.

**7.2. The administrative and other costs required for compliance with the rules.**

Costs associated with these rules include the costs of providing the services to youth and young adults who opt in to the services being offered by the Department.

**7.3. A description of the methods that the agency may use to reduce the impact on small businesses.**

There is no direct impact on small businesses.

**7.4. The probable costs and benefits to private persons and consumers who are directly affected by the rules.**

There are no costs associated with applying for services provided under this program. The benefits to private persons and consumers who are directly affected by the rules includes providing them with clear information on the extended foster care program.

**8. A statement of the probable effect on state revenues.**

The Department does not charge a fee to persons applying for receive services under this program. The Department does not know of any direct or indirect effect of the rulemaking on state revenues.

**9. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.**

There is no less intrusive or less costly alternative method for achieving the purpose of the proposed amendments to the existing rules.

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

Not applicable

4. "Compact State" means a state that is a member of the Interstate Compact on the Placement of Children.
  5. "Department" or "DCS" means the Arizona Department of Child Safety.
  6. "Interstate placement" means any movement of a child from one state to another state for the purpose of establishing a suitable living environment and providing necessary care.
  7. "Intra-state placement" means the placement of a child within a state by an agency of that state.
  8. "Placement" means the same as in A.R.S. § 8-548.
  9. "Receiving state" means the same as in A.R.S. § 8-548.
  10. "Sending agency" means the same as in A.R.S. § 8-548.
  11. "Sending state" means the state where the sending agency is located, or the state in which the court holds exclusive jurisdiction over a child, which causes, permits, or enables the child to be sent to another state.
2. To the placement of children into and out of the United States when the other jurisdiction involved is a foreign country.
  3. When a sending court or agency seeks an independent (not ICPC related) courtesy check for placement with a parent from whom the child was not removed, the responsibility for credentials and quality of the courtesy check rests directly with the sending court or agency and the person or party in the receiving state who agrees to conduct the courtesy check without invoking the protection of the ICPC home study process. This does not prohibit a sending state from requesting an ICPC.
  4. The Compact does not apply in court cases of paternity, divorce, custody, and probate pursuant to which or in situations where children are being placed with parents or relatives or non-relatives.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

**R21-5-102. Authority**

The ICPC is governed by A.R.S. §§ 8-548 through 8-548.06 and the ICPC regulations. ICPC regulations are posted on the Association of Administrators of the Interstate Compact on the Placement of Children website. These regulations supplement those authorities and must be read in conjunction with them.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

**R21-5-103. Conditions of Placement**

No person, court, or public or private agency in a Compact State shall place a child in another Compact State until the Compact Administrator in the receiving state has notified the Compact Administrator in the sending state, on a prescribed form, that such placement does not appear to be contrary to the interests of the child and does not violate any applicable laws of the receiving state.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

**R21-5-104. Financial Responsibility**

The sending person, court, or public or private agency shall be held financially responsible for:

1. Sending the child to the receiving state;
2. Returning the child to the sending state; and
3. Treatment of the child during the period of placement.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

**R21-5-105. Applicability**

- A. Except as listed in subsection B, the ICPC applies to the placement of:
  1. Children in another Compact State by an agency, court or person, which has care or custody of the children.
  2. Foreign-born children who are brought under the jurisdiction of a Compact State by an international child placing agency.
- B. In addition to the children listed in statute that are not subject to ICPC, the ICPC does not apply:
  1. When a child is placed in an institution caring for the mentally ill, mentally impaired, epileptic, or in any institution primarily educational in character or in any hospital or other medical facility.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

**R21-5-106. Placement Approval**

Sending and receiving states must obtain approval from the Compact Administrator in both the sending and receiving states prior to the placement of a child in another Compact State.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

**R21-5-107. Operations**

In providing services provided under this Article, the sending and the receiving state shall:

1. Maintain all information required by state and federal law.
2. Comply with all federal and their respective state laws and regulations regarding the disclosure and use of confidential health and personal information.
3. Comply with all federal and their respective state non-discrimination laws and regulations.
4. Ensure that interpreters, including assistance for the visually or hearing impaired, are available to those receiving services at no cost.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

## ARTICLE 2. INDEPENDENT LIVING AND TRANSITIONAL INDEPENDENT LIVING PROGRAMS

**R21-5-201. Definitions**

The following definitions apply to this Article:

1. "Active participation" means the foster youth is demonstrating efforts toward completion of case plan goals such as regular attendance at school or employment that results in school credits or earned wages.
2. "Aftercare services" means assistance and support available to eligible, former foster youth living in Arizona after the Department, tribal foster care, or other state foster care case is dismissed, and includes services available through the Transitional Independent Living Program.
3. "Age of majority" means that a person is at least 18 years old.
4. "Approved living arrangement" means a residence that has been reviewed by the assigned Child Safety Worker or other responsible agency staff and approved within the individual case plan.
5. "Arizona Young Adult Program" means a group of programs and services designed to assist eligible youth to

## Department of Child Safety - Permanency and Support Services

- make a successful transition to adulthood. The programs and services include Independent Living Services, the Independent Living Subsidy Program, Voluntary Out-of-home Care for Foster Youth 18 through 20 Years of Age, and the Transitional Independent Living Program.
6. "Child placing agency" means the same as in A.R.S. § 8-501(A)(1)(a)(iii), and includes a Child Welfare Agency that OLR licenses as a Placing Agency to place a child in a licensed foster home, or facility.
  7. "Child Welfare Agency" means the same as in A.R.S. § 8-501.
  8. "Child Safety Worker" means the same as in A.R.S. § 8-801.
  9. "Custody of the Department" means that the foster youth:
    - a. Is in out-of-home care under the supervision of the Department while the subject of a dependency petition, as an adjudicated dependent, or placed voluntarily under A.R.S. § 8-806; or
    - b. Is 18, 19, or 20 years of age, a resident of Arizona, and has signed an individual case plan agreement for voluntary out-of-home care. This includes foster youth who were dually adjudicated (dependent and delinquent) and released from a secure setting prior to, or on the foster youth's 18th birthday.
  10. "Department" or "DCS" means the Arizona Department of Child Safety.
  11. "Eligible youth" means a person who meets the qualifications in A.R.S. § 8-521 for the Independent Living Program, the qualifications in A.R.S. § 8-521.01 for the Transitional Independent Living Program, or is a person who was formerly in another state's child welfare program who would otherwise be eligible.
  12. "Employment" means:
    - a. Paid employment;
    - b. Participation in employment-readiness activities, which include career assessment and exploration, and part time enrollment in an employment or career readiness education program;
    - c. Volunteer positions;
    - d. Job-shadowing;
    - e. Internship; or
    - f. Other paid or unpaid employment-related activities.
  13. "Extraordinary purchase" means an expenditure by an eligible youth that impedes an eligible youth's ability to meet the financial obligations outlined in the eligible youth's budget.
  14. "Foster youth" means a person in the custody of the Department.
  15. "Full-time student" means an eligible youth enrolled in an education program identified by the program as being full-time due to the number of credits, credit hours, or other measure of enrollment.
  16. "Independent Living Program" means the program authorized by A.R.S. § 8-521 to provide an Independent Living Subsidy and educational case management to a foster youth.
  17. "Independent Living Services" or "IL Services" means an array of assistance and support services, including those provided under the Independent Living Program, that the Department provides, contracts, refers, or otherwise arranges that are designed to help a foster youth transition to adulthood by building skills and resources necessary to ensure personal safety, well-being, and permanency into adulthood.
  18. "Independent Living Subsidy" or "IL Subsidy" means a monthly stipend provided under the Independent Living Program to a foster youth, to assist in meeting monthly living expenses. This stipend replaces any foster care maintenance payment from the Department for support of the foster youth's daily living expenses.
  19. "Individual case plan" means an agreement between an eligible foster youth and the Department, directed by the foster youth that documents specific services and assistance that support the foster youth's goals in relation to:
    - a. Natural supports including permanent connections to and relationships with family and community, including peer and community mentors;
    - b. A safe, stable, desired living arrangement, which may include a permanent arrangement such as guardianship or adoption;
    - c. Daily living skills;
    - d. Secondary and postsecondary education and training;
    - e. Employment and career planning;
    - f. Physical health, including reproductive health;
    - g. Life care planning;
    - h. Emotional health;
    - i. Mental health;
    - j. Spiritual or faith needs;
    - k. Interpersonal relationships; and
    - l. Age-appropriate extra-curricular, enrichment, and social activities.
  20. "Individual service plan" means an agreement that is directed by an eligible youth in the TIL Program that documents specific services and assistance to support the eligible youth's goals including, as applicable:
    - a. Financial,
    - b. Housing,
    - c. Counseling,
    - d. Employment,
    - e. Education, and
    - f. Other appropriate support and services.
  21. "Life skills assessment" means a measure of an eligible youth's ability to function in a variety of areas such as daily living skills, knowledge of community resources, and budgeting, as determined by a validated assessment tool.
  22. "Medical professional" means a doctor of medicine or osteopathy, physician's assistant, or registered nurse practitioner licensed in A.R.S. Title 32, or a doctor of medicine licensed and authorized to practice in another state or foreign country. A medical professional from another state or foreign country must provide verification of valid and current licensure in that state or country.
  23. "Misuse of funds" means that an eligible youth has expended money provided by the Department for specific purposes (such as education or living expenses) on an item that is not permitted by law (such as illegal drugs and alcohol), or on an extraordinary purchase that is not included in an approved budget or individual case or service plan, to the degree that the funds are not available for necessary items and purchases approved within the case plan, service plan, or budget.
  24. "Natural supports" means relationships and connections that occur in everyday life, independent of formal services, with people or groups who provide personal or other support during a person's lifetime.
  25. "Out-of-home care" means a placement approved by the Department such as a licensed foster home, residential group care facility operated by a Child Welfare Agency, therapeutic residential facility, independent living setting, approved unlicensed independent living setting, or in a

- relative or non-relative placement. Out-of-home care excludes a detention facility, forestry camp, training school, or any other facility operated primarily for the detention of a child who is determined delinquent.
26. "Personal Crisis" means an unexpected event or series of events in an eligible youth's life that prevents or impedes participation in scheduled services or activities.
  27. "Residential group care facility" means a Child Welfare Agency that is licensed to receive more than five children for 24-hour social, emotional, or educational supervised care and maintenance at the request of a child, child placing agency, law enforcement agency, parent, guardian, or court. A residential group care facility provides care in a residential setting for children for an extended period of time.
  28. "Responsible agency staff" means the assigned Child Safety Worker, another identified Department employee, or contracted staff.
  29. "Service team members" means the eligible youth, the youth's attorney(s), the Guardian ad Litem (GAL), the Court Appointed Special Advocate (CASA), tribal child welfare staff, other parties to the dependency case, contract, or other service providers, responsible agency staff, and other adults involved with the youth or supporting the youth's activities or employment.
  30. "Substantial non-compliance" means an eligible youth's:
    - a. Termination from an educational, vocational, or employment program due to lack of attendance or failure to make satisfactory progress as defined by the program for reasons unrelated to physical health including pregnancy, emotional, or mental health;
    - b. Persistent lack of communication during a 60-day period with the assigned Child Safety Worker or other responsible agency staff known to the youth that results in a loss of contact with the eligible youth, or interferes with the Department's ability to provide services and supervision or to document individual case plan or service plan progress;
    - c. Persistent misuse of funds provided to support individual case plan or service plan goals; or
    - d. For an eligible foster youth, failure to communicate unexpected changes in the living arrangement as agreed to in the individual case plan or the Independent Living Subsidy agreement.
  31. "Transitional Independent Living Program" or "TIL Program" means a program of services for residents of Arizona who are eligible youth under A.R.S. § 8-521.01, that provides assistance and support in counseling, education, vocation, employment, and the attainment or maintenance of housing.
  32. "Transitional Independent Living Services" or "TIL Services" means those services the Department provides through the Transitional Independent Living Program under A.R.S. § 8-521.01, and may include assistance and support with health care, money management, housing, counseling, education, vocational training, and employment. The Department or its contractors provide services through a written agreement with the eligible youth.
  33. "Validated assessment tool" means a written or verbal survey tool that can demonstrate empirical evidence for reliability and validity.
  34. "Work day" means Monday through Friday, excluding Arizona state holidays.
  35. "Young Adult Transitional Insurance" means a category of health care coverage under the state Medicaid program (Arizona Health Care Cost Containment System or AHC-CCS) for Medicaid eligible youth who have reached the age of majority in foster care.
- Historical Note**  
New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).
- R21-5-202. Provision of Services**
- A. The Department shall provide services and stipends for the IL Services, IL Subsidy, and TIL services to eligible youth in a manner that is fair and equitable.
  - B. The Department shall provide Independent Living Services to eligible foster youth based on needs identified by the eligible foster youth, by service team recommendations, or the findings of a life skills assessment. The services shall address needs identified in the eligible foster youth's individual case plan and may include one or more of the following, depending on the individual case plan goals:
    1. Information and assistance to create and maintain a network of natural supports;
    2. Independent living skills training;
    3. Program incentives;
    4. Information and assistance in life care and health care planning, including enrollment in a health plan;
    5. Educational, career, and vocational planning;
    6. Financial assistance for post-secondary education and training;
    7. Out-of-home care for foster youth 18 through 20 years of age; or
    8. Aftercare services through the Transitional Independent Living Program.
- Historical Note**  
New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).
- R21-5-203. Denial of Services**  
The Department shall deny services if a person does not meet the eligibility requirements of A.R.S. §§ 8-806, 8-521, 8-521.01, and R21-5-204.
- Historical Note**  
New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).
- R21-5-204. Eligibility**
- A. Independent Living Services. In order to be eligible for IL Services a person shall:
    1. Be at least 16 years of age and less than 21 years of age;
    2. Be in the custody of the Department or tribal child welfare agency;
    3. Reside in out-of-home care;
    4. Be referred by the eligible youth's assigned Child Safety Worker, other Department staff, or a tribal social services representative; and
    5. Be a resident of Arizona if 18, 19, or 20 years of age.
  - B. Independent Living Subsidy.
    1. In order to be eligible for the IL Subsidy, a person shall:
      - a. Be at least 17 years of age, in the custody of the Department, and employed or a full-time student.
      - b. With the assistance of the responsible agency staff, complete the Independent Living Subsidy Agreement or other approved forms designated by the Department.
    2. Conditions for approval and continuation in the Independent Living Subsidy Program include:
      - a. Active participation in activities outlined in the individual case plan;

- b. Adherence to the terms of the IL Subsidy Agreement, including:
  - i. Communication with the Child Safety Worker;
  - ii. Maintenance of a Department-approved living arrangement, including approval of a roommate, except those assigned by school or work; and
  - iii. Participation in scheduled meetings to review progress and update the individual case plan and IL Subsidy Agreement.
- 3. Eligible youth 18, 19, and 20 years of age who are temporarily residing out of state for the purpose of education or vocational training, and who maintain Arizona residency, may receive the Independent Living Subsidy under the same conditions as above.
- C. Transitional Independent Living Program. Under A.R.S. § 8-521.01, in order to be eligible for the Transitional Independent Living Program, a person must be less than 21 years of age and have been in out-of-home care and in the custody of the Department, a licensed residential group care facility, or a tribal child welfare agency while 16, 17, or 18 years of age. Persons who were in another state's child welfare agency under the same conditions are also eligible.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-205. Services for Foster Youth 18 through 20 Years of Age in Out-of-home Care**

- A. The Department may provide out-of-home care services and supervision to a foster youth less than 21 years of age, who reached the age of 18 years while in the custody of the Department and in out-of-home care, when the foster youth:
  - 1. Requests out-of-home care;
  - 2. Has residency in the state of Arizona;
  - 3. Participates in developing an individual case plan agreement for out-of-home care; and
  - 4. Demonstrates acceptance of personal responsibility for his or her part of the agreement through active participation in the individual case plan.
- B. The foster youth, Child Safety Worker, and involved service team members shall develop the individual case plan for out-of-home care:
  - 1. Within the 90-day period prior to the foster youth's 18th birthday for foster youth continuing in out-of-home care past 18 years of age;
  - 2. Within ten work days for foster youth who enter out-of-home care during the 90-day period prior to the foster youth's 18th birthday; and
  - 3. For eligible youth re-entering foster care at 18 years of age or older, within seven work days of the eligible youth's return to Department care and supervision.
- C. The individual case plan shall outline the services and supports to be provided under R21-5-202(B) and include at least one of the following activities:
  - 1. Completion of secondary education or a program leading to an equivalent credential;
  - 2. Enrollment in an institution that provides post-secondary education or vocational education;
  - 3. Participation in a program or activity designed to promote or remove barriers to employment; or
  - 4. Employment of at least 80 hours per month.
- D. Foster youth participating in out-of-home care shall demonstrate acceptance of personal responsibility by actively participating in an individual case plan, unless prevented by a documented behavioral health or medical condition, or other

personal crisis or life event, such as pregnancy, birth, necessary maternity leave as determined by a medical professional, adoption, or guardianship of a child.

- E. The Child Safety Worker shall support the foster youth to address any documented condition, crisis, or life event listed in subsection (D), by:
  - 1. Facilitating a youth led discussion that includes a review of the supports and services available as intervention strategies, to assist in resolving the condition, crisis, or concern;
  - 2. Documenting the foster youth's preferred intervention strategy for addressing the condition, crisis, or concern; and
  - 3. Expeditiously providing or otherwise arranging the preferred intervention strategy.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-206. Transitional Independent Living Program**

- A. The Transitional Independent Living Program provides services to eligible youth, under A.R.S. § 8-521.01 that complements their own efforts toward becoming self-sufficient. The Department may provide the following assistance, depending on individual service plan goals:
  - 1. Financial,
  - 2. Housing,
  - 3. Counseling,
  - 4. Employment,
  - 5. Education, and
  - 6. Other appropriate support and services.
- B. The eligible youth requesting services through the Transitional Independent Living Program shall provide the following information to the responsible agency staff:
  - 1. Identifying information including:
    - a. Name (and any aliases); and
    - b. Date of birth;
  - 2. Information regarding the eligible youth's former foster care status such as the state or tribal child welfare system where the youth was in care, and approximate dates of care, if known; and
  - 3. Any available contact information for the youth, including:
    - i. Phone number,
    - ii. Friend or family phone number,
    - iii. Email address, and
    - iv. Any other communication method identified by the youth.
- C. An eligible youth and responsible agency staff shall develop an individual service plan for the eligible youth to receive these services.
- D. The individual service plan shall address the level of need based on the items noted in subsection (A).

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-207. Re-entry Into Out-of-home Care**

- A. The Department shall facilitate re-entry into out-of-home care for eligible youth participating in the Transitional Independent Living Program.
- B. On request for re-entry by the eligible youth, the Department shall confirm the eligible youth's request to receive out-of-home care, supervision, and other services with the youth and within ten work days:

1. Facilitate a meeting with the eligible youth to review the requirements under R21-5-205;
  2. Assist the eligible youth to develop an individual case plan that includes an effective date for reopening the Department case;
  3. Identify the name and contact information of the Child Safety Worker or responsible agency staff assigned to the case;
  4. Identify the out-of-home care type selected such as, foster home, residential group care facility, Independent Living Program, or other arrangement;
  5. Notify the identified Child Safety Worker or responsible agency staff assigned to the case; and
  6. Complete all necessary authorizations for out-of-home care and other services to reasonably ensure a smooth transition from the TIL Services to the IL Services.
- C.** If the eligible youth reports he or she is in crisis and unsafe, the Department shall immediately assess the youth's safety and assist the youth to secure a safe living arrangement and to manage the crisis.
- D.** An eligible youth may request to postpone re-entry, decline re-entry at any time, or re-initiate the request any time prior to the eligible youth's 21st birthday. The responsibilities of the Department to process the request for re-entry shall begin upon the Department's receipt of the eligible youth's request for re-entry under subsection (B).
- E.** Supports and services shall continue for youth who re-enter out-of-home care, as outlined in R21-5-205.
- F.** If the Department denies re-entry, the Department shall provide the youth with written notification of the reason for this decision and the youth's grievance and appeal rights within 15 work days of the request for re-entry.

#### Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

#### R21-5-208. Termination of Services

- A.** The Department may terminate IL Services, including out-of-home care for foster youth 18 through 20 years of age, and TIL services if the eligible youth:
1. Reaches the age of 21 years;
  2. Reaches the age of 18 years and does not desire continued services;
  3. Makes a voluntary decision to terminate services; or
  4. Demonstrates substantial non-compliance or otherwise refuses to meet the requirements of the individual case plan or individual service plan after the responsible agency staff or designee has made active efforts to engage the eligible youth in identifying and resolving issues, including assessing the effectiveness of current services, and identifying and providing additional or different support services.
- B.** The Department shall deny IL Services, including out-of-home care for foster youth age 18 through 20 years, and TIL services if the Department determines the person is:
1. Not eligible;
  2. Unwilling to create an individual case or service plan; or
  3. Not participating in the individual case or service plan.
- C.** The Child Safety Worker or responsible agency staff shall notify the person in writing of the Department's decision to terminate or deny services within ten work days of the person's application for services.
- D.** The notice shall include information on the person's right to grieve any decision to terminate or deny services.

- E.** Within ten work days of the notice to terminate or deny services, the Child Safety Worker or responsible agency staff shall contact the person to:
1. Assist the person through the grievance process including the completion and submittal of any required Department forms; or
  2. Identify and engage a personal advocate to assist the person through the grievance process, including the completion and submittal of any required Department forms.
- F.** When termination of services to a foster youth is planned due to one of the reasons outlined in (A)(1-3) of this Section, the Child Safety Worker or responsible agency staff shall schedule a discharge staffing with the foster youth within ten work days of the foster youth's 21st birthday or the Department's receipt of the foster youth's notice to discontinue services to provide any necessary documents not previously provided, such as a birth certificate, social security card, state identification card, credit report, and a copy of the foster youth's health and education records.
- G.** The Department shall not terminate services for substantial non-compliance under subsection (A)(4) until the Child Safety Worker or responsible agency staff satisfies all responsibilities including:
1. Staffing of the individual case or service plan;
  2. Adhering to the grievance process described in R21-5-209; and
  3. Developing and implementing a discharge plan that provides information on available community resources, and connects the person to those resources.
- H.** Services shall remain in effect until the reasons for termination are resolved or the grievance or appeal process is completed.
- I.** For Independent Living Subsidy only, if the Department determines that continuation of the Independent Living Subsidy would place the foster youth at risk of immediate harm, the Child Safety Worker or responsible agency staff shall:
1. Document this fact in the case file progress notes, and
  2. Arrange for a safe living arrangement and sufficient support services to reasonably ensure the foster youth's safety in the interim.

#### Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

#### R21-5-209. Grievance Process

- A.** A person eligible for services under R21-5-204 who disagrees with a Department adverse action decision to reduce, terminate, or deny services for that person may:
1. File a grievance under this Section;
  2. Choose not to file a grievance and appeal the adverse action under A.A.C. Title 21, Chapter 1, Article 3 by filing a notice of appeal within 20 days after receipt of the adverse action decision reducing, terminating, or denying services; or
  3. File a grievance, and if the person is dissatisfied with the results of the grievance process, appeal under A.A.C. Title 21, Chapter 1, Article 3 by filing a notice of appeal within 20 days after receipt of the grievance response letter.
- B.** In the event that a person disagrees with a Department decision to reduce, terminate, or deny services, the Child Safety Worker or responsible agency staff shall:
1. Inform the person of the formal grievance process;
  2. Provide the person with the Department's grievance form and directions for submittal to the designated Department staff, such as the Department's Ombudsman's Office; and

3. Offer to assist the person in completing and submitting the form, or referring the person to the appropriate Department staff, such as the Department's Ombudsman, for assistance in completing and submitting the form.
- C. Upon receipt of the grievance form, the Department shall:
  1. Schedule a face-to-face meeting with the person who filed the grievance within seven work days from the date the grievance was received by the Department, or schedule a teleconference if a face-to-face meeting is not possible;
  2. Evaluate the grievance to determine if the grievance can be resolved by the Department to the satisfaction of the person;
  3. Mail a grievance response letter to the person within three work days of the meeting; and
  4. Include an appeal form with the grievance response letter so the person may appeal the adverse action.
- D. If the person agrees with the Department's decision to terminate services, the Child Safety Worker or responsible agency staff shall proceed with case closure including completing a discharge plan with the person that includes information on aftercare services and other community based support.
- E. The Department shall retain documentation of all grievances in the case file according to the Department's retention schedule. 

#### Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

### ARTICLE 3. DEPARTMENT ADOPTION SERVICES

#### R21-5-301. Definitions

In addition to the definitions in A.R.S. § 8-101, the following definitions apply in this Article, Article 4 of this Chapter, and 21 A.A.C. 9:

1. "Adoptable child" means a child who is legally available for adoption but who has not been placed for adoption.
2. "Adoptee" means a child who is the subject of a legal petition for adoption.
3. "Adoption agency" means an individual or entity, including a corporation, company, partnership, firm, association, or society, other than the Department, licensed by the Department to place a child for adoption.
4. "Adoption entity" or "entity" means the Department and includes an adoption agency, but does not include a private attorney who is licensed to practice law in the state of Arizona and who is only assisting in a direct placement adoption to the extent allowed by A.R.S. § 8-130(C).
5. "Adoption placement" or "placement" means the act of placing an adoptable child in the home of an adoptive parent who has filed, or is contemplating filing, a petition to adopt the child.
6. "Adoption Registry" means the electronic database described in A.R.S. § 8-105.
7. "Adoption services" means activities conducted in furtherance of an adoption and includes the activities listed in A.A.C. R21-5-303 and R21-9-201(B).
8. "Adoptive parent" means an individual who has successfully completed the application process and has been certified by the court to adopt. An adoptive parent includes an individual who does not have a child placed in their home.
9. "Agency placement" means the child is placed in an adoptive home chosen by the adoption agency.
10. "AHCCCS" means the Arizona Health Care Cost Containment System, which is the State's program for medical assistance available under Title XIX of the Social Security Act and state public insurance statutes under A.R.S. Title 36, Chapter 29.
11. "Applicant" means an individual who has applied to become an adoptive parent.
12. "Birth parent" means the biological mother or father of a child.
13. "Central Registry" means the information maintained by the Department of substantiated reports of child abuse or neglect for the purposes of A.R.S. § 8-804.
14. "Certification application" means the form that an applicant submits to an adoption entity or to the court to request a certification investigation to become certified as an adoptive parent.
15. "Certification investigation" means the process referred to in A.R.S. § 8-105(C) by which an adoption entity determines if an applicant is a fit and proper person to adopt.
16. "Certification order" means a judicial determination that an applicant is acceptable to adopt children.
17. "Certification report" or "adoptive home study" means the written report described in A.R.S. § 8-105, in which an adoption entity summarizes the results of a certification investigation and makes a recommendation for or against certification of an applicant.
18. "Child with special needs" means a child who has one of the special needs listed in A.R.S. § 8-141.
19. "Department" or "DCS" means the Arizona Department of Child Safety.
20. "Developmentally appropriate" means an action that takes into account:
  - a. A child's age and family background;
  - b. The predictable changes that occur in a child's physical, emotional, social, cultural, and cognitive development; and
  - c. A child's pattern and history of growth, personality, and learning style.
21. "Direct placement" means the child is placed in an adoptive home by the birth parent or legal parent.
22. "Final report to the court" means a written report that includes a social study under A.R.S. § 8-112, in which an adoption entity advises the court of the entity's assessment and recommendations about the finalization of a particular adoption.
23. "Foster parent" means the same as in A.R.S. § 8-501.
24. "ICPC" means the Interstate Compact on the Placement of Children described in A.R.S. § 8-548.
25. "ICWA" means the Indian Child Welfare Act described in 25 U.S.C. 1901 et seq.
26. "Legally available" means a child whose birth or legal parents are deceased, have voluntarily relinquished their parental rights, or whose parental rights have been terminated by the court.
27. "License" means a permission granted by the Department to an adoption agency authorizing the adoption agency to perform adoption services in A.A.C. R21-9-201(B).
28. "Open adoption" means an adoption in which the adoptive parent and the birth or legal parent agree to share varying degrees of each other's personal information for future contact.
29. "Out-of-state agency" means any person or entity that is authorized or licensed by a state other than Arizona, or a foreign country, to perform adoption services.
30. "Placed child" means an adoptable child who has been placed with an adoptive parent, and the adoptive parent has not yet filed a petition to adopt the child.

8-453. Powers and duties

A. The director shall:

1. Carry out the purposes of the department prescribed in section 8-451.
2. Provide transparency by being open and accountable to the public for the actions of the department.
3. Develop a data system that enables persons and entities that are charged with a responsibility relating to child safety to access all relevant information relating to an abused, neglected or abandoned child as provided by law.
4. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, employ deputy directors and other key personnel based on qualifications that are prescribed by the director.
5. Adopt rules to implement the purposes of the department and the duties and powers of the director.
6. Petition, as necessary to implement the case plan established under section 8-824 or 8-845, for the appointment of a guardian or a temporary guardian under title 14, chapter 5 for children who are in custody of the department pursuant to court order. Persons applying to be guardians or temporary guardians under this section shall be fingerprinted. A foster parent or certified adoptive parent already fingerprinted is not required to be fingerprinted again, if the foster parent or certified adoptive parent is the person applying to be the guardian or temporary guardian.
7. Cooperate with other agencies of this state, county and municipal agencies, faith-based organizations and community social services agencies, if available, to achieve the purposes of this chapter.
8. Exchange information, including case specific information, and cooperate with the department of economic security for the administration of the department of economic security's programs.
9. Administer child welfare activities, including:
  - (a) Cross-jurisdictional placements pursuant to section 8-548.
  - (b) Providing the cost of care of:
    - (i) Children who are in temporary custody, are the subject of a dependency petition or are adjudicated by the court as dependent and who are in out-of-home placement, except state institutions.
    - (ii) Children who are voluntarily placed in out-of-home placement pursuant to section 8-806.
    - (iii) Children who are the subject of a dependency petition or are adjudicated dependent and

who are in the custody of the department and ordered by the court pursuant to section 8-845 to reside in an independent living program pursuant to section 8-521.

(c) Providing services for children placed in adoption.

10. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

11. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of funds.

12. Coordinate with, contract with or assist other departments, agencies and institutions of this state and local and federal governments in the furtherance of the department's purposes, objectives and programs.

13. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.

14. Collect monies owed to the department.

15. Act as an agent of the federal government in furtherance of any functions of the department.

16. Carry on research and compile statistics relating to the child welfare program throughout this state, including all phases of dependency.

17. Cooperate with the superior court in all matters related to this title and title 13.

18. Provide the cost of care and transitional independent living services for a person under twenty-one years of age pursuant to section 8-521.01.

19. Ensure that all criminal conduct allegations and reports of imminent risk of harm are investigated.

20. Ensure the department's compliance with the Indian child welfare act of 1978 (P.L. 95-608; 92 Stat. 3069; 25 United States Code sections 1901 through 1963).

21. Strengthen relationships with tribal child protection agencies or programs.

B. The director may:

1. Take administrative action to improve the efficiency of the department.

2. Contract with a private entity to provide any functions or services pursuant to this title.

3. Apply for, accept, receive and expend public and private gifts or grants of money or

property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this title.

4. Reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business. Volunteers reimbursed for expenses are not eligible for workers' compensation under title 23, chapter 6.

C. The department shall administer individual and family services, including sections on services to children and youth and other related functions in furtherance of social service programs under the social security act, as amended, title IV, parts B and E, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services and other related federal acts and titles.

D. If the department has responsibility for the care, custody or control of a child or is paying the cost of care for a child, the department may serve as representative payee to receive and administer social security and veterans administration benefits and other benefits payable to the child. Notwithstanding any law to the contrary, the department:

1. Shall deposit, pursuant to sections 35-146 and 35-147, any monies it receives to be retained separate and apart from the state general fund on the books of the department of administration.

2. May use these monies to defray the cost of care and services expended by the department for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.

3. Shall maintain separate records to account for the receipt, investment and disposition of monies received for each child.

4. On termination of the department's responsibility for the child, shall release any monies remaining to the child's credit pursuant to the requirements of the funding source or, in the absence of any requirements, shall release the remaining monies to:

(a) The child, if the child is at least eighteen years of age or is emancipated.

(b) The person who is responsible for the child if the child is a minor and not emancipated.

E. Subsection D of this section does not apply to benefits that are payable to or for the benefit of a child receiving services under title 36.

F. Notwithstanding any other law, a state or local governmental agency or a private entity is not subject to civil liability for the disclosure of information that is made in good faith to the department pursuant to this section.

G. Notwithstanding section 41-192, the department may employ legal counsel to provide legal advice to the director. The attorney general shall represent the department in any administrative or judicial proceeding pursuant to title 41, chapter 1, article 5.

H. The total amount of state monies that may be spent in any fiscal year by the department for foster care as provided in subsection A, paragraph 9, subdivision (b) of this section may not exceed the amount appropriated or authorized by section 35-173 for that purpose. This section does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

8-521. Independent living program; conditions; eligibility; rules; case management unit; progress reports

A. The department or a licensed child welfare agency may establish an independent living program for youths who are the subject of a dependency petition or who are adjudicated dependent and are all of the following:

1. In the custody of the department, a licensed child welfare agency or a tribal child welfare agency.
2. At least seventeen years of age.
3. Employed or full-time students.

B. The independent living program may consist of a residential program of less than twenty-four hours a day supervision for youths under the supervision of the department through a licensed child welfare agency or a foster home under contract with the department. Under the independent living program, the youth is not required to reside at a licensed child welfare agency or foster home.

C. The director or the director's designee shall review and approve any recommendation to the court that a youth in the custody of the department be ordered to an independent living program.

D. For a youth to participate in an independent living program, the court must order such a disposition pursuant to section 8-845.

E. The department of child safety, a licensed child welfare agency or a tribal child welfare agency having custody of the youth shall provide the cost of care as required by section 8-453, subsection A, paragraph 9, subdivision (b), item (iii) for each child placed in an independent living program pursuant to this section, except that the monthly amount provided shall not exceed the average monthly cost of purchased services for the child in the three months immediately preceding placement in an independent living program.

F. The department shall adopt rules pursuant to title 41, chapter 6 to carry out this section.

G. The department shall provide quarterly progress reports to the court and to local foster

care review boards for each youth participating in the independent living program.

H. The local foster care review boards shall review at least once every six months the case of each youth participating in the independent living program.

I. The department shall establish an educational case management unit within the division consisting of two case managers to develop and coordinate educational case management plans for youths participating in the independent living program and to assist youths in the program to do the following:

1. Graduate from high school.
2. Pass the statewide assessment pursuant to section 15-741.
3. Apply for postsecondary financial assistance.
4. Apply for postsecondary education.

#### 8-521.01. Transitional independent living program

A. The department may establish a transitional independent living program for persons who meet the following qualifications:

1. The person is under twenty-one years of age.
2. The person was the subject of a dependency petition, adjudicated dependent or placed voluntarily pursuant to section 8-806.

B. The department shall provide care and services that complement the person's own efforts to achieve self-sufficiency and to accept personal responsibility for preparing for and making the transition to adulthood. The care and services provided shall be based on an individualized written agreement between the department and the person.

C. Care and services may be provided as follows:

1. If the person was in out-of-home placement or in the independent living program when the person became eighteen years of age, the department may provide out-of-home placement, independent living or other transitional living support services.
2. If the person was in out-of-home placement in the custody of the department, a licensed child welfare agency or a tribal child welfare agency while the person was sixteen, seventeen or eighteen years of age, the department may provide transitional living support services.

**DEPARTMENT OF HEALTH SERVICES (F19-1209)**

Title 9, Chapter 7, Article 2, Registration, Installation, and Service of Ionizing Radiation-Producing Machines; and Certification of Mammography Facilities



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** January 7, 2020

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

**FROM:** Council Staff

**DATE:** December 10, 2019

**SUBJECT: DEPARTMENT OF HEALTH SERVICES (F19-1209)**  
Title 9, Chapter 7, Article 2 - Registration, Installation, and Service of Ionizing Radiation-Producing Machines; and Certification of Mammography Facilities

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This Five-Year-Review Report (5YRR) from the Department of Health Services relates to rules in Title 9, Chapter 7, Article 2 regarding radiation producing machines.

In the previous 5YRR of these rules the Department indicated it would revise several of its rules once the rulemaking moratorium ended. DHS indicates that because the rulemaking moratorium did not end, they did not complete the proposed changes.

### **Proposed Action**

The Department indicates it plans to amend several of its rules to improve their clarity, effectiveness, consistency, and effectiveness. DHS plans to submit a Notice of Expedited Rulemaking to the Council by June 2020. The Department indicates it will review the rules in the entire Chapter, including Article 2, after completing 5YRRs on all Articles, and evaluate whether additional rulemaking is necessary.

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

Yes, the Department cites both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The rule changes were made to improve clarity and were not expected to have an economic impact on any businesses. The Department believes this economic impact is as estimated.

Stakeholders include the Department, individuals involved in the sale, installation, and service of machines producing ionizing radiation, healthcare professionals, and the general public.

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 Department believes that the substantive content of the rules is the minimum necessary to protect health and safety and comply with statutory requirements and that the probable benefits of the rules in the Article outweigh the probable costs of the rules. The Department plans to address minor and non-substantive issues addressed in the review through an expedited rulemaking in 2020.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department indicates it did not receive any written criticisms of these rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes, for the reasons mentioned in the report, the Department indicates the following rules need to be amended to improve their clarity, conciseness, understandability, consistency with other rules and statutes, and effectiveness:

- **R9-7-201** - Exemptions;
- **R9-7-202** - Application for Registration of Ionizing Radiation Producing Machines;
- **R9-7-204** - Issuance of Notice of Registration;
- **R9-7-205** - Expiration of Notice of Registration of Certification;
- **R9-7-206** - Assembly, Installation, Removal from Service, and Transfer;
- **R9-7-209** - Notifications;
- **R9-7-207** - Reciprocal Recognition of Out-of-State Radiation Machines;
- **R-7-208** - Certification of Mammography Facilities; and

- **Appendix A.** - Application Information.

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

Yes, for the reasons mentioned in the report, the Department indicates the following rules are not enforced as written.

- **R9-7-201**- Exemptions;
- **R9-7-202**- Application for Registration of Ionizing Radiation Producing Machines;
- **R9-7-203** - Application for Registration of Servicing and Installation;

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

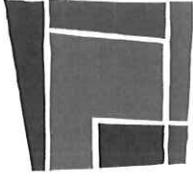
Not applicable. There is no corresponding federal law for these rules.

**8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable; the rules were adopted before July 29, 2010.

**9. Conclusion**

For the reasons mentioned in the report, the Department plans to amend several of its rules to improve their clarity, conciseness, understandability, consistency with other rules and statutes and effectiveness. The Department plans to submit a Notice of Expedited Rulemaking to the Council by June 2020, allowing for stakeholder engagement before filing the Notice of Proposed Expedited Rulemaking. DHS also indicates it plans to review the rules in the entire Chapter, including Article 2, after completing 5YRRs on all Articles, scheduled up through December 2021, and evaluate whether additional rulemaking is necessary. Council staff recommends approval of this report.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

## POLICY & INTERGOVERNMENTAL AFFAIRS

October 23, 2019

**VIA EMAIL:** [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Nicole Sornsins, Esq., Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

RE: Department of Health Services, 9 A.A.C. 7, Article 2, Five-Year-Review Report

Dear Ms. Sornsins:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 7, Article 2, Registration, Installation, and Service of Ionizing Radiation-Producing Machines; and Certification of Mammography Facilities, which is due on December 31, 2019.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Ruthann Smejkal at [Ruthann.Smejkal@azdhs.gov](mailto:Ruthann.Smejkal@azdhs.gov) or 602-364-1230.

Sincerely,

A handwritten signature in black ink, appearing to read 'RL', written over a horizontal line.

Robert Lane  
Director's Designee

RL:rms

Enclosures

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



**Arizona Department of Health Services**

**Five-Year-Review Report**

**Title 9. Health Services**

**Chapter 7. Department of Health Services**

**Radiation Control**

**Article 2. Registration, Installation, and Service of Ionizing Radiation-Producing Machines;  
and Certification of Mammography Facilities**

**October 2019**

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

General Statutory Authority: A.R.S. §§ 30-654(B)(5) and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 30-654, 30-657, 30-671(B), 30-672, 30-672.01, and 30-673

**2. The objective of each rule:**

The purpose of the rules is to establish the registration and exemption requirements for machines producing ionizing radiation in Arizona, consistent with statutory requirements.

<b>Rule</b>	<b>Objective</b>
R9-7-201	To provide exemptions to requirements in the Article for certain sources of radiation for which there is no measured impact to the health and safety of the public. To specify that the production, testing, or factory servicing of certain exempt electronic equipment is not exempt from the requirements of this Article.
R9-7-202	To specify requirements for registration of machines producing ionizing radiation, including fees and diagrams of the areas of the facility that may be affected by the radiation. To include requirements specific to mammography facilities and to particle accelerators used for medical purposes.
R9-7-203	To specify requirements for registration of persons who install, sell, or service machines producing ionizing radiation, including X-ray machines, in compliance with A.R.S. § 30-672.01.
R9-7-204	To specify that the Department shall issue a Notice of Registration to an applicant complying with applicable requirements, including that one Notice may be issued for all radiation machines located at the same facility.
R9-7-205	To provide information about expiration of registration, including that registration does not expire if a timely application for renewal has been submitted.
R9-7-206	To require a person assembling or installing a machine producing ionizing radiation or taking such a machine out of service to notify the Department of the event and provide specific information about the machine or assembly. To specify that radiation machines, when properly placed in operation and used, must meet the requirements of these rules.
R9-7-207	To specify conditions of use for a radiation machine brought into Arizona for use on a temporary basis, including notification of the Department, adherence with Arizona requirements for safe operation and documentation, and duration of use.

R9-7-208	To specify additional documentation required to be submitted with an application in R9-7-202 for certification of mammography facilities.
R9-7-209	To specify situations requiring a registrant or other person possessing a registered radiation machine to notify the Department.
Appendix A	To specify the information required to be included on an application submitted according to R9-7-202.

3. **Are the rules effective in achieving their objectives?**

Yes  No

*If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.*

Rule	Explanation
Multiple	Except as specified below or under paragraphs 4 and 6, the rules are effective in achieving their objectives.
Article Title	Since A.R.S. § 30-672 covers licensing and registration of all sources of radiation and A.R.S. § 30-672.01 requires registration of a person installing or servicing any radiation machine, as defined in A.R.S. § 30-651 to include more than machines producing ionizing radiation, the Article would be more effective if the title of the Article included all machines that electronically produce radiation, not only machines producing ionizing radiation.
R9-7-201	The rule would be more effective if it clarified that providers of radiation machines for mobile services are not exempt from registration under subsection (C).
R9-7-202	The rule would be more effective if it included requirements for registration of all machines that electronically produce radiation, not only machines producing ionizing radiation. The rule would also be more effective if the requirements for diagrams in subsection (D) were simplified and if a requirement, similar to that in subsection (E), were added for machines to be used for radiation therapy to meet the requirements in R9-7-611 and R9-7-611.01.
R9-7-203	Although an issue with A.R.S. § 30-672.01 rather than the rule, the rule would be more effective if an applicant were required to list the services or types of radiation machines for which registration under the rule is being requested.
R9-7-205	The rule would be more effective if it specified or provided a reference to the time period(s) for certification. Subsection (A) would be more effective if the phrase “certificate issued according to R9-7-208” were reworded, because R9-7-208 does not specify issuing a certificate and only specifies requirements for applying for certification.
R9-7-206	The rule would be more effective if it included requirements for persons who assemble, install, remove from service, or transfer any machine that electronically produces radiation, not only machines producing ionizing radiation. Subsection (D) would be more effective if it were moved into R9-7-202, as subsection (B).
R9-7-206 and R9-7-209	R9-7-206(B) and R9-7-209(B) appear to be duplicative. The rules would be more effective if they were combined.
R9-7-209	The rule would be more effective if the difference between a “notice of registration” and a “certificate issued according to R9-7-208” were clarified.
Appendix A	The rule would be more effective if the listed information were consistent with the information required in practice on Department-provided application forms.

4. **Are the rules consistent with other rules and statutes?** Yes  No

*If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.*

Rule	Explanation
Article Title	The title of the Article is inconsistent with A.R.S. §§ 30-672 and 30-672.01, which cover all radiation machines, not just those producing ionizing radiation.
R9-7-202	The rule is inconsistent with A.R.S. § 30-672, which covers licensing and registration of all sources of radiation, not just those producing ionizing radiation.
R9-7-206	The rule is inconsistent with A.R.S. § 30-672.01, which requires registration of all persons who assemble or install any machine that electronically produces radiation, not only machines producing ionizing radiation.
R9-7-208	Although cited in subsection (3), A.R.S. § 32-2842(C) does not exist, having been removed through Laws 2011, Ch. 97.

5. **Are the rules enforced as written?** Yes  No

*If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.*

Rule	Explanation
R9-7-201	The rule is enforced such that providers of radiation machines for mobile services are not exempt from registration under subsection (C).
R9-7-202	The rule is enforced as if it contained a requirement, similar to that in subsection (E), for machines to be used for radiation therapy to meet the requirements in R9-7-611 and R9-7-611.01 before use.
R9-7-203	The rule is enforced as if it contained a requirement for an applicant requesting registration under the rule to list the services or types of radiation machines being serviced.

6. **Are the rules clear, concise, and understandable?** Yes  No

*If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.*

Rule	Explanation
Multiple	The rules would be clearer if grammatical or punctuation errors were corrected.
R9-7-201	The rule would be clearer and more concise if subsections (A), (C), and (D) were combined into one "exemptions" subsection. The rule would also be improved if it were clearer that radiation machines that are not in operation and are in the possession of financial institutions that have taken possession of these machines as a result of foreclosure, bankruptcy, or other default of payment are exempt from registration under subsection (C).
R9-7-202	The rule would be clearer if the word "it" in subsection (B) were replaced with the term to which it refers and if the cross-reference to the information in Appendix A were clarified. Subsection (D) would be clearer if requirements for the drawing were broken

	out or better expressed.
R9-7-204	The rule would be clearer if subsection (A) specified to what “Act” the rule referred. The rule would also be clearer if the rule specified what happens if an application does not meet the specified requirements. In addition, the rule would be improved if subsection (B) did not use passive language.
R9-7-205	The rule would be clearer if subsection (B) referred to A.R.S. § 41-1092.11.
R9-7-205 and R9-7-209	The rules would be clearer if the term “notice of registration” were either consistently capitalized, as in R9-7-205, or not capitalized, as in R9-7-209.
R9-7-206	The rule would be clearer if subsection (A) specified “within 15 days” of what notification is required. In addition, the rule would be more concise if the requirements in subsection (C) were combined into subsection (A). In addition, it is unclear to what the phrase “of these rules” in subsection (D) refers.
R9-7-207	The rule would be improved if subsection (C) did not use passive language.
R9-7-208	The rule would be improved if subsections (1), (2), and (3) referred to the application in R9-7-202. The rule would be more concise if the requirements in subsections (2) and (3) were replaced with a requirement to comply with A.R.S. § 32-2842.
Appendix A	The rule would be clearer if renamed as “Appendix 2A” since there are several other Appendices A in the Chapter.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes \_\_\_ No X

*If yes, please fill out the table below:*

Rule	Explanation

8. **Economic, small business, and consumer impact comparison:**

Pursuant to Laws 2017, Ch. 313, and Laws 2018, Ch. 234, the Department succeeded to the authority, powers, duties, and responsibilities of the Arizona Radiation Regulatory Agency for the regulation of radioactive materials, devices emitting ionizing or nonionizing radiation, and those persons using them. The rules in Article 2 were recodified in 2018 from 12 A.A.C. 1 to 9 A.A.C. 7, and the current codification is used when describing the economic impact of the rules, even though the rulemakings were in 12 A.A.C. 1.

The rules in Article 2 were variously last revised in 1997, 2003, 2005, and 2009. If a rule included in a rulemaking was further revised in a subsequent rulemaking, the impact of the rule is considered in the description of the subsequent rulemaking. An economic, small business, and consumer impact statement (EIS) is available to the Department for only the 2009 rulemaking, but the Department is estimating the economic effect of the other rulemakings from available records and information. The rules in Article 2 are currently used by approximately 7,300 persons.

R9-7-204 was last amended in 1997. Only small changes were made to modernize the wording of the rule. R9-7-202 and R9-7-208 were last revised in 2003. Minor changes were made as a result of a five-year-review report to clarify requirements. R9-7-209 was last revised in 2005, moving licensing requirements for devices or equipment producing nonionizing radiation into Article 14, which provides requirements for these devices, and

clarifying remaining requirements. Although no EIS is available for any of these rulemakings, the Department believes the rulemakings may have provided a minimal benefit to some stakeholders through improved clarity, but had no other economic impact on any stakeholders.

In the 2009 rulemaking, the remaining six rules in the Article were revised. In R9-7-201, typographical errors and unit designations were corrected, and a rule change clarified that the “production, testing, or factory servicing” of specified electronic equipment is not exempt from the requirements of the Article. The changes to R9-7-203 included clarifying application requirements and what “install” means. R9-7-205 was revised to clarify information about certification, renewal, and certificate expiration. An incorporation by reference was updated in R9-7-206, and a grammatical error was corrected in R9-7-207. In Appendix A, a cross-reference to Article 11 was added to clarify that this Article contains other registration requirements. According to the EIS, these changes were made to improve clarity and were not expected to have an economic effect on any businesses. The Department believes the economic impact is as estimated.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes \_\_\_ No X

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

*Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

The previous five-year-review report stated a plan to revise several rules once the rulemaking moratorium ended. Since the moratorium has not ended, no rulemaking was initiated for this Article, in keeping with the stated plan.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department believes that the substantive content of the rules is the minimum necessary to protect health and safety and comply with statutory requirements and that the probable benefits of the rules in the Article outweigh the probable costs of the rules. Other issues identified in this report may impose a minimally increased regulatory burden.

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No X

*Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?*

The requirements in this Article are based on state statutes, rather than federal regulations.

**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 in Article 2 were adopted before July 29, 2010. However, the Department believes the rules are exempt from A.R.S. § 41-1037 due to paragraph (A)(2) as the issuance of an alternative type of permit is authorized under A.R.S. §§ 30-672 and 30-672.01.

**14. Proposed course of action**

*If possible, please identify a month and year by which the agency plans to complete the course of action.*

While many of the items and possible changes described in paragraphs 3, 5, and 6 are minor and not substantive, the Article title and three of the rules are substantively inconsistent with state statutes. Although requirements in other Articles may affect how any revision of Article 2 should be made to protect health and safety while avoiding unintended consequences, the Department plans to address the issues described in this five-year-review report through expedited rulemaking and submit a Notice of Final Expedited Rulemaking to the Governor's Regulatory Review Council by June 2020, allowing for stakeholder engagement before filing of the Notice of Proposed Expedited Rulemaking. The Department will review the rules in the entire Chapter, including Article 2, after completing the five-year-review reports on all Articles in the Chapter, currently scheduled as due in December 2021, and evaluate whether additional rulemaking is necessary and, if so, establish a time-frame to complete the rulemaking.

## **CURRENT RULES IN 9 A.A.C. 7, ARTICLE 2**

### **ARTICLE 2. REGISTRATION, INSTALLATION, AND SERVICE OF IONIZING RADIATION-PRODUCING MACHINES; AND CERTIFICATION OF MAMMOGRAPHY FACILITIES**

#### **R9-7-201. Exemptions**

- A.** Electronic equipment that produces X-radiation incidental to its operation for other purposes is exempt from the registration and notification requirements of this Article, provided that an exposure rate, from any accessible surface, averaged over an area of 10 centimeters squared (1.55 inches squared) does not exceed 5 microsieverts (0.5 milliroentgen) per hour at 5 centimeters (2.0 inches).
- B.** The production, testing, or factory servicing of the electronic equipment in subsection (A) is not exempt from the requirements of this Article.
- C.** Radiation machines in storage or in transit to or from storage are exempt from the requirements of this Article.
- D.** Radiation machines rendered incapable of producing radiation are exempt from the requirements of this Article

#### **R9-7-202. Application for Registration of Ionizing Radiation Producing Machines**

- A.** A person shall not use a radiation machine except as authorized in this Article.
- B.** A person possessing a nonexempt radiation machine shall apply for registration of the machine with the Department within 30 days after its installation. The person applying for registration of a radiation-producing machine shall use the application forms provided by the Department. The applicant shall provide the information identified in Appendix A of this Article.
- C.** In addition to the application form or forms, the applicant shall remit the appropriate registration or licensing fee in R9-7-1306 and provide other information required by R9-7-208.
- D.** Each applicant that applies for registration of a stationary x-ray system, with the exception of applicants from bone densitometry, cabinet radiography, podiatry, dental, bone mineral analyzer and mammography facilities, shall provide a scale drawing of the room in which the x-ray system is located, or provide measurements from the radiation source to the surrounding barrier surfaces. The drawing shall denote the type of materials and the thickness (or lead equivalence) of each barrier of the room (walls, ceilings, floors, doors, windows). The drawing shall also denote the type and frequency of occupancy in adjacent areas, including those above and below the x-ray room of concern (e.g., hallways, offices, parking lots, and lavatories). Estimates of workload shall also be provided with the drawing.
- E.** An applicant proposing to use a particle accelerator for medical purposes shall not use the particle accelerator until the Department inspection required in R9-7-914 has been completed.

#### **R9-7-203. Application for Registration of Servicing and Installation**

- A. Each person who is engaged in the business of installing or offering to install radiation machines shall apply for registration. For purposes of this Chapter, install includes selling and servicing, or offering to sell or service, x-ray machines in Arizona.
- B. The applicant shall complete the application for registration on forms that request information required by A.R.S. § 30-672.01, provided by the Department.

**R9-7-204. Issuance of Notice of Registration**

- A. Upon determining that the application meets the requirements of the Act and this Article, the Department shall issue a Notice of Registration.
- B. All radiation machines located at the same facility may be registered using one Notice of Registration.

**R9-7-205. Expiration of Notice of Registration or Certification**

- A. Except as provided in subsection (B), a Notice of Registration, issued according to R9-7-204, or a certificate issued according to R9-7-208, expires at the end of the day on the expiration date stated in the Notice of Registration or certificate.
- B. If an application for renewal is filed by the registrant or certificate holder not less than 30 days prior to the expiration of the Notice of Registration or certificate, the Notice of Registration or certificate does not expire until a final determination is made by the Department on the renewal application.

**R9-7-206. Assembly, Installation, Removal from Service, and Transfer**

- A. A person who assembles, or installs ionizing radiation machines in this state shall notify the Department in writing within 15 days of:
  - 1. The name and address of the person possessing the machine that was assembled or installed;
  - 2. The manufacturer, model, and serial number of each radiation machine with the tube housing model number and serial number, maximum kVp, and maximum mA, assembled or installed; and
  - 3. The date each machine was assembled or installed, or the first clinical procedure is performed.
- B. Any person who possesses a radiation machine registered by the Department shall notify the Department within 15 days of the machine being taken out of service. The written notification shall contain the name and address of the person receiving the machine, if it is sold, leased, or transferred to another person; the manufacturer, model, and serial number of the machine; and the date the machine was taken out of service.
- C. In the case of diagnostic x-ray systems that contain certified components, an assembler shall, within 15 days following completion of the assembly, submit to the Department a copy of the assembler's report (FDA Report No. 2579) prepared in compliance with requirements in 21 CFR

1020.30(d), revised April 1, 2008, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments. The report shall suffice in lieu of any other report by the assembler, if it contains the information required in subsection (A).

- D. A person shall not make, sell, lease, transfer, lend, assemble, service, or install radiation machines or the supplies used in connection with radiation machines unless the supplies and equipment when properly placed in operation and used, meet the requirements of these rules.

**R9-7-207. Reciprocal Recognition of Out-of-state Radiation Machines**

- A. If any radiation machine is to be brought into the state for temporary use, the person proposing to bring the radiation machine into the state shall provide written notice to the Department at least three working days before the radiation machine is to be used in the state. The notice shall include the type of radiation machine; the nature, duration, and scope of use; and the exact location where the radiation machine is to be used. If, for a specific case, the three working-day period would impose an undue hardship, the person may upon application to the Department, obtain permission to proceed sooner.
- B. In addition, the owner of the radiation machine and the person possessing the machine while in the state shall:
  - 1. Comply with all applicable rules of the Department;
  - 2. Upon request, supply the Department with a copy of the machine's registration and other information regarding the safe operation of the machine while it is in the state; and
  - 3. Upon request, supply the Department with the work authorization from the Department, machine registration, operating and emergency procedures, utilization log, survey instrument and associated calibration record, and training records for all users.
- C. A radiation machine shall not be operated within the state on a temporary basis in excess of 180 calendar days per year.

**R9-7-208. Certification of Mammography Facilities**

An applicant seeking certification of a facility according to A.R.S. § 30-672(J) shall:

- 1. Provide evidence with the application that a quality assurance program has been established and is in use under R9-7-614(B)(1) and (2),
- 2. Provide evidence with the application that physicians reading mammographic images have the training and experience required in A.R.S. § 32-2842, and
- 3. Provide evidence with the application that physicians reading mammographic images have met the minimum criteria established by their respective licensing boards, as required in A.R.S. § 32-2842(C).

**R9-7-209. Notifications**

- A. A registrant shall notify the Department within 30 days of any change to the information contained in the notice of registration or a certificate issued according to R9-7-208.

- B.** A person who possesses a radiation machine registered by the Department shall notify the Department within 15 days if the machine is discarded or transferred to another person. In the notice, the person shall provide the name and address of the person who receives the machine, if it is sold, leased, or transferred to another person; the manufacturer, model, and serial number of the machine; and the date the machine was taken out of service.

**Appendix A. Application Information**

An application shall contain the following information as required in R9-7-202(B), before a registration will be issued. The Department shall provide an application form to an applicant with a guide, if available, or shall assist the applicant to ensure that only correct information is provided on the application.

Name and mailing address of applicant	Use location
Person responsible for radiation safety program	Telephone number
Type of facility	Facility subtype
Legal structure and ownership	Signature of certifying agent
Radiation machine information	Equipment identifiers
Shielding information	Scale drawing, if applicable
Equipment operator instructions and restrictions	Physicist name and training, if applicable
Classification of professional in charge	
Record of calibration for therapy units	Type of request: amendment, new, or renewal
Protection survey results, if applicable	
Type of industrial radiography program, if applicable	

Radiation Safety Officer name, if applicable	Contact person
Other registration requirements listed in Articles 2, 6, 8, 9, and 11	Appropriate fee listed in Article 13 schedule

**Historical Note**

New Article 2, Appendix A recodified from 12

## Statutory Authority for Rules in 9 A.A.C. 7, Article 2

### **30-654. Powers and duties of the department**

A. The department may:

1. Accept grants or other contributions from the federal government or other sources, public or private, to be used by the department to carry out any of the purposes of this chapter.
2. Do all things necessary, within the limitations of this chapter, to carry out the powers and duties of the department.
3. Conduct an information program, including:
  - (a) Providing information on the control and regulation of sources of radiation and related health and safety matters, on request, to members of the legislature, the executive offices, state departments and agencies and county and municipal governments.
  - (b) Providing such published information, audiovisual presentations, exhibits and speakers on the control and regulation of sources of radiation and related health and safety matters to the state's educational system at all educational levels as may be arranged.
  - (c) Furnishing to citizen groups, on request, speakers and such audiovisual presentations or published materials on the control and regulation of sources of radiation and related health and safety matters as may be available.
  - (d) Conducting, sponsoring or cosponsoring and actively participating in the professional meetings, symposia, workshops, forums and other group informational activities concerned with the control and regulation of sources of radiation and related health and safety matters when representation from this state at such meetings is determined to be important by the department.

B. The department shall:

1. Regulate the use, storage and disposal of sources of radiation.
2. Establish procedures for purposes of selecting any proposed permanent disposal site located within this state for low-level radioactive waste.
3. Coordinate with the department of transportation and the corporation commission in regulating the transportation of sources of radiation.
4. Assume primary responsibility for and provide necessary technical assistance to handle any incidents, accidents and emergencies involving radiation or sources of radiation occurring within this state.
5. Adopt rules deemed necessary to administer this chapter in accordance with title 41, chapter 6.
6. Adopt uniform radiation protection and radiation dose standards to be as nearly as possible in conformity with, and in no case inconsistent with, the standards contained in the regulations of the United States nuclear regulatory commission and the standards of the United States public health service. In the adoption of the standards, the department shall consider the total occupational radiation exposure of individuals, including that from sources that are not regulated by the department.
7. Adopt rules for personnel monitoring under the close supervision of technically competent people in order to determine compliance with safety rules adopted under this chapter.
8. Adopt a uniform system of labels, signs and symbols and the posting of the labels, signs and symbols to be affixed to radioactive products, especially those transferred from person to person.
9. By rule, require adequate training and experience of persons utilizing sources of radiation with respect to the hazards of excessive exposure to radiation in order to protect health and safety.
10. Adopt standards for the storage of radioactive material and for security against unauthorized removal.
11. Adopt standards for the disposal of radioactive materials into the air, water and sewers and burial in the soil in accordance with 10 Code of Federal Regulations part 20.

12. Adopt rules that are applicable to the shipment of radioactive materials in conformity with and compatible with those established by the United States nuclear regulatory commission, the department of transportation, the United States treasury department and the United States postal service.

13. In individual cases, impose additional requirements to protect health and safety or grant necessary exemptions that will not jeopardize health or safety, or both.

14. Make recommendations to the governor and furnish such technical advice as required on matters relating to the utilization and regulation of sources of radiation.

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

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

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

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

C. All fees collected under subsection B, paragraph 17 of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

### **30-657. Records**

A. Each person that possesses or uses a source of radiation shall maintain records relating to its receipt, storage, transfer or disposal and such other records as the department requires by rule.

B. The department shall require each person that possesses or uses a source of radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules adopted by the department. Copies of records required by this section shall be submitted to the department on request by the department.

C. Any person that possesses or uses a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of the employee's personal exposure record at such times as prescribed by rules adopted by the department.

D. Any person that possesses or uses a source of radiation, when requested, shall submit to the department copies of records or reports submitted to the United States nuclear regulatory commission regardless of whether the person is subject to regulation by the department. The department, by rule, shall specify the records or reports required to be submitted to the department under this subsection.

### **30-671. Radiation protection standards**

A. Radiation protection standards in rules adopted by the department under this chapter do not limit the kind or amount of radiation that may be intentionally applied to a person or animal for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts.

B. Radiation sources shall be registered, licensed or exempted at the discretion of the department.

### **30-672. Licensing and registration of sources of radiation; exemptions**

A. The department by rule shall provide for general or specific licensing of by-product, source, special nuclear materials or devices or equipment using those materials. The department shall require from the applicant satisfactory evidence that the applicant is using methods and techniques that are demonstrated to be safe and that the applicant is familiar with the rules adopted by the department under section 30-654, subsection B, paragraph 5 relative to uniform radiation standards, total occupational radiation exposure norms, labels, signs and symbols, storage, waste disposal and shipment of radioactive materials. The department may require that, before it issues a license, the employees or other personnel of an applicant who may deal with sources of radiation

receive a course of instruction approved by the department concerning department rules. The department shall require that the applicant's proposed equipment and facilities be adequate to protect health and safety and that the applicant's proposed administrative controls over the use of the sources of radiation requested be adequate to protect health and safety.

B. The department may require registration or licensing of other sources of radiation if deemed necessary to protect public health or safety.

C. The department may exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this section if it finds that exempting such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

D. The director may suspend or revoke, in whole or in part, any license issued under subsection A of this section if the licensee or an officer, agent or employee of the licensee:

1. Violates this chapter or rules of the department adopted pursuant to this chapter.

2. Has been, is or may continue to be in substantial violation of the requirements for licensure of the radiation source and as a result the health or safety of the general public is in immediate danger.

E. If the licensee, or an officer, agent or employee of the licensee, refuses to allow the department or its employees or agents to inspect the licensee's premises, such an action shall be deemed reasonable cause to believe that a substantial violation under subsection D, paragraph 2 of this section exists.

F. A license may not be suspended or revoked under this chapter without affording the licensee notice and an opportunity for a hearing as provided in title 41, chapter 6, article 10.

G. The department shall not require persons who are licensed in this state to practice as a dentist, physician assistant, chiropractor or veterinarian or licensed in this state to practice medicine, surgery, osteopathic medicine, chiropractic or naturopathic medicine to obtain any other license to use a diagnostic x-ray machine, but these persons are governed by their own licensing acts.

H. Persons who are licensed by the federal communications commission with respect to the activities for which they are licensed by that commission are exempt from this chapter.

I. Rules adopted pursuant to this chapter may provide for recognition of other state or federal licenses as the department deems desirable, subject to such registration requirements as the department prescribes.

J. Any licenses issued by the department shall state the nature, use and extent of use of the source of radiation. If at any time after a license is issued the licensee desires any change in the nature, use or extent, the licensee shall seek an amendment or a new license under this section.

K. The department shall prescribe by rule requirements for financial security as a condition for licensure under this article. The department shall deposit all amounts posted, paid or forfeited as financial security in the radiation regulatory and perpetual care fund established by section 30-694.

L. Persons applying for licensure shall provide notice to the city or town where the applicant proposes to operate as part of the application process.

M. Any facility that provides diagnostic or screening mammography examinations by or under the direction of a person who is exempt from further licensure under subsection G of this section shall obtain certification by the department. The department shall prescribe by rule the requirements of certification in order to ensure the accuracy and safety of diagnostic and screening mammography.

### **30-672.01.Registration of persons who install or service radiation machines; exception; roster of registrants**

A. A person who is in the business of installing or servicing radiation machines that are required to be registered by the department shall register with the department on a form provided by the department.

B. Notwithstanding subsection A of this section, a person who is subject to the jurisdiction of the department and who operates a radiation machine is not required to register with the department.

C. The registration form required pursuant to subsection A of this section shall be limited to the following information:

1. The full business name of the registrant.
  2. The names of the owners if the registrant is a corporation or partnership.
  3. The names of employees who carry out installation or service work for the registrant.
  4. The business address of the registrant.
- D. The department shall maintain a roster of all registrants, including the date of initial registration. The roster shall be available for public inspection.
- E. A registrant must reregister with the department if there is a change in the information provided under subsection C of this section.

**30-673. Unlawful acts**

It is unlawful for any person to receive, use, possess, transfer, install or service any source of radiation unless the person is registered, licensed or exempted by the department in accordance with this chapter and rules adopted under this chapter.

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

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to

state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

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

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

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the

inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

- (a) Served at a noncommercial social event such as a potluck.
- (b) Prepared at a cooking school that is conducted in an owner-occupied home.
- (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
- (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
- (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
- (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
- (g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.
- (h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks

and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

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

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

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

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

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

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

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

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

nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

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

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

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

Q. For the purposes of this section, "fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

**DEPARTMENT OF HEALTH SERVICES (F20-0101)**

Title 9, Chapter 24, Department of Health Services - Arizona Medically Underserved  
Area Health Services



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** January 7, 2020

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

**FROM:** Council Staff

**DATE:** December 10, 2019

**SUBJECT: DEPARTMENT OF HEALTH SERVICES (F20-0101)**  
Title 9, Chapter 24, Arizona Medically Underserved Area Health Services

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This Five-Year-Review Report (5YRR) from the Department of Health Services (Department) relates to rules in Title 9, Chapter 24, regarding medically underserved area health services. The rules cover the following articles:

**Article 2 - Arizona Medically Underserved Areas; and  
Article 3 - Coordinating Medial Providers.**

In the previous 5YRR the Department it would revise the rules when any substantive changes were necessary. The Department indicates no substantive changes were needed, therefore no changes were made.

### **Proposed Action**

The Department plans to amend several of its rules to improve their clarity, conciseness, understandability, consistency with other rules and statutes, and effectiveness. DHS plans to submit a Notice of Final Expedited rulemaking to the Council by May 30, 2020.

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

Yes, the Department cites both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department indicates that the rules affect the Department of Health Services, political subdivisions of this state, private physician or dental practices, facilities that provide medical or dental services, consumers, and the general public.

The Department states that the actual economic, small business, and consumer impact of the rules is mostly consistent with the 2006 EIS. Political subdivisions, private physician and dental practices, facilities that provide medical or dental services, consumers and the general public did not incur any direct impact as anticipated. Instead, they may have seen minimal indirect benefits from the rules. The Department, rather than incurring minimal costs as anticipated, incurred no costs.

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 Department believes that the rules are mostly clear, concise, and understandable. Even though the rules contain antiquated language and outdated references, the rules still impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs. The Department states that the benefits of the rules outweigh the costs. The Department plans to address matters identified in this report in an expedited rulemaking in 2020.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department indicates it did not receive any written criticisms.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes, for the reasons mentioned in the report, the Department indicates the following rules need to be amended to improve their clarity, conciseness, understandability, consistency with other rules and statutes and effectiveness:

- **R9-24-201** - Definitions;
- **R9-24-203** - Primary Care Index;
- **R9-24-204** - Primary Care Area Boundaries Determination;
- **R9-24-205** - Time-Frames;
- **R9-24-301** - Definitions;
- **R9-24-302** - CMP Functions; and
- **Table 1**. Primary Care Index Scoring.

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

Yes, the Department indicates the rules are enforced as written.

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

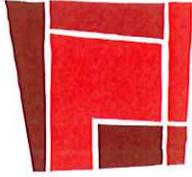
Not applicable. There is no corresponding federal law for these rules.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules do not require a permit or license.

9. **Conclusion**

As mentioned above, and for the reasons mentioned in the report, the Department plans to amend several of its rules by submitting a Notice of Final Expedited Rulemaking to the Council by May 30, 2020. Council staff recommends approval of this report.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

## POLICY & INTERGOVERNMENTAL AFFAIRS

October 28, 2019

**VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)**

Nicole Sornsin, Esq., Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

RE: Department of Health Services, 9 A.A.C. 24, Five-Year-Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 24, Arizona Medically Underserved Area Health Services, which is due on October 31, 2019.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Teresa Koehler at 602-364-0813 or [Teresa.Koehler@azdhs.gov](mailto:Teresa.Koehler@azdhs.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert Lane".

Robert Lane  
Director's Designee

RL:tk

Enclosures

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



ARIZONA DEPARTMENT  
OF HEALTH SERVICES

**Arizona Department of Health Services**

**Five-Year-Review Report**

**Title 9. Health Services**

**Chapter 24. Department of Health Services – Arizona Medically Underserved Area Health Services  
October 2019**

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

Authorizing statutes: A.R.S. § 36-136(G)

Implementing statutes: A.R.S. §§ 36-2352, 36-2353, and 36-2354

**2. The objective of each rule:**

<b>Rule</b>	<b>Objective</b>
R9-24-201	The objective of the rule is to define terms used in Article 2 to enable readers to understand clearly the requirements in the Article and to allow for consistent interpretation.
R9-24-202	The objective of the rule is to provide a statement of how the Department will designate Arizona medically underserved areas.
R9-24-203	The objective of the rule is to establish the criterion and criterion values and scoring measures used to determine whether a primary care area determined under R9-24-204 qualifies as an Arizona medically underserved areas. The rules also established annual review and reporting requirements of the Arizona medically underserved areas.
Table 1.	The objective of the table is to present a matrix showing each criterion used by the Department in designating primary care areas as an Arizona medically underserved areas, the value ranges within each criterion, and the points attached to each value within a criterion.
R9-24-204	The objective of the rule is to establish the Department’s requirements for determining the boundaries of primary care areas in the state and for processing a primary care boundary change request.
R9-24-205	The objective of the rule is to establish the Department’s time-frame for a primary care area boundary change request.
R9-24-301	The objective of the rule is to define terms used in Article 3 to enable readers to understand clearly the requirements in the Article and to allow for consistent interpretation.
R9-24-302	The objective of the rule is to establish the functions of a coordinating medical provider.

**3. Are the rules effective in achieving their objectives?**

Yes  No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
	The rules are effective; however as identified in paragraphs 4 and 6 of this five-year-review report, the rules could be improved to make clearer and increase understandability of the rules by simplifying and clarifying some requirements; updating antiquated language and outdated definitions and references, and making minor technical and grammatical changes.

4. **Are the rules consistent with other rules and statutes?** Yes \_\_\_ No  \_\_\_

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R9-24-201	The rule would be consistent with A.R.S. § 28-101, if definition (23) “motor vehicle” were changed to “vehicle” since “motor vehicle” is not defined in A.R.S. § 28-101.
R9-24-203	The rule would be consistent with A.R.S. § 36-2352(B) if in subsections (A) and (C), AzMUA designations were changed to “every two years” and if in subsection (D), “annual” were changed to “biennial.”

5. **Are the rules enforced as written?** Yes  \_\_\_ No \_\_\_

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency’s proposal for resolving the issue.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes  \_\_\_ No \_\_\_

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
R9-24-201	The rule would be clearer and more understandable if definition (23) “motor vehicle” were changed to “vehicle” since “motor vehicle” is not defined in A.R.S. § 28-101. In addition, references in definitions (3), (8), (28), and (29) are outdated and would be clearer if updated or deleted. For example, in definition (8) the reference to

	<p><a href="http://www.cdc.gov/nchs/fastats/lifexpec.htm">http://www.cdc.gov/nchs/fastats/lifexpec.htm</a> is incorrect. The updated reference for “life expectancy” is <a href="http://www.cdc.gov/nchs/fastats/life-expectancy.htm">http://www.cdc.gov/nchs/fastats/life-expectancy.htm</a>. Definition (33) should be revised since the data for physician assistants and registered nurse practitioners is difficult to obtain and not current. Additionally, the definition for “primary care physicians” would be more accurate if the definition clarified physicians who are family practitioners, general practitioners, pediatricians, general internists, or obstetrician or gynecologists. If revised, the Department plans to collect data from a federal source that is current, provided in a timely matter, and at no cost to the Department. Also, definitions in R9-24-201(12), (18), and (43) are antiquated and should be deleted. The Department plans to amend the rules through expedited rulemaking and after amending R9-24-205, Time-frames, new definitions will be added for “administrative completeness review time-frame,” “calendar days,” “substantive review time-frame,” and “working days” to make the rules clear, concise, and understandable.</p>
R9-24-203	<p>The rule would be clearer if, in subsection (B), the requirements were simplified and updated. For example, in subsection (B)(1)(a), “the Arizona State board of Nursing, and the Arizona Regulatory Board of Physician Assistants;” should be removed since only physician primary care provider data is collected. In subsections (B)(1)(b) through (c)(i) – (iv), the requirement to report a full-time employee’s time worked, whether full-time or adjusted, could be simplified by removing math steps on how to determine less than full-time hours worked. Subsection (B)(2) and (B)(4) have outdated references to “Population Estimate for Arizona Counties, Incorporated Places and Balance of Country” that reflect populations of cities and towns. Subsections (B)(2) and (B)(4) should be updated to reference current “American Community Survey” provided by the United States Census Bureau (<a href="https://www.census.gov/programs-surveys/acs">https://www.census.gov/programs-surveys/acs</a>). This source provides accurate census tract populations. Also, since requirements in subsection (B)(3) are outdated and duplicative of requirements in subsections (B)(2) and (4), subsection (B)(3) should be deleted except subsections (B)(3)(a)(ii) and (iii) should be moved to subsection (B)(12). Subsection (B)(5) is redundant with subsection (B)(4) and should be deleted. Subsections (B)(7) and (10) are antiquated and should be removed. Other outdated subsections include (B)(6) and (12); these should be changed to update antiquated language and to remove references to “Population Estimate for Arizona Counties, Incorporated Places and Balance of Country.” In subsection (B)(13), the primary care index should clarify criteria for populations who are younger than age 14, are disabled, and speak a language other than English. Additionally, subsections (B)(13)(a) and (b) should be removed since primary care providers are captured in subsection (B)(1)(a); and subsection (B)(13)(c) should be removed since it is redundant with subsection (B)(1). After amending subsection (B) and Table 1, the Department expects that subsection (A)(2)(a), the score of “more than 55 points,” could change; and if so, the Department plans to change subsection (A)(2)(a) accordingly. Subsection (D) contains a</p>

	reference to “ <a href="http://www.azdhs.gov/hsd">http://www.azdhs.gov/hsd</a> ” that is updated. Lastly, as stated in paragraph 4, the rule would be consistent with A.R.S. § 36-2352(B) if in subsections (A) and (C) AzMUA designations were changed to “every two years” and if in subsection (D), “annual” were changed to “biennial.”
Table 1.	The rule would be clearer if the “Table 1” title were consistent with the current formatting standard and changed to “Table 2.1.” In addition, the table will need to be changed accordingly to ensure that the primary care index scoring (criteria, values range, and points) is consistent with changes made in R9-24-203(B).
R9-24-204	The rule would be more understandable if the term “census tract” were used in rule instead of “census block.” The U.S. Census Bureau groups census blocks into block groups that are grouped into census tracts. The U.S. Census Bureau uses census tracts to provide a stable set of geographic units for the presentation of statistical data. The requirement in subsection (B)(2) should be removed since primary care HPSA boundaries are redundant and are included in geographic areas identified in the most recent decennial census specified in subsection (A)(1). Subsection (C) should be simplified by removing “Without receiving a primary care area boundary change request under subsection (D),” and subsection (D)(1)(c) should be changed to “biennial” to be consistent with other rules and statutes.
R9-24-205	The rule is understandable; however, it would be clearer if the time-frame requirements were simplified and consistent with other rules. For example, the rule should clarify that “The overall time-frame begins, for an initial license approval, on the date the Department receives an application packet.” In addition, the time-frame durations for administrative completeness review, substantive review, and overall time-frame specified in rule should be moved to a new time-frames table, Table 2.2.
R9-24-301	The rule is clear, concise, and understandable. However, because Arizona statutes and administrative code requires continuing education for physicians, physician assistants, and registered nurse practitioners be complete prior to licensure renewal and is verified by a health care provider’s professional board, definitions (2) and (3) could be simplified by using the term “continuing education” to include both medical and nursing continuing education. Simplifying the term would still allow a coordinating medical provider to make continuing education recommendations as specified in R9-24-302(A)(6).
R9-24-302	The rule is clear, concise, and understandable. However, the requirement in subsection (A)(6) could be simplified by using the term “continuing education” as reported in Section R9-24-301.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes \_\_\_ No √

*If yes, please fill out the table below:*

Commenter	Comment	Agency's Response

8. **Economic, small business, and consumer impact comparison:**

The rules for Arizona Medically Underserved Areas Health Services were last amended through a Notice of Final Rulemaking at 12 A.A.R. 3048, effective September 30, 2006; and, as required by state statutes, the Department completed an economic, small business, and consumer impact statement (EIS).

The 2006 rule changes include consolidating Article 1, Definitions and Time-frames, with Article 2. In R9-24-201, definitions from R9-24-101 were added or deleted and other existing definitions in R9-24-201 were deleted or updated. Technical changes were made in R9-24-202. The requirements in R9-24-203 were changed to reflect the the following: current AzMUA designation process; added a requirement to prepare a primary care index every 12 months; simplified the criteria related to the primary care index in subsection (B); and updated registered nurse practitioner and other professional board references. The Department moved requirements for boundaries designation-determination to R9-24-204 and updated existing rules to specify that the Department may, without a boundary change request, re-determine the boundaries of one or more primary care areas to ensure maximum medical service coverage. Technical changes were also made to some requirements in R9-24-204 and new R9-23-205, previously R9-24-102, to improve understandability of the rules. In Article 3, the Department added new definitions related to coordinating medical providers and in R9-24-302, changed or added requirements to clarify responsibilities provided by a coordinating medical provider. The Rulemaking simplified and improved the rules in 9 A.A.C. 24.

The 2006 EIS cited statutory authority for 9 A.A.C. 24 medically underserved areas health services (AzMUAs) rules and summarized the changes made to the rules in the 2006 Notice of Final Rulemaking. The Department identified affected persons as political subdivisions of the state, private physicians or dental practices, facilities that provide medical or dental services, consumers and the general public, and the Department. Annual costs or revenues were considered “minimal” if less than \$1,000; “moderate” if between \$1,000 and \$10,000; and “substantial” if more the \$10,000.

The Department in the 2006 EIS anticipated that it, as a directly affected person of the Article 2 rules, would not incur additional economic impact, except for minimal impact for revised requirements related to a primary care area (PCA) boundary change request time-frames. The Department believed that the changes made to the Article 3 rules for coordinating medical providers would not have any economic impact since no medical clinic located in an AzMUA had ever contracted with a coordinating medical provider.

In addition, the 2006 EIS' impact analysis stated that political subdivisions were not expected to have a direct cost-benefit impact due to 9 A.A.C. 24, Article 3 rules, since no medical clinic had contracted with a coordinating medical provider. The Article 2 rules, however, were believed to have an indirect benefit for political subdivisions with an AzMUA designation for attracting health care providers seeking loan repayment program funding and increasing health services provided in the community. Likewise, businesses (physician and dental practices and medical and dental facilities) were not expected to have a direct cost-benefit impact due to Article 3 rules, but would have an indirect benefit due to Article 2 rules. The 2006 EIS' probable impacts on public and private employment and businesses are similar and consistent with the cost-benefit analysis having indirect impact for attracting primary care providers seeking loan repayment program funding in rural areas having an AzMUAs designation.

Other affected persons (consumers and general public) are those who are determined to be in an AzMUA and those who receive health services in an AzMUA that otherwise would not be available. The Department stated in the 2006 EIS that only the Article 2 rules were expected to have "an indirect impact on stakeholders and members of the public." The Department reported not receiving any PCA boundary change requests and expected the amended PCA boundary change request process established in rule to have no economic impact. Lastly, since no AzMUA had ever had a coordinating medical provider, Article 3 was believed to have had no economic impact.

The Department in its 2018 AzMUAs Report designated 88 AzMUAs. In the 2016 AzMUAs Report, the Department had designated 98 AzMUAs. The Department believes that the change in the number of AzMUAs is a result of the increase in Arizona's population, application of the 2014-updated methodology used to delineate primary care areas, and aligning Primary Care Health Professional Shortage Areas (HPSAs) with updated Primary Care Area boundaries. Arizona has a shortage of primary care physicians, ranking 42nd in the country at 77.9 primary care physicians per 100,000 population (compared to 90.8 per 100,000 nationally). To address these workforce shortages, the Department administers state and federal workforce recruitment and retention programs. One such program, the Arizona State Loan Repayment Program (SLRP), utilizes AzMUAs as an eligibility criteria. There are currently 142 providers serving in SLRP at 291 practice sites in underserved areas of Arizona.

The Department's assessment of the actual economic, small business, and consumer impact of the rules is mostly consistent with the 2006 EIS. The EIS reported that the Department would be directly affected by the new rules in Article 2 and would incur minimal costs associated with the boundary change request time-frames. The new Article 3 rules were not expected to have any impact since the Department had not been asked nor assisted a county, city or town, or health service district to recruit a coordinating medical provider. The Department has assessed that the new Article 2 rules did not impact the Department as expected; and rather than incur minimal costs, the Department incurred no costs since the Department has not received a boundary change request. However, the Department did experience the expected impact for the new Article 3 rules. The Department, to date, has not assisted a county, city or town, or health service district recruit a coordinating medical provider. The new Article 3 rules have had no impact on the Department.

Lastly, since no medical clinic had contracted with a coordinating medical provider, affected persons (political subdivisions, private physician or dental practices, facilities that provide medical or dental services, and consumers and the public) were not expected to incur an impact from the new Article 3 rules. The Department solicited information from Arizona health service districts and established that the health service districts have not contracted with a coordinating medical provider. The Department agrees that the above-mentioned affected persons were not impacted by the new Article 3 rules. Political subdivisions, private physician or dental practices, facilities that provide medical or dental services, and consumers and the public were expected to have a minimal indirect benefit from the new Article 2 rules for attracting primary care providers seeking loan repayment program funding in a rural area (AzMUAs). The Department agrees that the expected indirect benefit may have existed, however, in 2014 the number of AzMUAs decreased from 98 to 88. The Department estimates that the actual indirect benefit to be nominal. Except as indicated, the Department's assessment of the actual economic, small business, and consumer impact of the rules is mostly consistent with the 2006 EIS.

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?**

*Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

In the 2014 Five-year-review Report, the Department stated that it would continue to hold the same course of action as in the 2009 Five-year-review Report and would revise the rules when a substantive change necessitates. In the 2009 Five-year-review Report, the Department stated that it did not intend to review the rules and would revise the rules the next time the Department needs to make a substantive change to the rules.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The 2006 EIS indicated that annual costs or revenues were considered "minimal" if less than \$1,000; "moderate" if between \$1,000 and \$10,000; and "substantial" if more the \$10,000. The Department for cost or revenue designations adds "significant" when meaningful or important but not readily subject to quantification.

The Department, based on its assessment of the rules provided in paragraph 8, believes that the rules provide a significant benefit to political subdivisions for having rules that determine PCA boundaries and establish criterion, criterion values, and scoring measure that are used to determine whether a PCA is located in a AzMUA. If a political subdivision is located within an AzMUA, the Department, physician or dental practices, facilities that provide medical or dental services, and consumers and the public may receive a significant benefit. The Department benefits by providing AzMUAs designations that attract health service providers, participating in the

loan repayment program, to physician or dental practices and facilities providing medical or dental services. Having these additional health service providers increases medical and dental services for consumers living in those areas. The Department and the public benefit significantly from providing or receiving, respectively, health services that increase the health of Arizonians.

Political subdivisions benefit from having AzMUAs that create employment opportunities to health service providers relocating for employment at physician or dental practices and facilities. In addition, having more health service providers in the area will increase benefits for consumers who will not only have other medical and dental care options but may also experience an increase in the quality of medical and dental services received. Physician or dental practices and facilities that provide medical or dental services will benefit from increased revenues received from providing additional medical and dental services. Increased revenues may also come from consumers seeking medical or dental services locally rather than traveling out-of-the-area for their health care needs. The Department believes that the rules are mostly clear, concise, and understandable, and even though the rules contain antiquated language and outdated references as indicated in this five-year-review report, the rules still impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs. The Department has determined that the benefits of the rules outweigh the costs of the rules.

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No

*Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?*

The rules in Article 2 and Article 3 govern the designation of Arizona medically underserved areas and coordinating medical providers and are not related to federal laws.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the 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 were adopted before July 29, 2010 and do not require the issuance of regulatory permit, license, or agency authorization.

14. **Proposed course of action**

The Department plans to amend the rules in 9 A.A.C. 24 to address matters identified in this five-year-review report in an expedited rulemaking. The Department plans to submit a Notice of Final Expedited Rulemaking to the Council by May 30, 2020.

# ATTACHMENT 1

## TITLE 9. HEALTH SERVICES

### CHAPTER 24. DEPARTMENT OF HEALTH SERVICES

#### ARIZONA MEDICALLY UNDERSERVED AREA HEALTH SERVICES

#### ARTICLE 2. ARIZONA MEDICALLY UNDERSERVED AREAS

##### **R9-24-201. Definitions**

In addition to the definitions in A.R.S. § 36-2351, the following definitions apply in this Article, unless otherwise specified:

1. “Act, event, or default” means an occurrence or the failure of something to occur.
2. “Agency” has the same meaning as in A.R.S. § 41-1001.
3. “Ambulatory care sensitive conditions” means the illnesses listed in the first table of Appendix B (entitled “Ambulatory Care Sensitive Conditions”) to “Using Administrative Data to Monitor Access, Identify Disparities, and Assess Performance of the Safety Net,” in *Tools for Monitoring the Health Care Safety Net*, AHRQ Publication No. 03-0027, September 2003, Agency for Healthcare Research and Quality, Rockville, MD, and available on the web site of the Agency for Healthcare Research and Quality, U.S. Department of Health and Human Services, at <http://www.ahrq.gov/data/safetynet/billappb.htm>.
4. “Arizona Medical Board” means the agency established by A.R.S. § 32-1402 to regulate physicians licensed under A.R.S. Title 32, Chapter 13.
5. “Arizona medically underserved area” means:
  - a. A primary care area or part of a primary care area with the designation described in R9-24-202(1), or
  - b. A primary care area with the designation described in R9-24-202(2).
6. “Arizona Regulatory Board of Physician Assistants” means the agency established by A.R.S. § 32-2502 to regulate physician assistants.
7. “Arizona State Board of Nursing” means the agency established by A.R.S. § 32-1602 to regulate nurses and nursing assistants.
8. “Birth life expectancy” means the average life span at the time of birth according to the most recent U.S. life expectancy data in the National Vital Statistics Reports of the National Vital Statistics System, available on the web site of the National Center for Health Statistics, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, at <http://www.cdc.gov/nchs/fastats/lifexpec.htm>.
9. “Board of Osteopathic Examiners in Medicine and Surgery” means the agency established by A.R.S. § 32-1801 to regulate physicians licensed under A.R.S. Title 32, Chapter 17.
10. “Boundary change” means a re-determination of the geographic limits of a primary care area.
11. “Census block” means a geographic unit that is:
  - a. The smallest unit of census geography established by the U.S. Census Bureau, and

- b. One of approximately 8 million similar units covering the entire nation.
12. “Day” means calendar day:
    - a. Excluding the day of the act, event, or default that triggers the running of a time-frame;
    - b. Excluding the last day of a time-frame if it is a Saturday, Sunday, or legal holiday; and
    - c. If the last day of a time-frame is excluded under subsection (12)(b), including the next day that is not a Saturday, Sunday, or legal holiday.
  13. “Family unit” means:
    - a. Two or more individuals related by birth, marriage, or adoption who live at the same residence; or
    - b. One individual who does not live at the same residence with anyone related by birth, marriage, or adoption.
  14. “First health care contact” means the initial telephone call or visit to a health care provider as defined in 45 CFR 160.103 for an individual’s health issue.
  15. “Full-time” means providing primary care services for at least 40 hours between a Sunday at 12:00 midnight and the next Sunday at 12:00 midnight.
  16. “Health organization” means:
    - a. A person or entity that provides medical services;
    - b. A third party payor defined in A.R.S. § 36-125.07(C); or
    - c. A trade or professional association described in 501(c)(3), (4), (5), or (6) of the Internal Revenue Code, 26 U.S.C. 501(c), that is exempt from federal income taxes.
  17. “Indian reservation” has the same meaning as in A.R.S. § 11-801.
  18. “Legal holiday” means a state service holiday listed in A.A.C. R2-5-402.
  19. “Local planning personnel” means individuals who develop programs related to the delivery of and access to medical services for places or areas:
    - a. Under the jurisdiction of an Arizona city or county, or
    - b. In an Arizona Indian reservation or less than 50 miles outside the boundaries of an Indian reservation.
  20. “Low-weight birth” means the live birth of an infant weighing less than 2500 grams or 5 pounds, 8 ounces.
  21. “Medical services” has the same meaning as in A.R.S. § 36-401.
  22. “Mobility limitation” means an individual’s physical or mental condition that:
    - a. Has lasted for at least six months,
    - b. Impairs the individual’s ability to go outside the individual’s residence alone, and
    - c. Is not a temporary health problem such as a broken bone that is expected to heal normally.
  23. “Motor vehicle” has the same meaning as in A.R.S. § 28-101.
  24. “Nonresidential” means not primarily used for living and sleeping.
  25. “Person” has the same meaning as in A.R.S. § 41-1001.
  26. “Physician assistant” has the same meaning as in A.R.S. § 32-2501.

27. "Political subdivision" means a county, city, town, district, association, or authority created by state law.
28. "Population" means the number of residents of a place or an area, according to:
  - a. The most recent decennial census prepared by the U.S. Census Bureau and available at <http://www.census.gov>; or
  - b. The most recent Population Estimates for Arizona's Counties, Incorporated Places and Balance of County prepared by the Department of Economic Security and available at <http://www.workforce.az.gov/?PAGED=67&SUBID=137>.
29. "Poverty threshold" means calendar year income relative to family unit size that:
  - a. Determines an individual's poverty status,
  - b. Is defined annually by the U.S. Census Bureau, and
  - c. Is available for the most recently completed calendar year at <http://www.census.gov/hhes/poverty/threshld.html>.
30. "Primary care area" means a geographic region determined by the Department under R9-24-204.
31. "Primary care HPSA" means primary care health professional shortage area designated by the U.S. Department of Health and Human Services under 42 U.S.C. 254e, 42 CFR 5.1 through 5.4, and 42 CFR Part 5, Appendix A.
32. "Primary care index" means the document in which the Department designates primary care areas as medically underserved according to R9-24-203 and Table 1.
33. "Primary care provider" means a physician, physician assistant, or registered nurse practitioner who:
  - a. Except for emergencies, is an individual's first health care contact; and
  - b. Provides primary care services in general or family practice, general internal medicine, pediatrics, or obstetrics and gynecology.
34. "Primary care services" means health care provided by a primary care provider, including:
  - a. Illness and injury prevention,
  - b. Health promotion and education,
  - c. Identification of individuals at special risk for illness,
  - d. Early detection of illness,
  - e. Treatment of illness and injury, and
  - f. Referral to specialists.
35. "Primary care services utilization pattern" means a distribution of the use of primary care services resulting from the factors listed in R9-24-204(A)(3)(a).
36. "Registered nurse practitioner" has the same meaning as in A.R.S. § 32-1601.
37. "Residence" means a structure or part of a structure where an individual lives and sleeps.
38. "Resident" means an individual who lives and sleeps in a place or an area more than one-half of the time.
39. "Residential" means primarily used for living and sleeping.

40. “Self-care limitation” means an individual’s physical or mental condition that:
  - a. Has lasted for at least six months;
  - b. Impairs the individual’s ability to perform activities such as dressing, bathing, or moving around inside the individual’s residence; and
  - c. Is not a temporary health problem such as a broken bone that is expected to heal normally.
41. “Specialist” means an individual who:
  - a. Is regulated under:
    - i. A.R.S. Title 32, Chapters 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 25, 28, 29, 33, 34, 35, 39, or 41;
    - ii. A.R.S. Title 36, Chapter 6, Article 7; or
    - iii. A.R.S. Title 36, Chapter 17; and
  - b. Meets the education, knowledge, and skill requirements generally recognized in the profession related to a specific service or procedure, patient category, body part or system, or type of disease.
42. “Street route” means a course of travel by road.
43. “Temporary” means lasting for a limited time.
44. “Topography” means the surface configuration of a place or region, including elevations and positions of the physical features.
45. “Travel pattern” means a prevalent flow of motor vehicles resulting from:
  - a. The configuration of streets, and
  - b. The location of residential and nonresidential areas.
46. “Value” means a number within a value range.
47. “Value range” means, for a criterion listed in R9-24-203(B) and Table 1, a measurement:
  - a. Consisting of a scale between upper and lower limits, except for the supplementary criteria score under R9-24-203(B)(12); and
  - b. To which Table 1 assigns points or 0 points.
48. “Work disability” means an individual’s physical or mental condition that:
  - a. Has lasted for at least six months,
  - b. Limits the individual’s choice of jobs or prevents the individual from working for more than 34 hours per week, and
  - c. Is not a temporary health problem such as a broken bone that is expected to heal normally.

**Historical Note**

Adopted effective July 27, 1978 (Supp. 78-4). R9-24-201 recodified from R9-24-121 (Supp. 95-2). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1). Amended by final rulemaking at 12 A.A.R. 3048, effective September 30, 2006 (Supp. 06-3).

### **R9-24-202. Arizona Medically Underserved Area Designation**

The Department shall designate as Arizona medically underserved areas:

1. The primary care areas or parts of primary care areas designated as primary care HPSAs by the U.S. Department of Health and Human Services, and
2. The primary care areas designated as medically underserved by the Department under R9-24-203 and Table 1.

### **R9-24-203. Primary Care Index**

**A.** Every 12 months, the Department shall prepare, according to this Section, a primary care index for designating primary care areas determined under R9-24-204 as Arizona medically underserved areas.

1. For each primary care area determined under R9-24-204, the Department shall calculate the value for each criterion in subsection (B).
  - a. After calculating the value for each criterion in subsection (B), the Department shall assign points to each value according to Table 1.
  - b. A primary care area's score is the sum of the points received by the primary care area for each criterion in subsection (B).
2. The Department shall designate as Arizona medically underserved:
  - a. The primary care areas that, according to subsection (B) and Table 1, score within the top 25 percent on the primary care index or that obtain more than 55 points, whichever results in the designation of more Arizona medically underserved areas; and
  - b. The primary care areas or parts of primary care areas with the designation described in R9-24-202(1).

**B.** For each primary care area determined by the Department under R9-24-204, the primary care index shall include a score for each of the following:

1. Population-to-primary-care-provider ratio, determined by dividing the population of the primary care area by the number of primary care providers in the primary care area:
  - a. Using primary care provider data from the Arizona Medical Board, the Board of Osteopathic Examiners in Medicine and Surgery, the Arizona State Board of Nursing, and the Arizona Regulatory Board of Physician Assistants;
  - b. Counting a full-time physician as 1.0, a full-time physician assistant as 0.8, and a full-time registered nurse practitioner as 0.8; and
  - c. If the Department determines that a physician, physician assistant, or registered nurse practitioner practices less than full-time in the primary care area, lowering the number obtained under subsection (B)(1)(b) as follows:

- i. Creating a fraction with a numerator that represents the number of hours per week the physician, physician assistant, or registered nurse practitioner practices in the primary care area and with a denominator of 40;
  - ii. Multiplying 1.0 or 0.8, whichever is appropriate, by the fraction obtained under subsection (B)(1)(c)(i);
  - iii. Subtracting the result obtained under subsection (B)(1)(c)(ii) from 1.0 or 0.8, whichever is appropriate; and
  - iv. Subtracting the result obtained under subsection (B)(1)(c)(iii) from the number obtained under subsection (B)(1)(b);
2. Travel distance to the nearest primary care provider, determined by:
  - a. Estimating the distance in miles:
    - i. From the center of the most densely populated area in the primary care area determined from the most recent Population Estimates for Arizona's Counties, Incorporated Places and Balance of County identified in R9-24-201(28)(b) or, for the year in which the most recent decennial census is published, from the most recent decennial census prepared by the U.S. Census Bureau; and
    - ii. To the nearest primary care provider determined from the data described in subsection (B)(1)(a); and
  - b. Using the most direct street route;
3. Composite transportation score, determined by:
  - a. Compiling data on the following six indicators from the most recent decennial census prepared by the U.S. Census Bureau:
    - i. Percentage of population with calendar year income less than 100 percent of the poverty threshold;
    - ii. Percentage of population older than age 65;
    - iii. Percentage of population younger than age 14;
    - iv. Percentage of population with a work disability, mobility limitation, or self-care limitation;
    - v. Percentage of population without a motor vehicle; and
    - vi. The motor-vehicle-to-population ratio;
  - b. Calculating the statewide average value for each of the six indicators in subsection (B)(3)(a);
  - c. Dividing the value of each indicator for each primary care area by the statewide average value for that indicator;
  - d. Multiplying the figure calculated under subsection (B)(3)(c) for each indicator by 100; and
  - e. Averaging the six indicator values obtained under subsection (B)(3)(d) for each primary care area;
4. Percentage of population with calendar year income less than 200% of the poverty threshold, determined from data in the most recent decennial census prepared by the U.S. Census Bureau;
5. Percentage of population with annual income between 100% and 200% of the poverty threshold, determined from data in the most recent decennial census prepared by the U.S. Census Bureau;

6. Percentage of uninsured births, determined from Department birth records reporting payment source as “self-pay” or “unknown;”
7. Ambulatory care sensitive condition hospital admissions:
  - a. Based on the number of hospital admissions for ambulatory care sensitive conditions per 1000 individuals living in the primary care area who are under age 65, and
  - b. Determined from hospital inpatient and emergency department services data provided by the Department;
8. Percentage of low-weight births, determined from data provided by the Department;
9. From data provided by the Department, the sum of the percentage of births for which the mothers reported:
  - a. No prenatal care,
  - b. Prenatal care that began in the second or third trimester, and
  - c. Four or fewer prenatal care visits;
10. Percentage of deaths at ages younger than the birth life expectancy, determined from the most recent U.S. life expectancy data and data provided by the Department;
11. Number of infant deaths per 1000 live births, determined from data provided by the Department;
12. Supplementary criteria score, based on the presence or absence in a primary care area of the following:
  - a. Percentage of minority population greater than the statewide average for all counties, determined from data in the most recent Population Estimates for Arizona’s Counties, Incorporated Places and Balance of County identified in R9-24-201(28)(b) and from data in the most recent decennial census;
  - b. Percentage of elderly population greater than the statewide average for all counties, determined from data in the most recent Population Estimates for Arizona’s Counties, Incorporated Places and Balance of County identified in R9-24-201(28)(b) and from data in the most recent decennial census prepared by the U.S. Census Bureau; and
  - c. Average annual unemployment rate greater than the average annual statewide rate, from data in the most recent Arizona Unemployment Statistics Program Special Unemployment Report, prepared by the Arizona Department of Economic Security; Research Administration, in cooperation with the U.S. Department of Labor, Bureau of Labor Statistics, and available at <http://www.workforce.az.gov>; and
13. Sole provider or no provider score:
  - a. Based on whether a primary care area has only 1.0 or less than 1.0 primary care provider;
  - b. Counting a full-time physician as 1.0, a full-time physician assistant as 0.8, and a full-time registered nurse practitioner as 0.8; and
  - c. If the Department determines that a physician, physician assistant, or registered nurse practitioner practices less than full-time in the primary care area, lowering the number obtained under subsection (B)(13)(b) as follows:

- i. Creating a fraction with a numerator that represents the number of hours per week the physician, physician assistant, or registered nurse practitioner practices in the primary care area and with a denominator of 40;
- ii. Multiplying 1.0 or 0.8, whichever is appropriate, by the fraction obtained under subsection (B)(13)(c)(i);
- iii. Subtracting the result obtained under subsection (B)(13)(c)(ii) from 1.0 or 0.8, whichever is appropriate; and
- iv. Subtracting the result obtained under subsection (B)(13)(c)(iii) from the number obtained under subsection (B)(13)(b).

C. Every 12 months, according to subsections (A) and (B) and Table 1, the Department shall:

1. Withdraw an Arizona medically underserved area designation,
2. Continue an Arizona medically underserved area designation, or
3. Designate a new Arizona medically underserved area.

D. A list of current Arizona medically underserved areas is available in the Department’s annual Arizona Medically Underserved Areas (AzMUA) Report at <http://www.azdhs.gov/hsd/>.

**Table 1. Primary Care Index Scoring**

CRITERIA	VALUE RANGE	POINTS
Population-to-primary-care-provider ratio	≤ 2000:1	0
	2001:1 to 2500:1	2
	2501:1 to 3000:1	4
	3001:1 to 3500:1	6
	3501:1 to 4000:1	8
	> 4000:1 or no provider	10
Travel distance to nearest primary care provider	≤ 15.0 miles	0
	15.1-25.0 miles	2
	25.1-35.0 miles	4
	35.1-45.0 miles	6
	45.1-55.0 miles	8
	> 55.0 miles	10
Composite transportation score	51st highest score and below	0
	41st-50th highest scores	2
	31st-40th highest scores	4
	21st-30th highest scores	6
	11th-20th highest scores	8
	10 highest scores	10
Percentage of population with annual income less than 200% of poverty threshold	≤ 15.0%	0
	15.1-25.0%	2
	25.1-35.0%	4
	35.1-45.0%	6
	45.1-55.0%	8
	>55.0%	10

Percentage of population with annual income between 100% and 200% of poverty threshold	≤ 10.0%	0
	10.1-15.0%	2
	15.1-20.0%	4
	20.1-25.0%	6
	25.1-30.0%	8
	> 30.0%	10
Percentage of uninsured births	≤ 6.0%	0
	6.1-10.0%	2
	10.1-14.0%	4
	14.1-18.0%	6
	18.1-22.0%	8
	>22.0%	10
Ambulatory care sensitive condition hospital admissions	≤ 8.0	0
	8.1-12.0	2
	12.1-16.0	4
	16.1-20.0	6
	20.1-24.0	8
	> 24.0	10
Percentage of low-weight births	≤ 6.0%	0
	6.1-8.0%	2
	8.1-10.0%	4
	10.1-12.0%	6
	12.1-14.0%	8
	>14.0%	10
Sum of the percentage of births with: a. No prenatal care, b. Prenatal care begun in second or third trimester, and c. Prenatal care visits ≤ 4	≤ 15.0%	0
	15.1-25.0%	2
	25.1-35.0%	4
	35.1-45.0%	6
	45.1-55.0%	8
	>55.0%	10
Percentage of deaths at ages younger than birth life expectancy	≤ 40.0%	0
	40.1-50.0%	2
	50.1-60.0%	4
	60.1-70.0%	6
	70.1-80.0%	8
	>80.0%	10
Number of infant deaths per 1000 live births	≤ 4.0	0
	4.1-6.0	2
	6.1-8.0	4
	8.1-10.0	6
	10.1-12.0	8
	>12.0	10
Supplementary criteria score	1 Criterion	2
	2 Criteria	4
	3 Criteria	6
Sole provider or no provider score	Primary care provider ≤ 1.0	5
	Primary care providers > 1.0	0
Key to Symbols ≤ represents "less than or equal to" > represents "more than"		

**Historical Note**

New Table adopted by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1). Amended by final rulemaking at 12 A.A.R. 3048, effective September 30, 2006 (Supp. 06-3).

#### **R9-24-204. Primary Care Area Boundaries Determination**

- A.** The Department shall determine the boundaries of primary care areas for the entire state. A primary care area's boundaries shall meet the following requirements:
1. The geographic area within the boundaries corresponds to or is larger than a census block identified for the geographic area in the most recent decennial census;
  2. The boundaries are consistent with the population's primary care services utilization patterns; and
  3. The primary care utilization patterns are determined by considering:
    - a. The geographic area's:
      - i. Topography,
      - ii. Social and cultural relationships of the people living within the geographic area,
      - iii. Political subdivision boundaries, and
      - iv. Travel patterns; and
    - b. Data about the type, amount, and location of primary care services used by the geographic area's population, obtained from local planning personnel, government officials, health organizations, primary care providers, and residents of the geographic area.
- B.** In addition to the requirements for primary care area boundaries in subsection (A), the Department shall consider:
1. Indian reservation boundaries, and
  2. Primary care HPSA boundaries.
- C.** Without receiving a primary care area boundary change request under subsection (D), the Department may redetermine the boundaries of one or more primary care areas according to the requirements and considerations in subsections (A) and (B).
- D.** A primary care area's local planning personnel, government officials, health organizations, primary care providers, or residents may submit to the Department a primary care area boundary change request.
1. A person requesting a boundary change shall:
    - a. Make the request in writing,
    - b. Include documentation supporting the boundary change, and
    - c. Submit the request by October 1 to be considered for inclusion in the next calendar year's Arizona medically underserved area designation process.
  2. The Department shall review a primary care area boundary change request according to the time-frames in R9-24-205.

#### **R9-24-205. Time-frames**

- A.** The overall time-frame described in A.R.S. § 41-1072 for a primary care area boundary change request under R9-24-204(C) is 90 days.

1. A person requesting a boundary change and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
  2. An extension of the substantive review time-frame and the overall time-frame may not exceed 25 percent of the overall time-frame.
- B.** The administrative completeness review time-frame described in A.R.S. § 41-1072 for a primary care area boundary change request under R9-24-204(C) is 30 days and begins on the date the Department receives a boundary change request.
1. Within the administrative completeness review time-frame, the Department shall mail a notice of administrative completeness or a notice of deficiencies to the person requesting a boundary change.
    - a. A notice of deficiencies shall list each deficiency and the information or documents needed to complete the boundary change request.
    - b. A notice of deficiencies suspends the administrative completeness review time-frame and the overall time-frame from the date the Department mails the notice until the date the Department receives the missing information or documents.
    - c. If the person requesting a boundary change does not submit to the Department all the information and documents listed in the notice of deficiencies within 60 days after the date the Department mails the notice of deficiencies, the Department considers the boundary change request withdrawn.
  2. If the Department approves a boundary change request during the administrative completeness review time-frame, the Department does not issue a separate written notice of administrative completeness.
- C.** The substantive review time-frame described in A.R.S. § 41-1072 for a primary care area boundary change request under R9-24-204(C) is 60 days and begins on the date the Department mails the notice of administrative completeness.
1. Within the substantive review time-frame, the Department shall mail written notification of approval or denial of the boundary change request to the person requesting a boundary change.
  2. During the substantive review time-frame:
    - a. The Department may make one comprehensive written request for additional information; and
    - b. If the Department and the person requesting a boundary change agree in writing to allow one or more supplemental requests for information, the Department may make the number of supplemental requests for information agreed to.
  3. A comprehensive written request for additional information or a supplemental request for information suspends the substantive review time-frame and the overall time-frame from the date the Department mails the request until the date the Department receives all the information and documents requested.
  4. If the person requesting a boundary change does not submit to the Department all the information and documents listed in a comprehensive written request for additional information or a supplemental request for

information within 60 days after the date the Department mails the request, the Department shall deny the boundary change request.

- D.** The Department shall approve a primary care area boundary change request under R9-24-204(C) unless:
1. The requested boundaries do not meet the requirements in R9-24-204(A),
  2. The considerations required in R9-24-204(B) support the current boundaries and outweigh the information and documents submitted with the boundary change request, or
  3. The person requesting the boundary change does not submit information and documents as stated in subsection (B)(1)(c) or subsection (C)(4).

### **ARTICLE 3. COORDINATING MEDICAL PROVIDERS**

#### **R9-24-301. Definitions**

In addition to the definitions in A.R.S. § 36-2351 and 9 A.A.C. 24, Article 2, the following definitions apply in this Article, unless otherwise specified:

1. “CMP” means coordinating medical provider.
2. “Continuing medical education” means instruction that meets the requirements in:
  - a. A.A.C. R4-16-102 for a physician licensed under A.R.S. Title 32, Chapter 13;
  - b. A.A.C. R4-17-205 for a physician assistant licensed under A.R.S. Title 32, Chapter 25; and
  - c. A.R.S. § 32-1825 and A.A.C. R4-22-109 for a physician licensed under A.R.S. Title 32, Chapter 17.
3. “Continuing nursing education” means instruction that:
  - a. Is required by A.A.C. R4-19-511 for authorization from the Arizona State Board of Nursing for a registered nurse practitioner to prescribe and dispense drugs and devices;
  - b. Meets requirements for continuing education established by a nurse credentialing organization, such as the American Nurses Credentialing Center; or
  - c. Provides training related to the performance of a nurse’s job duties.
4. “Drug prescription services” means providing medication that requires an order by medical personnel authorized by law to order the medication.
5. “Durable medical equipment” means an item that:
  - a. Can withstand repeated use;
  - b. Is designed to serve a medical purpose; and
  - c. Generally is not useful to an individual in the absence of a medical condition, illness, or injury.
6. “Governing authority” has the same meaning as in A.R.S. § 36-401.
7. “Independent decision” means a registered nurse practitioner’s action without a physician’s order according to A.A.C. R4-19-508 and A.A.C. R4-19-511.

8. “Medical direction” means guidance, advice, or consultation provided by a CMP to a registered nurse practitioner.
9. “Medical personnel” means a medical clinic’s physicians, physician assistants, registered nurse practitioners, and nurses.
10. “Nurse” means an individual licensed as a graduate, professional, or registered nurse or as a practical nurse under A.R.S. Title 32, Chapter 15.
11. “Order” means a written directive.
12. “Practice requirements” means the standards for physicians established in:
  - a. A.R.S. Title 32, Chapter 13 and 4 A.A.C. 16; or
  - b. A.R.S. Title 32, Chapter 17 and 4 A.A.C. 22.
13. “Referral source” means a person who sends an individual to a third person for medical services.
14. “Social services” means assistance, other than medical services, provided to maintain or improve an individual’s physical, mental, and social participation capabilities.
15. “Supervision” has the same meaning as in A.R.S. § 32-2501.
16. “Support services” means drug prescription services, social services, and provision of durable medical equipment.
17. “Work schedule coverage” means a medical clinic’s system for ensuring that a sufficient number of medical personnel are present at the medical clinic.
18. “Written protocol” means an agreement that identifies and is signed by a CMP and a registered nurse practitioner or a physician assistant.

### **R9-24-302. CMP Functions**

#### **A. A CMP shall:**

1. Participate in planning for the delivery of medical services and support services within the Arizona medically underserved area that includes ways to increase access to medical services and support services for the Arizona medically underserved area’s residents;
2. Develop written protocols that:
  - a. Describe the manner and frequency that a registered nurse practitioner or a physician assistant at a medical clinic will communicate with the CMP, in addition to the face-to-face meeting required in subsection (A)(5);
  - b. Specify the criteria used by a registered nurse practitioner at the medical clinic in making an independent decision to refer an individual to a physician; and
  - c. Specify procedures to be followed by a physician assistant at the medical clinic when the CMP’s supervision of the physician assistant is by a means other than physical presence;

3. Approve or disapprove the selection of registered nurse practitioners and physician assistants who will work at the medical clinic;
  4. Provide:
    - a. Medical direction to the registered nurse practitioners at the medical clinic, and analysis
    - b. Supervision to the physician assistants at the medical clinic;
  5. At least weekly, conduct a face-to-face meeting with each registered nurse practitioner and each physician assistant at the medical clinic to evaluate the medical services provided by the registered nurse practitioner or physician assistant;
  6. For continuing medical education or continuing nursing education of a medical clinic's medical personnel:
    - a. Recommend specific areas of instruction, including instruction in referral sources; and
    - b. Develop a written plan for work schedule coverage to accommodate continuing medical education or continuing nursing education; and
  7. At least annually, meet with the medical clinic's governing authority to evaluate the medical clinic's program and the medical care provided by the medical clinic's medical personnel.
- B.** The requirements in subsection (A) do not replace the practice requirements applicable to a CMP.

**Historical Note**

New Section renumbered from R9-24-301 and amended by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1). Amended by final rulemaking at 12 A.A.R. 3048, effective September 30, 2006 (Supp. 06-3).

## ATTACHMENT 2

36-136. Powers and duties of director: compensation of personnel

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.
2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

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

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

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.
2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.
3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.
4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving

and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

- (a) Served at a noncommercial social event such as a potluck.
- (b) Prepared at a cooking school that is conducted in an owner-occupied home.
- (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
- (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
- (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
- (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
- (g) 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.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-

causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules

adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

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

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

13. Establish an online registry of food preparers that are authorized to prepare 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. 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.

### **36-2351. Definitions**

In this chapter, unless the context otherwise requires:

1. "Construction" means building, erection, fabrication or installation.
2. "Coordinating medical provider" means a physician or group of physicians, or any combination thereof, which has entered into an agreement with a county, incorporated city or town, health service district or the department to supervise the medical care offered at a medical clinic, as defined by this section.
3. "Department" means the department of health services.
4. "Health service district" means a health service district established pursuant to title 48, chapter 16, article 1.
5. "Hospital" means a health care institution licensed as a hospital pursuant to chapter 4, article 2 of this title.
6. "Medical clinic" means a facility, whether mobile or stationary, which provides ambulatory medical care in a medically-underserved area through the employment of physicians, professional nurses, physician assistants or other health care technical and paraprofessional personnel.
7. "Physician" means a physician licensed pursuant to title 32, chapter 13 or 17.

### **36-2352. Designation of medically-underserved areas**

A. The department shall designate areas of medical need in this state as medically-underserved if either:

1. The area is designated as a health professional shortage area as defined in 42 Code of Federal Regulations part 5.

2. The area is designated as medically underserved by the department of health services by using an index that measures the following indicators:
  - (a) The availability of services based on a population to primary care provider ratio.
  - (b) The area's geographic accessibility to health care services.
  - (c) The percentage of the area's population that is at or below a designated federal poverty level.
  - (d) The health needs of the area as determined by factors which may include the incidence of infant mortality, low weight births and inadequate prenatal care.
  - (e) Other factors indicative of medically underserved areas which may include unemployment and the presence of farm workers, minorities and the elderly.
- B. The department of health services shall submit a report to the president of the senate and the speaker of the house of representatives beginning October 1, 1996 and every two years thereafter that reevaluates the criteria, effectiveness and recommendations for changes, if necessary, to the index. The report shall also include a summary of the communities designated as medically underserved and a listing of the programs they were able to utilize based on the medically underserved designation.

#### **36-2353. Medically-underserved areas; selection of coordinating medical providers**

- A. For each area designated as medically-underserved, the department may assist counties, incorporated cities and towns or health service districts to recruit a coordinating medical provider. Selection of a coordinating medical provider shall be based upon such provider's proximity to the medically-underserved area and the ability and willingness of such provider to fulfill the requirements established pursuant to section 36-2354.
- B. If no coordinating medical provider is located in or near the medically-underserved area, the university of Arizona may agree to serve as the coordinating medical provider for the area.

#### **36-2354. Coordinating medical provider; duties**

A coordinating medical provider for a medically-underserved area shall perform certain functions as determined by the department in order to ensure the provision of adequate medical care by the medical clinic. These functions may include:

1. Diagnostic services through a communications system between the clinic and the coordinating medical provider.
2. Overall direction of medical care offered at the clinic or facility, including a periodic evaluation of the quality of such care.
3. Drug prescription services.
4. Communication services to facilitate patient treatment during emergency transit to the clinic or a hospital.

**DEPARTMENT OF HEALTH SERVICES (F20-0102)**

Title 9, Chapter 7, Article 17, Wireline Service Operations and Subsurface Tracer Studies



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** January 7, 2020

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

**FROM:** Council Staff

**DATE:** December 10, 2019

**SUBJECT: DEPARTMENT OF HEALTH SERVICES**  
Title 9, Chapter 7, Article 17 - Wireline Service Operations and Subsurface Tracer Studies

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This Five-Year-Review Report (5YRR) from the Department of Health Services (Department) relates to rules in Title 9, Chapter 7, Article 17 regarding wireline service operations and subsurface tracer studies.

In the previous 5YRR for these rules, the Department indicated it did not plan to amend any of the rules unless there was a change to the federal requirements. The Department did not amend the rules because there were not any changes to the federal requirements.

### **Proposed Action**

The Department indicates it plans to review the rules in the entire Chapter after completing 5YRRs on all Articles, the last being due in December 2021. Therefore, in December 2021 or shortly thereafter, the Department will decide whether a rulemaking is necessary and if so, establish a time-frame to complete the rulemaking.

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

Yes, the Department cites both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The last time any of the rules in Article 17 were revised was in a 2009 rulemaking that removed passive language without changing the substance of the rules. The Department indicates that there may have been a minimal benefit from increased clarity and that any economic impact was as estimated. Stakeholders include the Department and entities that perform wireline service operations and subsurface tracer studies.

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 Department believes that the probable benefits of the rules outweigh the probable costs. The Department believes that the substantive content of the rules are the minimum necessary to protect health and safety.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department indicates it did not receive any written criticisms of these rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes, for the reasons mentioned in the report, the Department indicates that several of the rules are not clear, concise, understandable, consistent with other rules and statutes, and effective.

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

Yes, the Department indicates the rules are enforced as written.

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

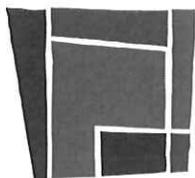
No, the Department indicates that the rules are not more stringent than the corresponding federal regulation, 10 CFR 39.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable, the rules do not require a permit or license.

**9. Conclusion**

As mentioned above, the Department indicates that it plans to review the rules in the entire Chapter after completing 5YRRs on all Articles in the Chapter, the last being due December 2021. In December 2021, or shortly thereafter, the Department will evaluate the entire Chapter and determine whether a rulemaking is necessary. The Department indicates that the rules in Article 17 must comply with an Agreement with the federal Nuclear Regulatory Commission, and must discuss any possible changes with the NRC before initiating a rulemaking. Council staff recommends approval of this report.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

## POLICY & INTERGOVERNMENTAL AFFAIRS

October 16, 2019

**VIA EMAIL:** [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Nicole Sornsin, Esq., Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

RE: Department of Health Services, 9 A.A.C. 7, Article 17, Five-Year-Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 7, Article 17, Wireline Service Operations and Subsurface Tracer Studies, which is due on October 31, 2019.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Ruthann Smejkal at [Ruthann.Smejkal@azdhs.gov](mailto:Ruthann.Smejkal@azdhs.gov) or 602-364-1230.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Lane', written over a circular scribble.

Robert Lane  
Director's Designee

RL:rms

Enclosures

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

150 North 18th Avenue, Suite 500, Phoenix, AZ 85007-3247    P | 602-542-1025    F | 602-542-1062    W | [azhealth.gov](http://azhealth.gov)

*Health and Wellness for all Arizonans*



**Arizona Department of Health Services  
Five-Year-Review Report  
Title 9. Health Services  
Chapter 7. Department of Health Services  
Radiation Control**

**Article 17. Wireline Service Operations and Subsurface Tracer Studies  
October 2019**

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

General Statutory Authority: A.R.S. §§ 30-654(B)(5) and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 30-654, 30-657, 30-672, and 30-673

**2. The objective of each rule:**

Rule	Objective
R9-7-1701	To define terms used in the Article so that a reader can consistently interpret requirements.
R9-7-1702	To specify the requirements for identifying the party responsible for recovery, monitoring, decontamination, and abandonment procedures related to lost or disconnected well logging sources of radioactivity.
R9-7-1703	To establish the transport, use, and storage requirements of source material in well logging.
R9-7-1712	To specify the requirements for storing or transporting a source of radiation used in well logging.
R9-7-1713	To require that transport containers are physically secured in a transporting vehicle.
R9-7-1714	To require the presence of calibrated and operable radiation survey instruments at every field station and temporary job site, including the sensitivity and calibration parameters.
R9-7-1715	To establish requirements for performing leak testing on sealed sources used by a licensee, including the method and frequency of testing, the removal of leaking sources from service, and the maintenance of records.  To specify what sealed sources are exempt from testing requirements.

R9-7-1716	To specify requirements for conducting a physical inventory of all licensed material, including the frequency of inventory, content of records, and maintenance of records.
R9-7-1717	To specify requirements for records of use, including the content of the records and length of retention.
R9-7-1718	To specify the design and performance criteria for a sealed source used in well logging operations.
R9-7-1719	To specify labeling requirements for sources, source holders, logging tools, and transport containers to indicate the presence or possible presence of radioactivity.
R9-7-1720	To establish requirements for inspection of equipment used for well logging before use and according to a program for semiannual inspection and routing maintenance. To require that equipment found to have a defect is removed from service until repaired and that a record is made and maintained. To specify restrictions on opening, repair, modification, or tampering with a sealed source.
R9-7-1721	To establish the qualifications and training requirements of a logging supervisor and logging assistant to ensure safe well logging operations. To require annual safety training reviews and maintenance of training records.
R9-7-1722	To require the development of operating and emergency procedures and specify the subject matter to be covered to protect health and safety.
R9-7-1723	To establish requirements for the monitoring of radiation exposure by personnel and for related actions to protect health and safety.
R9-7-1724	To specify requirements for radioactive contamination control to protect health and safety.
R9-7-1725	To establish requirements for use of a uranium sinker bar in well logging to ensure health and safety.
R9-7-1726	To establish requirements for use of an energy compensation source in well logging to ensure health and safety.
R9-7-1727	To establish requirements for use of a neutron generator source in well logging to ensure health and safety.
R9-7-1728	To establish requirements for use of a sealed source in a well without surface casing to ensure health and safety.
R9-7-1731	To specify requirements to ensure the security of areas in which licensed material is being used to protect health and safety.
R9-7-1732	To describe requirements for the use of tools for remote handling of sealed sources.
R9-7-1733	To establish requirements for subsurface tracer studies to ensure health and safety.
R9-7-1734	To establish requirements for use of a sealed source in a well without surface casing to protect a freshwater aquifer to ensure health and safety. To establish requirements for use of a particle accelerator to ensure health and safety.
R9-7-1741	To establish requirements for performing radiation surveys, including the method of testing and the content and maintenance of records.
R9-7-1742	To specify the document required to be maintained at a field station.
R9-7-1743	To specify the document required to be maintained at a temporary job site.

R9-7-1751	To specify the notification requirements for incidents, lost sources, or abandoned sources.
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3. **Are the rules effective in achieving their objectives?** Yes  No

*If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.*

Rule	Explanation

4. **Are the rules consistent with other rules and statutes?** Yes  No

*If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.*

Rule	Explanation

5. **Are the rules enforced as written?** Yes  No

*If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.*

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes  No

*If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.*

Rule	Explanation
Multiple	The rules would be clearer if minor grammatical or formatting changes were made. In addition, Arizona is required by the Agreement negotiated between Arizona and the U.S. Atomic Energy Commission (now the U.S. Nuclear Regulatory Commission (NRC)) in 1967 to be consistent with requirements of the NRC. To comply with the Agreement some requirements in this Article must be identical to federal requirements, regardless whether the language is clear or not.

R9-7-1701	The rule would be clearer if the term “tritium neutron generator tube” were defined.
R9-7-1702	The rule would be clearer if the exception in subsection (D) were included as a lead-in subsection (A). Subsection (A)(4) would be clearer if it cited to R9-7-1724. Subsection (A)(5) would be more understandable if it cited to A.A.C. R12-7-126 and R12-7-127, referenced a description of how the Department classifies a source as irretrievable, and specified the event initiating the “within 30 days.” Subsection (A)(5)(c)(ii) would be clearer and more concise if this exception for the radiation symbol, in addition to source of radiation subjected to high-temperature, were included in R9-7-428(B), and if the rule were cited to in the subsection. Subsection (A)(5)(d) would be clearer if it cited to the applicable requirements in A.A.C. Title 12, Chapter 7, Article 1 and Title 12, Chapter 15, Article 8. Subsection (B) would be clearer if it contained the cross-reference to subsection (A). Subsection (C) would be clear if it specified how a licensee may apply for approval of an alternate manner to abandon an irretrievable well logging source.
R9-7-1703, R9-7-1712, and R9-7-1713	The rules would be improved if the titles of R9-7-1703 and R9-7-1712 or their contents were revised to address an apparent inconsistency. Transport requirements in the three rules might also be better grouped together. The rule would also be improved if the requirements in subsections (C) and (D) were combined. However, R9-7-1703 is compatibility category B, meaning it must be word-for-word with federal requirements.
R9-7-1716	The rule would be clearer if the content of the inventory record were in a list, rather than included in a long sentence.
R9-7-1718	The rule would be improved if subsection (A) were clarified to state that a licensee “may use a sealed source ... if” or “shall use a sealed source ... that ...”. The rule would also be improved if the requirements in subsections (C) and (D) were combined. However, the rule is compatibility category B, meaning it must be word-for-word with federal requirements.
R9-7-1719	Subsection (B) would be clearer if it cited to requirements in R9-7-428(A).
R9-7-1720	The rule would be clearer if subsections (A) and (B) were reformatted so they were not as long with multiple sentences. The rule may also be improved if requirements in subsections (C) and (E) were combined.
R9-7-1721	The rule would be clearer if subsections (A)(4) and (B)(3) specified what is “successful completion of a written/oral test and if the person giving the written test were specified. Subsection (B)(4) could also be improved if it required a logging assistant to demonstrate competence as well as receive instruction. However, the rule is compatibility category B, meaning it must be word-for-word with federal requirements.
R9-7-1722	Subsection (5) could be improved if it cited to R9-7-1731. Subsection (6) could be improved if it cited to 9 A.A.C. 7, Article 15 or to 49 CFR 171 to 173. Subsection (9) would be improved if uranium sinker bars were listed in the rule, consistent with R9-7-1720(B). The rule would also be improved if it contained a requirement for the operating and emergency procedures to be maintained for at least three years past termination, as in other Sections of the Chapter.
R9-7-1722, R9-7-1726, R9-7-1727, R9-7-1728, and R9-7-1734	The rule would be clearer if the term “surface casing” were defined.

R9-7-1723	Subsection (A) would be clearer if it stated “unless that individual wears ...” rather than “unless that person wears ...”. Subsection (B) would be improved if it were clearer whether the requirement is for the licensee to ensure that each individual wears the assigned equipment or whether it is a requirement on the individual to wear the assigned equipment. The rule would also be improved by citing to limits of exposure.
R9-7-1726	Subsection (B) would be improved if the citation to R9-7-1728 were removed since this rule is inherently not applicable because it specifies requirements for use of a sealed source in a well without a surface casing. Subsection (C) could be improved if it required all “applicable” requirements to be followed.
R9-7-1727	Subsection (C) could be improved if it required all “applicable” requirements to be followed.
R9-7-1728 and R9-7-1734	The rule would be improved if requirements in R9-7-1728 and R9-7-1734 were combined in one Section.
R9-7-1733	Subsection (A) would be improved by removing passive language and specifying who must take precautions.
R9-7-1734	Subsection (A) would be improved if the “correct procedure” were clarified. The requirements for particle accelerators, specified in subsection (C), should be in its own Section.
R9-7-1741	Subsection (A) would be improved if the rule specified that a radiation survey should be performed where radioactive material is used, as well as where it is stored, and that the instruments used must meet the requirements in R9-7-1714. Subsection (B) would be improved if the term “occupied positions” were described. Subsection (E) would be clearer if the content of the record of survey were in a list, rather than included in a long sentence.
R9-7-1742	The rule would be improved if the agreement required in R9-7-1702 were included in a list.
R9-7-1743	Subsection (4) would be clearer if it included a citation to applicable documentation requirements for shipping radioactive materials.
R9-7-1751	The rule would be improved if it did not imply that the licensee is making the effort to recover the sealed source or implementing abandonment procedures, since, according to the agreement required according to R9-7-1702, the well owner may be the responsible party. Subsection (A)(2) would be clearer if it stated “under R9-7-1702(A) or (C)” since R9-7-1702(C) refers to an abandonment procedure not authorized in R9-7-1702(A)(5), so the two would be mutually exclusive. Subsection (A)(3) would be clearer if the time frame for making the request were specified. Subsection (C) would be clearer if the three situations requiring notification were listed, with the appropriate cross-reference. Subsection (D) would be clearer if reformatted to better delineate the content and person receiving the report in the same sentence.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes \_\_\_ No \_\_\_

*If yes, please fill out the table below:*

Rule	Explanation
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8. **Economic, small business, and consumer impact comparison:**

Pursuant to Laws 2017, Ch. 313, and Laws 2018, Ch. 234, the Department succeeded to the authority, powers, duties, and responsibilities of the Arizona Radiation Regulatory Agency for the regulation of radioactive materials and those persons using them. The rules in Article 17 were recodified in 2018 from 12 A.A.C. 1 to 9 A.A.C. 7, and the current codification is used when describing the economic impact of the rules, even though the rulemakings were in 12 A.A.C. 1. These rules were first adopted in 1990, with revisions made and Sections added in four other rulemakings over the ensuing years. No economic impact statements (EISs) are available to the Department for the original rulemaking or two of the subsequent rulemakings, so the economic impact of the Sections made/revised in the three rulemakings was assessed from information in the Notice of Final Rulemaking for the rulemaking, including review of the changes made. If a rule included in a rulemaking was further revised in a subsequent rulemaking, the impact of the rule is considered in the description of the subsequent rulemaking.

Currently, the Department specifically licenses only one entity that uses the rules in Article 17. An additional three to five entities operate according to these rules under reciprocity. These entities provide services to companies in the oil and gas industries, which use wireline logging to obtain a continuous record of the properties of a rock formation.

The one Section that was made in 1990 and has not been revised in a subsequent rulemaking is R9-7-1732. This rule requires tools to be used when handling higher energy radioactive materials. The cost to the regulated community from this rule would be the purchase and maintenance of these tools. This cost was estimated to be less than the economic impact arising from the damage to the health of an individual handling such a sealed source without tools. The Department believes the economic impact is as estimated.

In a rulemaking effective in 2003, R9-7-1703, R9-7-1712, R9-7-1714, R9-7-1717, R9-7-1719, R9-7-1722, R9-7-1731, R9-7-1733, R9-7-1734, and R9-7-1741 were last revised. No EIS is available for this rulemaking. Except for changes to R9-7-1734 to include requirements for use of a sealed source in a well without a surface casing, all changes made as part of the rulemaking were identified in a five-year-review report of the

rules and clarify and improve the rules. Thus, they were believed to impose no costs and provide a benefit to stakeholders. The requirements added to R9-7-1734 had previously been required as conditions of use in a license, so the economic impact of this change was estimated to be minimal. The Department believes the economic impact is as estimated.

In the first of two rulemakings effective in 2004, nine other rules were newly made and one extensively revised to be consistent with federal requirements to comply with the Agreement. These include defining new technologies; adding radioactive contamination safeguards; including requirements for uranium sinker bars, energy compensation sources, neutron generator sources, and use of sealed sources in a well without surface casing; and adding standards for lost and abandoned sources. An EIS is available for this rulemaking. For most of these changes, little, if any, economic impact was predicted. The EIS stated that no licensees in Arizona were performing well logging activities affected by the new requirements for uranium sinker bars, energy compensation sources, neutron generator sources, and use of sealed sources in a well without surface casing, the addition of which was thought to have no current economic impact. However, an economic effect was thought to possibly occur in the future because these requirements if conditions/procedures changed. In addition, the costs associated with decontamination and clean-up that may result from not complying with the requirements were stated as being much greater than costs of compliance. Since these rules were adopted, there have been no changes in conditions/procedures related to requirements for uranium sinker bars, energy compensation sources, neutron generator sources, and use of sealed sources in a well without surface casing that have an economic effect, so the Department believes the economic impact is as estimated.

The second rulemaking in 2004 included R9-7-1716, R9-7-1720, R9-7-1721, R9-7-1723, R9-7-1742, and R9-7-1743. No EIS is available for this rulemaking. These rules were revised to include NRC standards required in 10 CFR 39 and were believed to not result in any increased cost to any affected party. The Department believes the economic impact is as estimated.

The last time any of the rules in Article 17 was revised was in a 2009 rulemaking that affected only one rule, R9-7-1713, and for which an EIS is available. This rule was revised to remove passive language without changing the substance of the rule. Therefore, the rulemaking may have had a very minimal benefit from increased clarity,

but no other economic impact was identified. The Department believes the economic impact is as estimated.

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?**

*Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

The 2014 five-year-review report stated that the Arizona Radiation Regulatory Agency had no plans to amend the rules in Article 17 unless there was a change to federal requirements that would necessitate revision of the rules for continued compliance with the Agreement. Since then, no change in federal requirements has necessitated a change in the requirements in Article 17, so the course of action has been followed.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department believes that probable benefits of the rule outweigh the probable costs of the rule. The Department also believes that the substantive content of the rules are the minimum necessary to meet requirements of the Agreement and protect health and safety. Other issues identified in this report may impose a minor regulatory burden.

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No \_\_\_

*Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?*

10 CFR 39

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 in Article 17 provide standards and limits for wireline service operations and

subsurface tracer studies but do not include the issuance of a license or permit.

**14. Proposed course of action**

*If possible, please identify a month and year by which the agency plans to complete the course of action.*

The minor items and possible changes described in paragraph 6 are not substantive. As discussed with the Council on the occasion of another 5YRR, it does not make sense in most cases, and is certainly not effective or efficient, to try to revise the Articles in Chapter 7 piecemeal. The Department plans to evaluate the entire Chapter, after finishing reviews of all the Articles in the Chapter, to determine whether a rulemaking is necessary and, if so, to establish a time-frame to complete the rulemaking. According to the Department's current schedule, the last five-year report for the Chapter is due in December 2021. Based on the reviews of those Articles that have been completed, the Chapter may need to be extensively revised. In addition, for many of the Sections in the Article, the rules must conform to NRC requirements, so it is much more feasible for this to occur during one encompassing rulemaking of the entire Chapter in which the NRC will be involved.

## **ARTICLE 17. WIRELINE SERVICE OPERATIONS AND SUBSURFACE TRACER STUDIES**

### **R9-7-1701. Definitions**

“Energy compensation source (ECS)” means a small sealed source, with activity that does not exceed 3.7 Mbq (100 microcuries), contained within a logging tool or other tool component.

“Tritium neutron generator target source” means a tritium source contained within a tritium neutron generator tube that produces neutrons for use in well logging applications.

### **R9-7-1702. Agreement with Well Owner or Operator**

**A.** A licensee that performs wireline service (well logging) with a sealed source shall enter into a written agreement with the employing well owner or operator that identifies the party responsible for complying with each of the following requirements. The responsible party shall:

1. Make a reasonable effort to recover any sealed source that may be lodged in the well;
2. Not attempt to recover a sealed source in a manner which, in the licensee’s opinion, is likely to result in its rupture;
3. Perform the radiation monitoring required in R9-7-1723(A);
4. Decontaminate anyone or anything contaminated with licensed material before releasing personnel or equipment from the site or releasing the site for unrestricted use; and
5. If a source is classified by the Department as irretrievable after reasonable efforts at recovery, implement the following requirements within 30 days:
  - a. Immobilize the irretrievable well logging source and seal it in place with a cement plug;
  - b. Provide a means to prevent inadvertent intrusion that could damage the source, unless the site is rendered inaccessible to subsequent drilling operations; and
  - c. Mount a permanent identification plaque, constructed of long-lasting material, such as stainless steel, brass, bronze, or Monel, in a conspicuous location adjacent to the well. The responsible party shall ensure that the plaque size is at least 17 cm (7 inches) square and 3 mm (1/8 inch) thick and the following information is written on the plaque:
    - i. The word “CAUTION,”
    - ii. The radiation symbol (the color requirement in R9-7-428(A) does not apply),
    - iii. The date the source was abandoned,
    - iv. The name of the well owner or operator that employed the licensee;

- v. The well name and identification number or other designation,
  - vi. An identification of each source by radionuclide and quantity of radionuclide,
  - vii. The depth of the source and depth to the top of the plug, and
  - viii. The following warning, "DO NOT RE-ENTER THIS WELL," and
  - d. Notify the Oil and Gas Conservation Commission, Department of Water Resources, or Department of Environmental Quality of the abandoned source, as required by law.
- B.** A licensee shall maintain a copy of the agreement at the field station during logging operations. The licensee shall retain a copy of the written agreement for three years after completion of the well logging operation.
  - C.** A licensee may apply in accordance with A.R.S. § 30-654(B)(13) for Department approval, on a case-by-case basis, of proposed procedures to abandon an irretrievable well logging source in a manner not otherwise authorized in subsection (A)(5).
  - D.** A written agreement between the licensee and the well owner or operator is not required if the licensee and the well owner or operator are employed by the same corporation or other business entity. If so, the licensee shall comply with the requirements in subsections (A)(1) through (A)(5).

**R9-7-1703. Limits on Levels of Radiation**

A person in possession of any source of radiation shall transport the source according to 9 A.A.C. 7, Article 15, and use or store the source in a manner that is consistent with the dose limits in 9 A.A.C. 7, Article 4.

**R9-7-1712. Storage Precautions**

- A.** A person storing or transporting a source of radiation shall place the source in an approved storage container, transport container, or both. The container or combination of containers shall have a lock, or tamper-proof seal for calibration sources, to prevent unauthorized removal of the source and exposure to radiation.
- B.** A person storing or transporting a source of radiation shall store the source in a manner that will minimize danger from explosion or fire.

**R9-7-1713. Transportation Precautions**

Each licensee shall ensure that transport containers are physically secured in the transporting vehicle to prevent accidental movement, loss, tampering, or unauthorized removal.

**R9-7-1714. Radiation Survey Instruments**

- A.** A licensee shall maintain at each field station and temporary job site a calibrated and operable radiation survey instrument capable of detecting beta and gamma radiation. The licensee

shall ensure that the radiation survey instrument is capable of measuring 1.0 microsievert (0.1 millirem) per hour through 500 microsievert (50 millirem) per hour.

- B. A licensee shall ensure that additional calibrated and operable radiation detection instruments are available as needed and that the instruments are sensitive enough to detect the low radiation and contamination levels that could be encountered if a sealed source is ruptured.
- C. A licensee shall ensure that the radiation survey instrument required in subsection (A) is calibrated
  - 1. At intervals not to exceed six months and after each instrument servicing;
  - 2. At energies comparable to the energies of the radiation sources used;
  - 3. For linear scale instruments, at two points located approximately 1/3 and 2/3 of fullscale on each scale or for logarithmic scale instruments, at midrange of each decade, and at two points of at least one decade; and
  - 4. So that accuracy within plus or minus 20 percent of the true radiation level can be demonstrated on each scale.
- D. A licensee shall retain calibration records for a period of three years from the date of calibration.

#### **R9-7-1715. Leak Testing of Sealed Sources**

- A. A licensee that uses a sealed source shall ensure that the source is tested for leakage according to subsection (C). The licensee shall maintain a record of leak test results in units of Becquerels (Bq) or microcuries, for inspection by the Department for three years after the leak test is performed.
- B. A person authorized under R9-7-417(C) shall wipe a sealed source using a leak test kit or a similar method approved by the Department, the NRC, or another Agreement State. The authorized person shall take the wipe sample from the nearest accessible point to the sealed source where contamination might accumulate, and ensure the wipe sample is analyzed for radioactive contamination. The authorized person shall use a method of analysis capable of detecting the presence of 185 Bq (0.005 microcuries) of radioactive material on the test sample.
- C. Test frequency.
  - 1. A licensee shall ensure that each sealed source (except an energy compensation source (ECS)) is tested in accordance with R9-7-417. In the absence of a certificate from a transferor that a test has been performed within six months before transfer, a licensee shall not use the sealed source until it is tested.
  - 2. A licensee shall ensure that each ECS that is not exempt from testing under subsection (E) is tested at intervals that do not exceed three years. In the absence of a certificate from a transferor that a test has been performed within three years before transfer, a licensee shall not use the ECS until it is tested.

**D. Removal of leaking source from service.**

1. If a test conducted according to this Section reveals the presence of 185 Bq (0.005 microcuries) or more of removable radioactive material, a licensee shall remove the sealed source from service immediately and have it decontaminated, repaired, or disposed of by a Department, a NRC, or an Agreement State licensee that is authorized to perform these functions. The licensee shall check the equipment associated with the leaking source for radioactive contamination and, if the equipment is contaminated, have it decontaminated or disposed of by a Department, a NRC, or an Agreement State licensee that is authorized to perform the chosen function.
2. A licensee shall submit a report to the Department, within five days of receiving positive test results. The report shall describe the equipment involved in the leak, the test results, any contamination that resulted from the leaking source, and each corrective action taken up to the date on the report.

**E. The following sealed sources are exempt from the periodic leak test requirements in subsections (A) through (D):**

1. Hydrogen-3 (tritium) sources;
2. Sources that contain licensed material with a half-life of 30 days or less;
3. Sealed sources that contain licensed material in gaseous form;
4. Sources of beta- or gamma-emitting radioactive material with an activity of 3.7 MBq [100 microcuries] or less; and
5. Sources of alpha- or neutron-emitting radioactive material with an activity of 0.37 MBq [10 microcuries] or less.

**R9-7-1716. Inventory**

A licensee shall conduct a physical inventory every six months to account for all licensed material received and possessed under the license. The licensee shall maintain records of the inventory for three years from the date of the inventory for inspection by the Department. The inventory shall indicate the quantity and kind of licensed material, the location of the licensed material, the date of the inventory, and the name of each individual who conducted the inventory. Physical inventory records may be combined with leak test records.

**R9-7-1717. Utilization Records**

Each licensee shall maintain records of use for three years from the date of the recorded event, that contain the following information for each source of radiation:

1. Make, model number, and serial number or a description of each source of radiation used;
2. The identity of the well-logging supervisor or the field unit to which the source is assigned;

3. Locations and dates of use; and
4. In the case of tracer materials and radioactive markers, the radionuclide and activity undertaken in a particular well.

**R9-7-1718. Design and Performance Criteria for Sealed Sources**

- A.** A licensee shall use a sealed source for well logging applications if the sealed source:
1. Is doubly encapsulated;
  2. Contains licensed material in a chemical and physical form that is insoluble and nondispersible; and
  3. Meets the requirements of subsection (B), (C), or (D).
- B.** For a sealed source manufactured on or before July 14, 1989, a licensee may use a sealed source in well logging applications that meets the requirements of USASI N5.4-1968, Classification of Sealed Radioactive Sources, available from the American National Standards Institute at 25 West 43rd Street, 4th floor, New York, NY 10036, which is incorporated by reference and on file with the Department, or the requirements in subsection (C) or (D). This incorporation by reference contains no future editions or amendments.
- C.** For a sealed source manufactured after July 14, 1989, a licensee may use a sealed source in well logging applications that meets the oil-well logging requirements of ANSI/HPS N43.6-1997, Sealed Radioactive Sources--Classification, available from the American National Standards Institute at 25 West 43rd Street, 4th floor, New York, NY 10036, which is incorporated by reference and on file with the Department. This incorporation by reference contains no future editions or amendments.
- D.** For a sealed source manufactured after July 14, 1989, a licensee may use a sealed source in well logging applications if the sealed source's prototype has been tested and found to maintain its integrity after each of the following required tests:
1. Temperature. The test source is held at -40° C for 20 minutes and 600° C for one hour, and then subjected to a thermal shock with a temperature drop from 600° C to 20° C within 15 seconds.
  2. Impact. A 5 kg steel hammer, 2.5 cm in diameter, is dropped from a height of 1 m onto the test source.
  3. Vibration. The test source is subjected to vibration in the 25 Hz to 500 Hz range at 5 g amplitude for 30 minutes.
  4. Puncture. A 1 gram hammer with a pin, 0.3 cm in diameter, is dropped from a height of 1 m onto the test source.
  5. Pressure. The test source is subjected to an external pressure of  $1.695 \times 10^7$  pascals (24,600 pounds per square inch absolute).
- E.** The requirements in subsections (A), (B), (C), and (D) do not apply to a sealed source that contains licensed material in gaseous form.

- F. The requirements in subsections (A), (B), (C), and (D) do not apply to an energy compensation source (ECS).

**R9-7-1719. Labeling**

- A. A licensee shall mark each source, source holder, or logging tool that contains radioactive material with a durable, legible, and clearly visible marking or label, consisting at minimum of the standard radiation caution symbol, without the conventional color requirement, and the following wording:  
DANGER (or: CAUTION)  
RADIOACTIVE  
This labeling is required for each component transported as a separate piece of equipment regardless of size.
- B. A licensee shall permanently attach to each transport container a durable, legible, and a clearly visible label consisting at minimum, of the standard radiation caution symbol and the following wording:  
DANGER (or: CAUTION)  
RADIOACTIVE  
NOTIFY CIVIL AUTHORITIES (or name of company)

**R9-7-1720. Inspection, Maintenance, and Opening of a Source or Source Holder**

- A. Each licensee shall visually check source holders, logging tools, and source handling tools for defects before each use to ensure that the equipment is in good working condition and that required labeling is present. If defects are found, the licensee shall remove equipment from service until it is repaired, and make a record listing: date of check, name of inspector, equipment involved, each defect found, and repairs made. The licensee shall maintain each record for three years after a defect is found.
- B. Each licensee shall have a program for semiannual visual inspection and routine maintenance of source holders, logging tools, injection tools, source handling tools, storage containers, transport containers, and uranium sinker bars to ensure that the required labeling is legible and that no physical damage is visible. If any defect is found, the licensee shall remove the equipment from service until it is repaired, and make a record listing; date of inspection, equipment involved, inspection and maintenance operations performed, each defect found, and each action taken to correct a defect. The licensee shall maintain each record for three years after a defect is found.
- C. A licensee shall not remove a sealed source from a source holder or logging tool, or perform maintenance on a sealed source or source holder that contains a sealed source without written permission from the Department.
- D. If a sealed source is stuck in the source holder, a licensee shall not perform any operation, such as drilling, cutting, or chiseling, on the source holder unless the licensee is

specifically authorized to perform the operation by the Department.

- E. The opening, repair, or modification of any sealed source is prohibited, unless authorized by the Department, the NRC, or an Agreement State.

**R9-7-1721. Training**

- A. A licensee shall not permit an individual to act as a logging supervisor until that person has:
  - 1. Completed training in the subjects outlined in subsection (E);
  - 2. Received copies of, and instruction in:
    - a. The applicable rules contained in 9 A.A.C. 7;
    - b. The Department license under which the logging supervisor will perform well logging; and
    - c. The licensee's operating and emergency procedures, required by R9-7-1722;
  - 3. Completed on-the-job training and demonstrated competence during a field evaluation in the use of licensed materials, remote handling tools, and radiation survey instruments; and
  - 4. Demonstrated understanding of the requirements in subsections (A)(1) and (A)(2) by successfully completing a written test.
- B. The licensee shall not permit an individual to act as a logging assistant until that person has:
  - 1. Received instruction in applicable rules of 9 A.A.C. 7;
  - 2. Received copies of, and instruction in, the licensee's operating and emergency procedures required by R9-7-1722;
  - 3. Demonstrated understanding of the materials listed in subsections (B)(1) and (B)(2) by successfully completing a written or oral test; and
  - 4. Received instruction in the use of licensed materials, remote handling tools, and radiation survey instruments that is related to the logging assistant's intended job responsibilities.
- C. A licensee shall provide a safety training review for logging supervisors and logging assistants at least once during each calendar year. Each logging supervisor and logging assistant shall attend a safety training review at least once during the current calendar year.
- D. A licensee shall maintain a record of each logging supervisor's and logging assistant's initial training and annual safety training review. The training records shall include copies of written tests and dates of oral tests given after the effective date of this Section. The licensee shall maintain the initial training records for three years following termination of employment, and maintain records of each annual safety training review, including a list of subjects covered during the review, for three years.
- E. A licensee shall provide instruction in the following subjects in the training required by subsection (A)(1):
  - 1. Fundamentals of radiation safety, including:

- a. Characteristics of radiation;
  - b. Units of radiation dose and quantity of radioactivity;
  - c. Hazards of exposure to radiation;
  - d. Levels of radiation from licensed material;
  - e. Methods of controlling radiation dose (time, distance, and shielding); and
  - f. Radiation safety practices, including prevention of contamination and methods of decontamination;
2. Radiation detection instruments, including:
    - a. Use, operation, calibration, and limitations of radiation survey instruments;
    - b. Survey techniques; and
    - c. Use of personnel monitoring equipment;
  3. Equipment, including:
    - a. Operation of equipment, including source handling equipment and remote handling tools;
    - b. Storage, control, and disposal of licensed material; and
    - c. Maintenance of equipment;
  4. The requirements of pertinent federal and state law, and
  5. Case histories of accidents in well logging.

**R9-7-1722. Operating and Emergency Procedures**

Each licensee shall develop operating and emergency procedures on the following subjects:

1. Procedures designed to prevent individuals from being exposed to radiation in excess of the limits in Article 4 of this Chapter. This subject includes:
  - a. Use of a sealed source in a well without a surface casing for the purposes of protecting a fresh water aquifer, as appropriate;
  - b. Methods employed to minimize exposure from inhalation or ingestion of licensed tracer materials; and
  - c. Methods for minimizing exposure of individuals in the event of an accident;
2. Use of remote handling tools for manipulating a radioactive sealed source or tracer;
3. Methods and occasions for conducting a radiation survey;
4. Methods and occasions for locking and securing a source of radiation;
5. Personnel monitoring and the use of personnel monitoring equipment;
6. Transportation of a source to a temporary job site or field station, including packaging and placing the source of radiation in a vehicle, placarding the vehicle, and securing the source of radiation during transportation;
7. Procedure for notifying the Department if there is an accident;
8. Maintenance of records;
9. Inspection and maintenance of source holders, logging tools, source handling tools, storage containers, transport containers, and injection tools;

10. Procedure required if a sealed source is:
  - a. Lost or lodged downhole; or
  - b. Ruptured, including safeguards to prevent job site and personnel contamination, inhalation; and ingestion;
11. Procedures required for picking up, receiving, and opening packages that contain radioactive material; and
12. Procedures required for site and equipment surveys and decontamination following tracer studies.

**R9-7-1723. Personnel Monitoring**

- A. A licensee shall not permit an individual to act as a logging supervisor or logging assistant unless that person wears, at all times during the handling of licensed radioactive materials, a personnel dosimeter that is processed and evaluated by an accredited National Voluntary Laboratory Accreditation Program (NVLAP) processor.
- B. A licensee shall assign a personnel dosimeter to each individual, who shall wear the assigned equipment.
- C. A licensee shall replace film badges at least monthly and replace other personnel dosimeters at least quarterly. After replacement, a licensee shall promptly process each personnel dosimeter.
- D. A licensee shall provide bioassay services to each individual who uses licensed materials in subsurface tracer studies if required by the license.
- E. A licensee shall record exposures noted from personnel dosimeters required by subsection (A) and bioassay results and maintain these records for three years after the Department terminates the radioactive material license.

**R9-7-1724. Radioactive Contamination Control**

- A. If a licensee detects evidence that a sealed source has ruptured or licensed materials have caused contamination, the licensee shall immediately initiate the emergency procedures required by R9-7-1722.
- B. If contamination results from the use of licensed material in well logging, the licensee shall decontaminate all affected areas, equipment, and personnel.
- C. During efforts to recover a source lodged in a well, the licensee shall continuously monitor, with a radiation detection instrument that complies with R9-7-1714 or a logging tool with a radiation detector, the well and any circulating fluids from the well to check for contamination resulting from damage to the source.

**R9-7-1725. Uranium Sinker Bars**

A licensee may use a uranium sinker bar for a well logging application only if it is legibly impressed with the words "Caution Radioactive-Depleted Uranium" and "Notify Civil

Authorities (or company name) if Found.”

**R9-7-1726. Energy Compensation Source**

- A. A licensee may use an energy compensation source (ECS) in a logging tool, or other tool component, if the ECS contains a quantity of radioactive material that does not exceed 3.7 MBq (100 microcuries).
- B. If used in a well with a surface casing, an ECS is subject to all Sections of this Article except R9-7-1702, R9-7-1728, and R9-7-1751.
- C. If used in a well logging hole without a surface casing, an ECS is subject to all Sections of this Article.

**R9-7-1727. Neutron Generator Source**

- A. A licensee may use a tritium neutron generator source to produce neutrons for well logging applications.
- B. If the activity of a tritium neutron generator source does not exceed 1.11 TBq (30 Curies) and the source is used in a well with a surface casing, the source is subject to all Sections of this Article except R9-7-1702 and R9-7-1751.
- C. If the activity of a neutron generator source is equal to or exceeds 1.11 TBq (30 Curies) or the source is used in a well without a surface casing, the source is subject to all Sections of this Article.

**R9-7-1728. Use of a Sealed Source in a Well Without a Surface Casing**

A licensee may use a sealed source in a well without a surface casing if the licensee follows a procedure for reducing the probability that the source will be lodged in the well. The procedure shall be separately approved by the Department or in a license issued by the Department, the NRC, or another Agreement State.

**R9-7-1731. Security**

- A. A logging supervisor shall be physically present at a temporary job site whenever licensed material is being handled or is not stored and locked in a vehicle or storage place. The logging supervisor may leave the job site to obtain assistance if a source becomes lodged in a well.
- B. During well logging, except when a radiation source is below ground or in a shipping or storage container, the logging supervisor or other individual designated by the logging supervisor shall maintain direct surveillance of the operation to prevent unauthorized entry into a restricted area, as defined in R9-7-102.

**R9-7-1732. Handling Tools**

The licensee shall provide and require the use of tools that will assure remote handling of sealed

sources other than low-activity calibration sources.

**R9-7-1733. Subsurface Tracer Studies**

- A. Any person who handles radioactive tracer material shall wear protective gloves and other appropriate protective clothing and equipment. Precautions shall be taken to avoid ingestion or inhalation of radioactive material.
- B. A licensee shall not inject radioactive material into potable aquifers without authority granted in a radioactive material license issued by the Department.
- C. A licensee shall dispose of tracer study waste contaminated with radioactive material in accordance with R9-7-434.

**R9-7-1734. Use of a Sealed Source in a Well Without a Surface Casing and Particle Accelerators**

- A. A licensee or registrant may use a sealed source in a well without a surface casing to protect a fresh water aquifer if the licensee follows the correct procedure for reducing the probability that the source will become lodged in the well.
- B. A licensee or registrant shall not begin well logging operations in a well without a surface casing unless the Department has approved the licensee's procedure for logging in an uncased hole.
- C. A licensee or registrant shall not permit aboveground testing of a particle accelerator, designed for use in welllogging, which results in the production of radiation, unless the area or facility affected is controlled or shielded in a manner consistent with applicable requirements in Article 4 of this Chapter.

**R9-7-1741. Radiation Surveys**

- A. A licensee shall perform and make a record of a radiation survey using instruments or calculations of radiation levels in each area where radioactive material is stored.
- B. A licensee shall make and record a radiation survey using instruments or calculations of radiation levels in occupied positions and on the exterior of each vehicle used to transport radioactive material. The survey or calculation shall include each source of radiation or combination of sources to be transported in the vehicle.
- C. After removal of the sealed source from the logging tool and before departing the job site, a licensee shall ensure that the logging tool detector is energized, or a survey meter is used to test the logging tool for contamination. The licensee shall record the test for contamination.
- D. The licensee shall make and record each survey using an appropriate survey instrument for the radionuclide being used, at the job site or wellhead for each tracer operation, except those using Hydrogen-3, Carbon-14 and Sulfur-35. Each survey shall include measurements of radiation levels before and after each tracer operation.

- E. Records of surveys conducted according to subsections (A) through (D) shall include the date of each survey, the identification of each individual making the survey, identification of each survey instrument used, each radiation measurement in millirem or microsievert per hour, and an exact description of the location of the survey. A licensee shall retain records of a survey for three years after completion of the survey.

**R9-7-1742. Documents and Records Required at Field Stations**

Each licensee shall maintain the following documents and records at the field station:

1. A copy of 9 A.A.C. 7;
2. The license, authorizing use of licensed material;
3. Operating and emergency procedures required by R9-7-1722;
4. The record of radiation survey instrument calibrations required by R9-7-1714;
5. The record of leak test results required by R9-7-1715;
6. Physical inventory records required by R9-7-1716;
7. Utilization records required by R9-7-1717;
8. Records of inspection and maintenance required by R9-7-1720;
9. Training records required by R9-7-1721; and
10. Survey records required by R9-7-1741.

**R9-7-1743. Documents and Records Required at Temporary Job Sites**

Each licensee that conducts operations at a temporary job site shall maintain the following documents and records at the temporary job site until the well logging operation is completed:

1. Operating and emergency procedures required by R9-7-1722;
2. The most current calibration records for the radiation survey instruments in use at the site required by R9-7-1714;
3. The most current survey records required by R9-7-1741.
4. The shipping papers for transportation of radioactive materials required by license condition; and
5. If operating under reciprocity in accordance with R9-7-320, a copy of the Department authorization for use of radioactive material in Arizona.

**R9-7-1751. Notification of Incidents and Lost Sources; Abandonment Procedures for Irretrievable Sources**

- A. If, after making a reasonable effort to recover a sealed source or device that contains radioactive material using methods that are not likely to result in damage or rupture and contamination, a licensee determines that the source or device is lodged in a well, the licensee shall:
1. Immediately notify the Department by telephone of the circumstances that resulted in the inability to retrieve the source and, if there is no evidence of contamination,

obtain the following from the Department:

- a. A determination that the source is irretrievable and abandonment is necessary because further efforts to recover the source are likely to result in an immediate threat to public health and safety, and
  - b. An approval to implement abandonment procedures;
2. Advise the well owner or operator, as applicable, of the abandonment procedures implemented under R9-7-1702(A) and (C); and
  3. Either ensure that abandonment procedures are implemented within 30 days after the Department classifies the source as irretrievable or request an extension of time if unable to complete abandonment procedures.
- B.** A licensee shall immediately notify the Department by telephone and subsequently, within 30 days, by confirmatory letter if the licensee knows or has reason to believe that a sealed source has been ruptured or the well has otherwise been contaminated. The letter shall describe the well location, the magnitude and extent of radioactive contamination, the consequences of the rupture, and the efforts planned or initiated to mitigate the consequences.
- C.** A licensee shall notify the Department of the theft or loss of any radioactive material, radiation overexposure, excessive levels and concentrations of radiation, and incidents as required by R9-7-443, R9-7-444, and R9-7-445.
- D.** A licensee shall, within 30 days after a sealed source has been classified as irretrievable, report in writing to the Department. The licensee shall send a copy of the report to each state or federal agency that issued permits or otherwise approved of the drilling operation. The report shall contain the following information:
1. Date of occurrence;
  2. A description of the irretrievable well logging source involved, including the name of the radionuclide and its quantity, and the chemical and physical form of the radionuclide;
  3. Surface location and identification of the well;
  4. Results of efforts to immobilize and seal the source in place;
  5. A brief description of the attempted recovery effort;
  6. Depth of the source;
  7. Depth of the top of the cement plug;
  8. Depth of the well;
  9. The reasons why further efforts to recover the source are likely to result in an immediate threat to public health and safety, necessitating abandonment;
  10. Information contained on the permanent identification plaque; and
  11. State and federal agencies receiving a copy of the report.

## **Statutory Authority for Rules in 9 A.A.C. 7, Article 17**

### **30-654. Powers and duties of the department**

A. The department may:

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

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

3. Conduct an information program, including:

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

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

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

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

B. The department shall:

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

2. Establish procedures for purposes of selecting any proposed permanent disposal site located within this state for low-level radioactive waste.

3. Coordinate with the department of transportation and the corporation commission in regulating the transportation of sources of radiation.

4. Assume primary responsibility for and provide necessary technical assistance to handle any incidents, accidents and emergencies involving radiation or sources of radiation occurring within this state.

5. Adopt rules deemed necessary to administer this chapter in accordance with title 41, chapter 6.

6. Adopt uniform radiation protection and radiation dose standards to be as nearly as possible in conformity with, and in no case inconsistent with, the standards contained in the regulations of

the United States nuclear regulatory commission and the standards of the United States public health service. In the adoption of the standards, the department shall consider the total occupational radiation exposure of individuals, including that from sources that are not regulated by the department.

7. Adopt rules for personnel monitoring under the close supervision of technically competent people in order to determine compliance with safety rules adopted under this chapter.
  8. Adopt a uniform system of labels, signs and symbols and the posting of the labels, signs and symbols to be affixed to radioactive products, especially those transferred from person to person.
  9. By rule, require adequate training and experience of persons utilizing sources of radiation with respect to the hazards of excessive exposure to radiation in order to protect health and safety.
  10. Adopt standards for the storage of radioactive material and for security against unauthorized removal.
  11. Adopt standards for the disposal of radioactive materials into the air, water and sewers and burial in the soil in accordance with 10 Code of Federal Regulations part 20.
  12. Adopt rules that are applicable to the shipment of radioactive materials in conformity with and compatible with those established by the United States nuclear regulatory commission, the department of transportation, the United States treasury department and the United States postal service.
  13. In individual cases, impose additional requirements to protect health and safety or grant necessary exemptions that will not jeopardize health or safety, or both.
  14. Make recommendations to the governor and furnish such technical advice as required on matters relating to the utilization and regulation of sources of radiation.
  15. Conduct or cause to be conducted off-site radiological environmental monitoring of the air, water and soil surrounding any fixed nuclear facility, any uranium milling and tailing site and any uranium leaching operation, and maintain and report the data or results obtained by the monitoring as deemed appropriate by the department.
  16. Develop and utilize information resources concerning radiation and radioactive sources.
  17. Prescribe by rule a schedule of fees to be charged to categories of licensees and registrants of radiation sources, including academic, medical, industrial, waste, distribution and imaging categories. The fees shall cover a significant portion of the reasonable costs associated with processing the application for license or registration, renewal or amendment of the license or registration and the costs of inspecting the licensee or registrant activities and facilities, including the cost to the department of employing clerical help, consultants and persons possessing technical expertise and using analytical instrumentation and information processing systems.
  18. Adopt rules establishing radiological standards, personnel standards and quality assurance programs to ensure the accuracy and safety of screening and diagnostic mammography.
- C. All fees collected under subsection B, paragraph 17 of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

### **30-657. Records**

A. Each person that possesses or uses a source of radiation shall maintain records relating to its receipt, storage, transfer or disposal and such other records as the department requires by rule.

B. The department shall require each person that possesses or uses a source of radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules adopted by the department. Copies of records required by this section shall be submitted to the department on request by the department.

C. Any person that possesses or uses a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of the employee's personal exposure record at such times as prescribed by rules adopted by the department.

D. Any person that possesses or uses a source of radiation, when requested, shall submit to the department copies of records or reports submitted to the United States nuclear regulatory commission regardless of whether the person is subject to regulation by the department. The department, by rule, shall specify the records or reports required to be submitted to the department under this subsection.

### **30-672. Licensing and registration of sources of radiation; exemptions**

A. The department by rule shall provide for general or specific licensing of by-product, source, special nuclear materials or devices or equipment using those materials. The department shall require from the applicant satisfactory evidence that the applicant is using methods and techniques that are demonstrated to be safe and that the applicant is familiar with the rules adopted by the department under section 30-654, subsection B, paragraph 5 relative to uniform radiation standards, total occupational radiation exposure norms, labels, signs and symbols, storage, waste disposal and shipment of radioactive materials. The department may require that, before it issues a license, the employees or other personnel of an applicant who may deal with sources of radiation receive a course of instruction approved by the department concerning department rules. The department shall require that the applicant's proposed equipment and facilities be adequate to protect health and safety and that the applicant's proposed administrative controls over the use of the sources of radiation requested be adequate to protect health and safety.

B. The department may require registration or licensing of other sources of radiation if deemed necessary to protect public health or safety.

C. The department may exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this section if it finds that exempting such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

D. The director may suspend or revoke, in whole or in part, any license issued under subsection A of this section if the licensee or an officer, agent or employee of the licensee:

1. Violates this chapter or rules of the department adopted pursuant to this chapter.

2. Has been, is or may continue to be in substantial violation of the requirements for licensure of the radiation source and as a result the health or safety of the general public is in immediate danger.

E. If the licensee, or an officer, agent or employee of the licensee, refuses to allow the department or its employees or agents to inspect the licensee's premises, such an action shall be deemed reasonable cause to believe that a substantial violation under subsection D, paragraph 2 of this section exists.

F. A license may not be suspended or revoked under this chapter without affording the licensee notice and an opportunity for a hearing as provided in title 41, chapter 6, article 10.

G. The department shall not require persons who are licensed in this state to practice as a dentist, physician assistant, chiropractor or veterinarian or licensed in this state to practice medicine, surgery, osteopathic medicine, chiropractic or naturopathic medicine to obtain any other license to use a diagnostic x-ray machine, but these persons are governed by their own licensing acts.

H. Persons who are licensed by the federal communications commission with respect to the activities for which they are licensed by that commission are exempt from this chapter.

I. Rules adopted pursuant to this chapter may provide for recognition of other state or federal licenses as the department deems desirable, subject to such registration requirements as the department prescribes.

J. Any licenses issued by the department shall state the nature, use and extent of use of the source of radiation. If at any time after a license is issued the licensee desires any change in the nature, use or extent, the licensee shall seek an amendment or a new license under this section.

K. The department shall prescribe by rule requirements for financial security as a condition for licensure under this article. The department shall deposit all amounts posted, paid or forfeited as financial security in the radiation regulatory and perpetual care fund established by section 30-694.

L. Persons applying for licensure shall provide notice to the city or town where the applicant proposes to operate as part of the application process.

M. Any facility that provides diagnostic or screening mammography examinations by or under the direction of a person who is exempt from further licensure under subsection G of this section shall obtain certification by the department. The department shall prescribe by rule the requirements of certification in order to ensure the accuracy and safety of diagnostic and screening mammography.

### **30-673. Unlawful acts**

It is unlawful for any person to receive, use, possess, transfer, install or service any source of radiation unless the person is registered, licensed or exempted by the department in accordance with this chapter and rules adopted under this chapter.

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

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with

the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

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

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

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail

level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

- (a) Served at a noncommercial social event such as a potluck.
- (b) Prepared at a cooking school that is conducted in an owner-occupied home.
- (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
- (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
- (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
- (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
- (g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.
- (h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent

with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

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

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

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

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

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

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

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

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

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

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is

washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

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

Q. For the purposes of this section, "fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

**STATE LAND DEPARTMENT (F19-1003)**

Title 12, Chapter 5, Article 20, Common Minerals and Natural Products, and Article 21,  
Oil and Gas Leases



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** January 14, 2020

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

**FROM:** Council Staff

**DATE:** December 10, 2019

**SUBJECT: ARIZONA STATE LAND DEPARTMENT (F19-1003)**  
Title 12, Chapter 5, Article 20, Common Mineral Materials and Natural Products,  
and Article 21, Oil and Gas Leases

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### Summary

This Five Year Review Report (5YRR) from the Arizona State Land Department (Department) relates to rules in Title 12, Chapter 5, Article 20, Common Mineral Materials and Article 21, Oil and Gas Leases. In this 5YRR, the Department did not review R12-5-2105 (Simultaneous filings; Conflicts) and R12-5-2106 (Noncompetitive Lease; Conflict) with the intention that those rules should expire.

Pursuant to A.R.S. §§ 27-271 to 276, the Department is authorized to lease state Trust land for mining common mineral materials and to sell natural products. The rules in Article 20 describe the practice and procedure to lease state Trust land in order to mine common mineral materials or to purchase natural products.

Pursuant to A.R.S. §§ 27-551 to 571, the Department is authorized to lease state lands for oil and gas exploration and production. The rules in Article 21 describe the application process, authorized initial exploration activities and operating regulations. The rules also address notice of sale, leases, mineral development reports, royalty and rental amounts, assignments, bonds, reporting requirements and termination of leases.

In the previous 5YRR for these rules, the Department proposed a course of action for each rule in this report, except for R12-5-2122 (Monthly Statement). For the various reasons stated in this report, the Department did not complete any of the courses of action indicated in the previous 5YRR.

### **Proposed Action**

The Department proposes to amend three rules by June 2020: R12-5-2003 (Application for Purchase); R12-5-2007 (Common Mineral Materials); R12-5-2104 (Application for Noncompetitive Lease; Acreage Limitation). The Department does not propose to take any action on the other rules reviewed in this report.

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

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department provides for the management of approximately 800,000 acres of the Trust's subsurface estate that are under lease or permit for the exploration or development of mineral, mineral material, or oil and gas resources as of FY 2018. Article 20 contains regulations related to common mineral materials and natural products. Article 21 contains regulations related to oil and gas leases.

The rules in Article 20 were adopted in 1978 prior to the requirement to prepare an EIS. The Department contends that the rules have not had any negative small business, economic, or consumer impact. The rules in Article 21 were amended in 2008 and an EIS was prepared in connection with that rulemaking. The Department indicates that there are no substantive differences between the current economic impact of the rules and what was stated in the 2008 EIS, except for differences that reflect annual rent and royalty amounts that vary from year to year.

Stakeholders include the Department and individuals or entities that apply for or have leases or permits for the exploration of mineral, mineral material, or oil and gas resources.

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 Department believes that the benefits of these rules outweigh any costs associated with them and that they meet their stated objectives. The Department indicates that the rules may need some clarifying, consistency and grammatical changes, but it believes that these changes will not substantially improve the rules. The Department does not propose to take any action on these rules at this time.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Department indicates it did not receive any written criticisms on these rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. For the reasons specified in the report, the Department indicates that the following rules could be amended to improve their clarity, conciseness, and understandability:

- **R12-5-2002 (Miscellaneous Rules);**
- **R12-5-2005 (Use of Land);**
- **R12-5-2006 (Notice and Conduct of Competitive Sales); and**
- **R12-5-2007 (Common Mineral Materials).**

For the reasons specified in the report, the Department indicates that the following rules are not entirely consistent with other rules, statutes, and/or agency operations:

- **R12-5-2001 (Definitions);**
- **R12-5-2002 (Miscellaneous Rules);**
- **R12-5-2003 (Application for Purchase);**
- **R12-5-2004 (Exploration Permits);**
- **R12-5-2006 (Notice and Conduct of Competitive Sales);**
- **R12-5-2007 (Common Mineral Materials);**
- **R12-5-2104 (Application for Noncompetitive Lease; Acreage Limitation);**

For the reasons specified in the report, the Department indicates that the following rules are not entirely effective:

- **R12-5-2007 (Common Mineral Materials); and**
- **R12-5-2104 (Application for Noncompetitive Lease; Acreage Limitation).**

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

Yes. For the reasons specified in the report, the Department indicates that the following rules are not enforced as written:

- **R12-5-2003 (Application for Purchase);**
- **R12-5-2006 (Notice and Conduct of Competitive Sales);**
- **R12-5-2007 (Common Mineral Materials);**
- **R12-5-2104 (Application for Noncompetitive Lease; Acreage Limitation);**  
and
- **R12-5-2118 (Cooperative and Unit Agreements).**

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

No. The Department indicates there is no corresponding federal law associated with these rules.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

None of the rules reviewed were adopted after July 29, 2010.

9. **Conclusion**

Council staff does not recommend approval of this report as submitted. Despite identifying numerous issues with these rules in the previous 5YRR, the Department did not take any action to amend or repeal them. In this report, the Department only proposes to amend three rules by June 2020. This is despite other rules continuing to have issues with clarity, enforcement, and consistency with other rules, statutes, and agency operations. Council staff notes that the report complies with the requirements of A.R.S. § 41-1056(A) and therefore does not qualify for return.

However, Council staff encourages the Council to consider, in light of the various issues identified in this report, whether the Department's analysis of any of the rules demonstrates that they are "materially flawed" under A.R.S. § 41-1056(E). Under this section, a rule can be "materially flawed" if it is "inconsistent with other statutes, rules or agency enforcement policies and the inconsistency results in a significant burden on the regulated public" and/or "is not clear, concise, and understandable." As described above, the Department identifies a number of rules that are not clear, concise, or understandable, or consistent with other rules, statutes, or agency operations.

If the Council determines that any of the rules reviewed in this 5YRR are materially flawed, it can require the Department "to propose an amendment or repeal of the rule by a date **no earlier than six months** after the date of the meeting at which the council considers the agency's report on its rule..." (emphasis added). Thus, the earliest the Council can require the Department to propose an amendment or repeal of these rules is July 14, 2019.



Douglas A. Ducey  
Governor

Lisa A. Atkins  
Commissioner

## Arizona State Land Department

1616 West Adams, Phoenix, Arizona 85007  
(602) 542-4631

July 31, 2019

Arizona Department of Administration  
Governor's Regulatory Review Council  
100 North 15<sup>th</sup> Avenue, Suite 402  
Phoenix, AZ 85007

Attn: Nicole Sornsins, Chairperson

RE: Arizona State Land Department's 5 Year Rule Review Report on A.A.C. Title 12, Chapter 5, Articles 20 & 21

Dear Chairperson Sornsins:

The Arizona State Land Department ("Department") submits for Council approval the accompanying Five-Year Review Report for A.A.C. Title 12, Chapter 5, Articles 20 and 21. This document complies with the requirements under A.R.S. § 41-1056. The Department certifies that the report complies with A.R.S. § 41-1091. Further, pursuant to A.A.C. R1-6-301(B)(2) and A.R.S. § 41-1056(J), the Department hereby notifies the Council of its intention to expire A.A.C. R12-5-2105 Simultaneous filings; Conflicts and R12-5-2106 Noncompetitive Lease; Conflict.

Should you have any questions, please do not hesitate to contact Angela Calabresi, Administrative Counsel, at (602) 542-2632 or [acalabresi@azland.gov](mailto:acalabresi@azland.gov).

Sincerely,

James Perry  
Deputy Land Commissioner

Enclosures

# FIVE-YEAR RULE REVIEW REPORT

Submitted to

**THE GOVERNOR'S REGULATORY REVIEW COUNCIL**



**ARIZONA STATE LAND DEPARTMENT**

*"Serving Arizona's Schools and Public Institutions Since 1915"*

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 5. STATE LAND DEPARTMENT**

**Article 20 – Common Mineral Materials and Natural Products**

**Article 21 – Oil and Gas Leases**

*Due July 31, 2019*

# **FIVE YEAR RULE REVIEW REPORT**

**TITLE 12. NATURAL RESOURCES**  
**CHAPTER 5. STATE LAND DEPARTMENT**  
**Article 20 – Common Mineral Materials and Natural Products**  
**Article 21 – Oil and Gas Leases**

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## Summary

The Administrative Procedures Act (APA) mandates a periodic review of agency rules. A.R.S. § 41-1056 provides criteria by which an agency must examine each rule, compile the examination into a report, and submit the report to the Governor's Regulatory Review Council ("Council") for review. The Arizona State Land Department (Department) is scheduled to file a review of its rules under Title 12, Chapter 5, Articles 20 and 21 with the Council in July 2019. The Department's complete rules are located in the Arizona Administrative Code (A.A.C.) Title 12, Chapter 5, Articles 1 through 25 and can be found on the Arizona Secretary of State website ([www.azsos.gov](http://www.azsos.gov)).

The Department is not a regulatory agency. It functions as the trustee of over 9 million surface and subsurface acres of land and its natural resources. These lands were granted to the State of Arizona under the provisions of the 1910 Enabling Act that provided for Arizona's statehood in 1912. The lands are held in trust for fourteen institutional beneficiaries. The largest beneficiary of the land is the common schools, or public K-12 schools, which were apportioned more than ninety percent of the land. The other thirteen beneficiaries include the State's three universities, the State hospital, the School for the Deaf and Blind, State penitentiaries, and Judicial and Legislative buildings. The Trust beneficiaries receive revenue from the Department's leasing, selling, and permitting use of the land. Revenues earned are classified as either permanent or expendable. Revenues from the sale of land and natural resources such as sand, gravel, and water, as well as royalties earned from mining oil and gas, are classified as permanent and invested, and the interest earned from that investment is distributed annually to the applicable beneficiary of the land from which it was derived. Revenues from lease rentals, interest earned on deferred sale payments, and other renewable types of uses are classified as expendable and are distributed annually to the applicable beneficiary of the land.

The trust status of the lands granted to the State imposes obligations and constraints that would not apply if the state held the land outright. The Department's management of the trust is governed by extensive and detailed provisions in Sections 24-30 of the State's Enabling Act, the Arizona Constitution (Article X), and statutes in A.R.S. Titles 27 (sub-surface) and 37 (surface estate). In addition, extensive case law governs the Department's procedures and management of the Trust.

Under this Five-Year Rule Review Report, the Department evaluated fifteen separate rules within Article 20: Common Mineral Materials and Natural Products and Article 21: Oil and Gas Leases.

Arizona Revised Statutes § 27-271 through § 27-276 authorizes the Department to lease state Trust land for mining common mineral materials and to sell natural products. Common mineral material includes cinders, sand, gravel, fill dirt, waste rock and materials commonly used as aggregate road material, rip rap, ballast and fill for general construction purposes. Natural products consist of resources severed from the land including water and plants but does not include geothermal resources or substances subject to Arizona mining laws. A.A.C. Title 12, Chapter 5, Article 20 describes the practice and procedure to lease state Trust land in order to

mine common mineral materials or to purchase natural products.

Arizona Revised Statutes § 27-551 through § 27-571 authorize the Department to lease state lands for oil and gas exploration and production. Statutes outline Department responsibilities with regard to leases, production and conservation of oil and gas, drilling, contracts, field operations, royalties, sales and unit agreements. A.A.C. Title 12, Chapter 5, Article 21 describes the application process, authorized initial exploration activities and operating regulations. The rules also address notice of sale, leases, mineral development reports, royalty and rental amounts, assignments, bonds, reporting requirements and termination of leases.

Five rules under Article 20 were adopted in 1978 and renumbered in 1993 (R12-5-2001 through R12-5-2005). Four rules under Article 20 were adopted in 1977 and renumbered in 1993 (R12-5-2006 through R12-5-2009). The rules in Article 20 have not been amended.

One rule under Article 21 was adopted in 2008 (R12-5-2101). The remaining five rules were adopted in 1976, renumbered in 1993 and amended in 2008 (R12-5-2104, R12-5-2115, R12-5-2118, R12-5-2120 and R12-5-2122).

## FACTORS ANALYZED AND IDENTICAL INFORMATION

### Legend of Factors Used in Analysis pursuant to A.A.C. R1-6-301(A):

1. General and specific authority, including any statute that authorizes the agency to make rules;
2. Objective of the rule, including the purpose for the existence of the rule;
3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached;
4. Consistency of the rule with state and federal statutes and other rules made by the agency;
5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement;
6. Clarity, conciseness, and understandability of the rule;
7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report;
8. A comparison of the estimated economic, small business and consumer impact with prior economic impact statement or assessment;
9. Any analysis submitted to the agency by another person regarding the rule's impact on this State's business competitiveness;
10. If applicable, how the agency completed the course of action indicated in the agency's previous five- year review report;
11. A determination that the rule's probable benefits outweigh the probable costs and that rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective;
12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law;
13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037; and
14. Course of action the agency proposes to take regarding each rule.

### Identical Information for All the Rules

Pursuant to A.A.C. R1-6-301(B), identical information shall be provided only once for any group of rules for which information on a particular issue is the same. The rules contained in this report are identical in the following ways:

7. **Written criticisms:**  
No written criticisms have been received by the Department in the last five years.
9. **External Analysis of impact on business competitiveness:**  
No business competitiveness analysis has been received by the Department.
11. **Cost v. Benefit and Least Burden Analyses:**  
The Department believes that the benefits of these rules outweigh any costs associated with them and that they meet their stated objectives.

**12. Comparison with Federal Law:**

There are no corresponding federal laws associated with these rules.

**13. A.R.S. § 41-1037 Compliance:**

None of the rules reviewed in this report were adopted after July 29, 2010, therefore this factor does not apply.

## RULE ANALYSIS

### Article 20 Common Mineral Materials and Natural Products

#### A.A.C. Rule 12-5-2001 Definitions

1. **Statutory Authority:**  
A.R.S. § 37-132; § 27-271; §27-272(E); § 37-481
2. **Objective:**  
This rule defines terms relating to common variety mineral materials and natural products.
3. **Effectiveness:**  
This rule is effective.
4. **Consistency:**  
This rule is mostly consistent. A.R.S. § 27-271 defines common variety minerals in greater specificity than subsection (A) of this rule, but it is not inconsistent with the statute.
5. **Enforcement policy:**  
This rule is enforced.
6. **Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
8. **Economic impact:**  
This rule was adopted in 1978 prior to the requirement to prepare an EIS, however the Department contends that this rule does not have any estimated negative small business, economic, or consumer impact.
10. **Previous 5YRR Report Course of Action:**  
In the previous 5YRRR, the Department proposed to amend the rule to eliminate terms that are repetitive of statute, to make non-substantive changes for clarification, to replace the term “common mineral materials” with the statutory term “common variety minerals” pursuant to A.R.S. § 27-271, and to delete the term “royalty” since the existing term “unit royalty rate” is preferred. The Department did not complete these courses of action and does not believe that currently doing so would substantially improve or alter the rule to add to clarity or conciseness.

**14. Course of Action Proposed:**

The Department does not propose any course of action on this rule at this time.

## **A.A.C. Rule 12-5-2002 Miscellaneous Rules**

**1. Statutory Authority:**

A.R.S. § 37-132; § 27-272

**2. Objective:**

This rule outlines the scope and applicability of the common mineral materials and natural products rules as well as sets forth restrictions on locations, agreements, activities, conservation measures, and appeals

**3. Effectiveness:**

This rule is effective.

**4. Consistency:**

This rule is mostly consistent, except that subsection (F) is not consistent with agency operations because vertical boundaries are not drawn downward for surface minerals as they are for subsurface minerals.

**5. Enforcement policy:**

This rule is enforced.

**6. Clear, concise, and understandable:**

The rule is mostly clear, concise and understandable. However, subsection (E) is redundant of A.R.S. § 27-272, and subsection (H) is unnecessary because it is governed by OAH.

**8. Economic impact:**

This rule was adopted in 1978 prior to the requirement to prepare an EIS, however the Department contends that this rule does not have any estimated negative small business, economic, or consumer impact.

**10. Previous 5YRR Report Course of Action:**

In the previous 5YRRR, the Department proposed to amend the rule to delete or modify outdated language to replace the term “common mineral materials” with “common variety minerals,” to remove subsections (B) and (D) through (H). The Department did not complete this course of action. Replacing the term “common mineral materials” with “common variety minerals” would align the rule with the statute, but it does not create such an inconsistency that this would warrant a rulemaking, as both are terms commonly used to refer to the same thing. Subsection (B) could be removed as an unnecessary iteration of scope, but keeping this subsection does not substantively change the rule. And, as noted above, while subsection (E) is redundant of A.R.S. § 27-272 and subsection (H) is unnecessary because it is governed by OAH, it is not clear that

subsections (D) are (G) redundant of statute. Therefore, the Department does not agree that the previous proposed course of action should be pursued at this time.

**14. Course of Action Proposed:**

The Department does not propose any course of action on this rule at this time.

## **A.A.C. Rule 12-5-2003 Application for Purchase**

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 27-272
- 2. Objective:**  
This rule outlines the process for an applicant interested in the lease of land for common mineral material or natural product extraction and use.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent with statute and other laws, but it is only partially consistent with agency operations, as parts of subsections (A) and (C) pertaining to the requirements of an applicant to be a citizen of the United States is not required because the Department does not citizenship-test its applicants. Further, a portion of subsection (B) is inconsistent with agency operations because the Department does not require a separate application for land that is located within a separate section as long as the parcels applied for are contiguous.
- 5. Enforcement policy:**  
The rule is mostly enforced, except those portions of the rule which are inconsistent with agency operations, as noted in the factor above, are not enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 8. Economic impact:**  
This rule was adopted in 1978 prior to the requirement to prepare an EIS, however the Department contends that this rule does not have any estimated negative small business, economic, or consumer impact.
- 10. Previous 5YRRR Report Course of Action:**  
In the previous 5YRRR, the Department proposed to amend the rule to eliminate the reference to the citizenship requirement in subsection (A); to clarify the number of acres that can be included in a single application; to make conforming changes throughout the rule regarding “leasing land” versus “purchasing” or “selling” land; to replace “common mineral materials” with “common variety minerals”; to add requirements for an applicant to provide a Mineral Development Report, with associated criteria and deadlines, as part of the application process; and to amend the reference to a commercial lease in subsection (D) to that of a special land use permit. The Department did not complete this course of action.

**14. Course of Action Proposed:**

The Department plans to amend this rule no later June 2020.

## **A.A.C. Rule 12-5-2004 Exploration Permits**

**1. Statutory Authority:**

A.R.S. § 37-132; § 27-272

**2. Objective:**

The objective of this rule is to outline the conditions for an interested party to conduct exploration and due diligence in order to determine whether to proceed to auction for a common mineral materials lease.

**3. Effectiveness:**

This rule is effective.

**4. Consistency:**

This rule is consistent with statute, however subsection (5) is inconsistent with agency operations because the Department issues Rights-of-entry in lieu of exploration permits, which are different mostly in name but offer similar rights to the subject land for the purposes of exploration and testing.

**5. Enforcement policy:**

This rule is enforced.

**6. Clear, concise, and understandable:**

The rule is clear, concise, and understandable.

**8. Economic impact:**

This rule was adopted in 1978 prior to the requirement to prepare an EIS, however the Department contends that this rule does not have any estimated negative small business, economic, or consumer impact.

**10. Previous 5yRRR Report Course of Action:**

In the previous 5YRRR, the Department proposed to replace the term “common mineral materials” with “common variety minerals”, to replace the term “purchase” with “lease”, and to specify certain requirements that an applicant must meet prior to conducting preliminary testing and exploration activities, such as proof of bonding and insurance and obtaining Department approval of same. The Department did not complete this course of actions. Replacing the term “common mineral materials” with “common variety minerals” and “purchase” with “lease” would align the rule with the statute, but it does not create such an inconsistency or confusion that this would warrant a rulemaking. Further, the proposed requirements that an applicant must meet prior to testing or exploration is unnecessary, as these requirements are provisions of the Right-of-Entry issued and enforced as a contractual term.

**14. Course of Action Proposed:**

The Department does not propose any course of action on this rule at this time.

## **A.A.C. Rule 12-5-2005 Use of Land**

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 27-272
- 2. Objective:**  
The rule authorizes and prohibits certain activities on and uses of land by applicants for and lessees of a common mineral material lease.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is mostly clear, concise, and understandable, except that subsection (B) and the last sentence of subsection (C) are redundant of A.R.S. § 27-272.
- 8. Economic impact:**  
This rule was adopted in 1978 prior to the requirement to prepare an EIS, however the Department contends that this rule does not have any estimated negative small business, economic, or consumer impact.
- 10. Previous 5yRR Report Course of Action:**  
In the previous 5YRRR, the Department proposed to replace the term “common mineral materials” with “common variety minerals,” to replace “buyer” with “lessee,” and to update cross-referenced laws. The Department did not complete this proposed course of action. The Department does not believe that any further changes to this rule are necessary at this time.
- 14. Course of Action Proposed:**  
The Department does not propose any course of action on this rule at this time.

## **A.A.C. Rule 12-5-2006 Notice and Conduct of Competitive Sales**

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 27-272; § 37-237
- 2. Objective:**  
This rule outlines the process to sell common mineral materials at public auction.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is mostly consistent, except that subsection (A)(2) is inconsistent with agency operations because governmental entities may not purchase common mineral materials or natural products outside of an auction.
- 5. Enforcement policy:**  
The rule is enforced except where noted above regarding governmental entities.
- 6. Clear, concise, and understandable:**  
The rule is clear and understandable and mostly concise, although subsection (B) is redundant of the Enabling Act and statute.
- 8. Economic impact:**  
This rule was adopted in 1977 prior to the requirement to prepare an EIS, however the Department contends that this rule does not have any estimated negative small business, economic, or consumer impact.
- 10. Previous 5yRRR Report Course of Action:**  
In the previous 5YRRR, the Department proposed to amend the rule to eliminate the exception for governmental entities, to replace the term “common mineral materials” with “common variety mineral,” “agreement” with “lease,” “sales” with “auctions,” and “buyer” with “lessee,” to relocate provisions pertaining to auction advertising from R12-5-2007 to R12-5-2006, to clarify existing bidding requirements with regard to initial bids, bidding increments, and obligations that a successful bidder must meet in order for the Department to issue a lease, and to clarify the starting date for a lease to begin on the first day of the month for all leases. The Department did not complete this course of action. The Department does not think that replacing the terms noted above will add substantial improvement value to the rule. The Department also does not think that outlining bidding requirements with regards to initial bids, increments, and bidder qualifications would be helpful as this may change over time (and may change depending on the transaction) and is therefore better relegated to the auction notice only. Further, the

Department does not think it is necessary that all leases begin on the first day of the month.

**14. Course of Action Proposed:**

The Department does not propose any course of action on this rule at this time.

## **A.A.C. Rule 12-5-2007 Common Mineral Materials**

**1. Statutory Authority:**

A.R.S. § 37-132; § 27-272; § 27-273

**2. Objective:**

This rule outlines some of the required common mineral material lease provisions, including restrictions, conditions, and royalty payment calculations. It also outlines the advertising process for auction and appraisal requirements.

**3. Effectiveness:**

The rule is effective except where it is inconsistent with agency operations as noted below.

**4. Consistency:**

The rule is partially consistent. It is inconsistent with agency operations in that a common mineral material lease does not allow for the extraction of groundwater pursuant to subsection (A)(3)-(5); the Department does not perform reappraisals pursuant to subsection (D) and (F); the Department charges a sales and administrative fee in the amount of 3% and not 2% as noted in subsection (G)(2); the Department must sometimes deviate from the restoration standards set forth in subsection (G)(5)(b) because these can be unique due to a site's geology, ecology, climate, etc.; and the Department would use an incidental sales instrument in lieu of the process outlined in the last sentence of subsection (G)(8) pertaining to mineral materials remaining on the land after restoration following the termination or expiration of a lease.

**5. Enforcement policy:**

The rule is enforced except where it is inconsistent with agency operations as noted above.

**6. Clear, concise, and understandable:**

The rule is mostly clear, concise, and understandable, except that subsections (C), (G)(1)(a), (G)(10)(a), and (G)(10)(b)(i)-(ii) are redundant of statute.

**8. Economic impact:**

This rule was adopted in 1977 prior to the requirement to prepare an EIS, however the Department contends that this rule does not have any estimated negative small business, economic, or consumer impact.

**10. Previous 5YRRR Report Course of Action:**

In the previous 5YRRR, the Department outlined a series of changes to terms, to conform the rule to agency operations where it is inconsistent, as noted above, and to reiterate

certain provisions outlined in statute. The Department did not complete this course of action.

**14. Course of Action Proposed:**

The Department plans to amend this rule no later June 2020.

**A.A.C. Rule 12-5-2008 Natural Products - Groundwater**

**1. Statutory Authority:**

A.R.S. § 37-132; § 37-481

**2. Objective:**

This rule outlines the process used by the Department to sell groundwater at public auction.

**3. Effectiveness:**

The rule is effective.

**4. Consistency:**

The rule is consistent.

**5. Enforcement policy:**

The rule is enforced.

**6. Clear, concise, and understandable:**

The rule is clear, concise, and understandable.

**8. Economic impact:**

This rule was adopted in 1977 prior to the requirement to prepare an EIS, however the Department contends that this rule does not have any estimated negative small business, economic, or consumer impact.

**10. Previous 5yRR Report Course of Action:**

In the previous 5YRRR, the Department proposed to describe the process for the sale of groundwater. The Department did not complete this proposed course of action. The Department does not believe that any further changes to this rule are necessary at this time because the rule is effective, consistent, and enforced.

**14. Course of Action Proposed:**

The Department does not propose any course of action on this rule at this time.

## **A.A.C. Rule 12-5-2009 All Other Natural Products**

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 37-481
- 2. Objective:**  
This rule outlines the process used by the Department to sell natural products, other than groundwater, at public auction.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 8. Economic impact:**  
This rule was adopted in 1977 prior to the requirement to prepare an EIS, however the Department contends that this rule does not have any estimated negative small business, economic, or consumer impact.
- 10. Previous 5YRRR Report Course of Action:**  
In the previous 5YRRR, the Department proposed to describe the process for the sale of natural products other than groundwater. The Department did not complete this proposed course of action. The Department does not believe that any further changes to this rule are necessary at this time because the rule is effective consistent and enforced.
- 14. Course of Action Proposed:**  
The Department does not propose any course of action on this rule at this time.

## Article 21 Oil and Gas Leases

### A.A.C. Rule 12-5-2101 Completed Oil and Gas Lease Application

- 1. Statutory Authority:**  
A.R.S. § 37-132, § 27-552
- 2. Objective:**  
This rule explains the criteria for an oil and gas lease application.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 8. Economic impact:**  
When this rule was adopted in 2008, an EIS was submitted with the rulemaking. There are no substantive differences with that EIS except for those outlined in the EIS attached to the report in an appendix, and those differences reflect annual rent and royalty amounts which vary from year to year.
- 10. Previous 5YRR Report Course of Action:**  
In the previous 5YRRR, the Department proposed to amend the rule by placing all general application requirements in R12-5-2101, particularly by relocating from R12-5-2104 the location to submit an application. However, since the last 5YRRR, the Department has transitioned to electronic application filing, which renders this change unnecessary.
- 14. Course of Action Proposed:**  
The Department does not propose any course of action on this rule at this time.

## **A.A.C. Rule 12-5-2104 Application for Noncompetitive Lease; Acreage Limitation**

**1. Statutory Authority:**

A.R.S. § 37-132; § 27-552; § 27-554; § 27-555

**2. Objective:**

The rule outlines the process to submit an application for an oil and gas lease which is not within a known geological structure of a producing oil and gas field. It also outlines a process to resolve conflicts in the event simultaneous applications are filed and the limit on the acreage that can be included within one such lease.

**3. Effectiveness:**

The rule is mostly effective, except that applications are now submitted electronically and therefore do not need to be submitted physically at the Department per subsection (B). Further, in the event there is a simultaneous electronic filing, conflicts would be resolved pursuant to A.R.S. § 27-555.

**4. Consistency:**

The rule is mostly consistent. It is inconsistent where it notes that the application fees are required pursuant to A.R.S. § 37-108, because application fees are now found in A.A.C. R12-5-1201. It is also inconsistent where it notes that simultaneous filings are resolved in accordance with A.A.C. R12-5-2105, because this has been superseded with the adoption of A.R.S. § 27-555 which now governs simultaneous filings.

**5. Enforcement policy:**

The Department enforces subsection (A) of the rule but has not had the need to enforce subsection (B) pertaining to conflicting applications because it has not had any simultaneous filings. In the very rare event a simultaneous filing were to happen, the Department would resolve that by enforcing A.R.S. § 27-555.

**6. Clear, concise, and understandable:**

The rule is clear, concise, and understandable.

**8. Economic impact:**

When this rule was amended in 2008, an EIS was submitted with the rulemaking. There are no substantive differences with that EIS except for those outlined in the EIS attached to the report in an appendix, and those differences reflect annual rent and royalty amounts which vary from year to year.

**10. Previous 5YRR Report Course of Action:**

In the previous 5YRRR, the Department proposed to amend the rule to make non-substantive changes, primarily grammatical, as well as to amend the rule to reference renumbered rules.

**14. Course of Action Proposed:**

The Department plans to amend this rule no later June 2020.

## **A.A.C. Rule 12-5-2115 Competitive Lease; Award of Lease**

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 27-552; § 27-556
- 2. Objective:**  
This rule describes the bid process to award a competitive oil and gas lease. A competitive lease exists when the land is located within a known geological structure of a producing oil and gas field.
- 3. Effectiveness:**  
This rule is effective.
- 4. Consistency:**  
This rule is consistent.
- 5. Enforcement policy:**  
This rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 8. Economic impact:**  
When this rule was amended in 2008, an EIS was submitted with the rulemaking. There are no substantive differences with that EIS except for those outlined in the EIS attached to the report in an appendix, and those differences reflect annual rent and royalty amounts which vary from year to year.
- 10. Previous 5YRRR Report Course of Action:**  
In the previous 5YRRR, the Department proposed to make grammatical changes. The Department does not believe these changes would substantially add anything to the clarity or effectiveness of the rule.
- 14. Course of Action Proposed:**  
The Department does not propose any course of action on this rule at this time.

## **A.A.C. Rule 12-5-2118 Cooperative and Unit Agreements**

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 27-552; § 27-557
- 2. Objective:**  
This rule outlines the conditions and requirements for an oil and gas lessee to join in cooperative or unit plans.
- 3. Effectiveness:**  
This rule is effective.
- 4. Consistency:**  
This rule is consistent.
- 5. Enforcement policy:**  
This rule would be enforced if necessary, but there has not been any applications for a cooperative or unit agreement in at least the last ten years.
- 6. Clear, concise, and understandable:**  
This rule is clear, concise, and understandable.
- 8. Economic impact:**  
When this rule was amended in 2008, an EIS was submitted with the rulemaking. There are no substantive differences with that EIS except for those outlined in the EIS attached to the report in an appendix, and those differences reflect annual rent and royalty amounts which vary from year to year.
- 10. Previous 5YRRR Report Course of Action:**  
In the previous 5YRRR, the Department proposed to update the rule to require a lessee who wishes to join in a cooperative or unit agreement to submit a plan of development to the Department, including proposed operations, expected construction, infrastructure, workforce, economic benefit and reclamation plans. While this change might be helpful, it is not exigent, as the Department has not processed a cooperative or unit agreement application in at least ten years and does not foresee doing so in the near future.
- 14. Course of Action Proposed:**  
The Department does not propose any course of action on this rule at this time.

## **A.A.C. Rule 12-5-2120 Surrender**

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 27-552; § 27-562
- 2. Objective:**  
This rule provides for the surrender and relinquishment of an oil and gas lease, or portion thereof, and the requirements for doing so.
- 3. Effectiveness:**  
This rule is effective.
- 4. Consistency:**  
This rule is consistent.
- 5. Enforcement policy:**  
This rule is enforced.
- 6. Clear, concise, and understandable:**  
This rule is clear, concise, and understandable.
- 8. Economic impact:**  
When this rule was amended in 2008, an EIS was submitted with the rulemaking. There are no substantive differences with that EIS except for those outlined in the EIS attached to the report in the appendix, and those differences reflect annual rent and royalty amounts which vary from year to year.
- 10. Previous 5yRRR Report Course of Action:**  
In the previous 5YRRR, the Department proposed to amend the rule to require a lessee to provide a written notice to the Department when the lease is surrendered. It is assumed that this change would have been in lieu of a submission of a copy of the lease, as the rule is currently written. The Department does not deem this amendment an exigent issue, as the current process of submitting a copy of the lease is no more burdensome and not substantially different than the submission of a written notice.
- 14. Course of Action Proposed:**  
The Department does not propose any course of action on this rule at this time.

## **A.A.C. Rule 12-5-2122 Monthly Statement**

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 27-552
- 2. Objective:**  
The purpose of this rule is to notify oil and gas lessees of their obligation to submit a monthly statement of production.
- 3. Effectiveness:**  
This rule is effective.
- 4. Consistency:**  
This rule is consistent.
- 5. Enforcement policy:**  
This rule is enforced.
- 6. Clear, concise, and understandable:**  
This rule is clear, concise, and understandable.
- 8. Economic impact:**  
When this rule was amended in 2008, an EIS was submitted with the rulemaking. There are no substantive differences with that EIS except for those outlined in the EIS attached to the report in the appendix, and those differences reflect annual rent and royalty amounts which vary from year to year.
- 10. Previous 5yRRR Report Course of Action:**  
In the previous 5YRRR, the Department proposed no course of action on this rule.
- 14. Course of Action Proposed:**  
The Department does not propose any course of action on this rule at this time.

## **Economic Impact Statement**

Of the land under the management of the Department, approximately 800,000 acres of the Trust's subsurface estate are under lease or permit for the exploration or development of mineral, mineral material, or oil and gas resources as of FY2018. The Department issues leases for three general types of mineral commodities: 1) leasable minerals (primarily base and precious metals); 2) common variety minerals (sand, gravel, and rock products); and 3) energy minerals (oil, gas, and geothermal resources). Leases for energy resources differ depending on the type of potential resource. Oil and gas leases within an area of known oil and gas production are awarded through a competitive sealed bid process for a primary term of five years. For leases in areas that are not known to contain oil and gas resources, leases are awarded on a noncompetitive bases by application and are subject to a royalty payment of 12.5%.

In FY2018, the Department maintained 272 oil and gas leases encompassing 478,230 acres of Trust land, a large majority of which is located in eastern Arizona in the Springerville-St. John's area. Rental revenue for that year was \$994,383. Royalty revenue was \$86,468 and came from a single helium-producing lease. Further, the Department maintained 21 common mineral material leases covering 2,192 acres of Trust land. Rental revenue was \$506,881 and royalty revenues were \$3,161,524.

In addition to providing revenue to the Trust, mining on Trust Lands provides opportunities for businesses that supply the mines with support services, supplies, and materials. The labor force of a mining operation is generally local, which also provides support for local businesses that sell services, consumer goods, groceries, and other personal and family needs. Taxes are paid by the mining companies, as well as by the employees. The taxes are utilized by the State, county, and local governments to support schools, create infrastructure, and provide government and community services.

**APPENDIX A**  
Arizona Administrative Code Rules Reviewed

Title 12, Chapter 5, Article 20. Common Mineral Materials and Natural Products

- R12-5-2001. Definitions
- R12-5-2002. Miscellaneous Rules
- R12-5-2003. Application for Purchase
- R12-5-2004. Exploration Permits
- R12-5-2005. Use of Land
- R12-5-2006. Notice and Conduct of Competitive Sales
- R12-5-2007. Common Mineral Materials
- R12-5-2008. Natural Products – Groundwater
- R12-5-2009. All Other Natural Products

Title 12, Chapter 5, Article 21. Oil and Gas Leases

- R12-5-2101. Completed Oil and Gas Lease Application
- R12-5-2104. Application for Noncompetitive Lease; Acreage Limitation
- R12-5-2115. Competitive Lease; Award of Lease
- R12-5-2118. Cooperative and Unit Agreements
- R12-5-2120. Surrender
- R12-5-2122. Monthly Statement

[Arizona Administrative Code](#)

[Title 12. Natural Resources](#)

[Chapter 5. State Land Department \(Refs & Annos\)](#)

[Article 20. Common Mineral Materials and Natural Products \(Refs & Annos\)](#)

A.A.C. R12-5-2001

R12-5-2001. Definitions

[Currentness](#)

**A.** “Common mineral materials” includes cinders, sand, gravel and associated rock, fill-dirt, common clay, disintegrated granite, boulders and loose float rock, waste rock and materials of similar occurrence commonly used as aggregate road material, rip-rap, ballast, borrow, fill, for general construction and for similar purposes.

**B.** “Natural products” includes all other products severed from the land including, but not limited to, water and plants but shall not include geothermal resources and those substances subject to the mining prospecting permit and leasing laws of Arizona.

**C.** “Royalty” means the monetary consideration representing the true appraised value of the common mineral materials of natural products.

**D.** For the purposes of any common mineral materials sales agreement, unless otherwise stated, the following terms shall have these meanings.

1. “Ton” is 2,000 pounds.
2. A “cubic yard” is a measurement of material that will fill a container that measures 1 yard by 1 yard by 1 yard and when a cubic yard is to be converted to tons industry accepted measures of conversion will be used.
3. “Annual production” is the number of tons of material that the Department determines is a reasonable amount to be extracted from the site in any 12-month period.
4. “Unit royalty rate” is the amount of money to be paid by the buyer to the Department for each ton of common mineral materials extracted.

**Credits**

Former Section R12-5-771 repealed as an emergency effective October 31, 1977, new Section R12-5-771 adopted effective September 16, 1977 (Supp. 77-5). Former Section R12-5-771 repealed as an emergency now repealed, new Section adopted effective September 21, 1978 (Supp. 78-5). Section R12-5-2001 renumbered from Section R12-5-771 (Supp. 93-3).

Current through rules published in Arizona Administrative Register Volume 25, Issue 17, April 26, 2019.

A.A.C. R12-5-2001, AZ ADC R12-5-2001

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[Title 12. Natural Resources](#)

[Chapter 5. State Land Department \(Refs & Annos\)](#)

[Article 20. Common Mineral Materials and Natural Products \(Refs & Annos\)](#)

A.A.C. R12-5-2002

R12-5-2002. Miscellaneous Rules

[Currentness](#)

**A. Scope.** These rules are promulgated pursuant to authority vested in the State Land Department by statute and provide for the disposition of common mineral products and natural products in conformance with the enabling Act and Arizona Constitution. These rules and regulations shall supersede any existing rules or procedures of the Department under this Chapter.

**B. Application of rules.** As applicable, these rules shall govern the sale of all common mineral materials and natural products.

**C. State land subject to application to purchase.** Any state-owned land containing deposits or accumulations of common mineral materials and natural products shall be subject to application for sale thereof it being understood that the state reserves the right to refuse to authorize the sale of common mineral materials or natural products on its lands.

**D. Location prohibited.** Common mineral materials and natural products are not subject to location as a claim, application for prospecting permit or to application for a mineral lease, as provided by Title 27, Chapter 2, Articles 3 and 4 of the Arizona Revised Statutes. The right to enter upon state land for the purpose of exploring and testing of common mineral materials is reserved by the Department.

**E. Nature of agreement.** A common mineral materials or natural products sales agreement is an agreement by virtue of which the holder may enter designated state trust lands and recover, extract, use, store, remove and dispose of the materials or natural products designated in the sales agreement, as set forth in R12-5-775(B), R12-5-778, and R12-5-779.

**F. Area of activity.** The agreement entitles the holder to pursue any permitted activity on or within the premises as determined by boundaries drawn vertically downward through the exterior boundaries of the premises.

**G. Environmental protection.** At any time during the course of the agreement, the Department may require the purchaser to employ new or other conservation measures in addition to any required at the time of purchase. Any such requirement shall not affect the royalty or minimum annual guarantee requirement.

**H. Rehearings and appeals.** The right to a rehearing or an appeal from an intermediate or final order of the Department, Commissioner or Board of Appeals from any action taken pursuant to this Article, shall be as authorized by the law

pertaining to the conduct of the Department, Commissioner and Board of Appeals, the general rules pertaining to such rehearings and appeals and such right is neither enlarged nor diminished by this Article.

**Credits**

Former Section R12-5-772 repealed as an emergency effective October 31, 1977, new Section R12-5-772 adopted effective September 16, 1977 (Supp. 77-5). Former Section R12-5-772 repealed as an emergency now repealed, new Section adopted effective September 21, 1978 (Supp. 78-5). Section R12-5-2002 renumbered from Section R12-5-772 (Supp. 93-3).

Current through rules published in Arizona Administrative Register Volume 25, Issue 17, April 26, 2019.

A.A.C. R12-5-2002, AZ ADC R12-5-2002

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[Chapter 5. State Land Department \(Refs & Annos\)](#)  
[Article 20. Common Mineral Materials and Natural Products \(Refs & Annos\)](#)

A.A.C. R12-5-2003

R12-5-2003. Application for Purchase

[Currentness](#)

**A.** Qualification of applicant. Any citizen, or one who has declared his intention to become a citizen, of the United States, partnership, or association of citizens, or a corporation organized under the laws of the United States or any state, or territory thereof, and authorized to transact business in the state, and any agency of the state of Arizona or any political subdivision thereof may apply to the Department to purchase common mineral materials or natural products.

**B.** Area covered by application. A separate application shall be made for each common mineral materials or other natural products sale that relates to land in a different section or to non-contiguous parcels within a section. The size of any area subject to sale shall be determined by the Department in order to further the best interests of the state, and may represent consolidated applications.

**C.** Information to be furnished by the applicant.

1. The application to purchase shall be in such form as the Commissioner may prescribe, shall be filed with the Department by the applicant or an authorized agent for the applicant, and shall contain the following information:

a. Name and address of applicant.

b. Statement whether applicant is an individual, partnership or corporation or agency of the state or political subdivision thereof.

c. Statement of citizenship, when applicable.

d. If a corporation:

i. Name.

ii. State of incorporation.

iii. Arizona business address.

- iv. Affirmation of authorization to do business in Arizona.
  
- e. Age and marital status, when applicable.
  
- f. Description, according to the public land survey, of the land for which application is being made.
  
- g. Location of mineral claims or leases on the land under application.
  
- h. Location of abandoned mineral workings or common mineral materials pits on the land under application.
  
- i. Location of proposed roadways within the area under application and of proposed routes of ingress and egress over other state land.
  
- j. Location of improvements or crops on land under application or on land over which proposed routes of ingress and egress pass (information required in (g) through (j) herein shall be conveyed by means of a reasonably accurate plat or drawing accompanying the application form).

2. This rule shall not be taken or construed to limit or restrict the authority of the Commissioner to require the applicant to furnish such additional information, either generally or specifically, as the Commissioner may deem necessary for the proper administration of the law governing sales of common mineral materials or other natural products.

**D. Filing application for sale.** Each application filed with the Department shall be accompanied by the filing fee provided by law and an application for commercial lease of whatever portion, if any of the lands covered by the sale application upon which the applicant intends to undertake related commercial activities, place permanent improvements or otherwise use the surface.

#### **Credits**

Former Section R12-5-773 repealed as an emergency effective October 31, 1977, new Section R12-5-773 adopted effective September 16, 1977 (Supp. 77-5). Former Section R12-5-773 repealed as an emergency now repealed, new Section adopted effective September 21, 1978 (Supp. 78-5). Section R12-5-2003 renumbered from Section R12-5-773 (Supp. 93-3).

Current through rules published in Arizona Administrative Register Volume 25, Issue 17, April 26, 2019.

A.A.C. R12-5-2003, AZ ADC R12-5-2003

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A.A.C. R12-5-2004

R12-5-2004. Exploration Permits

[Currentness](#)

Common mineral materials and natural products, exploration, permits.

1. Scope. Following receipt of an application to purchase, the Department may issue permits to any person to explore for common mineral materials or natural products which are subject to sale.
2. Issuance of permits. Such permits will be issued only for limited entry into designated areas for the purpose of exploring or testing for common mineral material or natural products.
3. Non-assignability of permits. Such permits are non-assignable and subject to control stipulations by the Department.
4. No reimbursable improvements will be authorized or recognized by the Department in connection with any activity pursuant to an exploration permit.
5. Filing an application for sale shall entitle an applicant to an exploration permit without payment of further fees; any other person wishing to explore must pay a sum equal to the application fee.
6. All related state land must be restored after exploration and before sale by the exploring person(s).

**Credits**

Former Section R12-5-774 repealed as an emergency effective October 31, 1977, new Section R12-5-774 adopted effective September 16, 1977 (Supp. 77-5). Former Section R12-5-774 repealed as an emergency now repealed, new Section adopted effective September 21, 1978 (Supp. 78-5). Section R12-5-2004 renumbered from Section R12-5-774 (Supp. 93-3).

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A.A.C. R12-5-2004, AZ ADC R12-5-2004

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[Article 20. Common Mineral Materials and Natural Products \(Refs & Annos\)](#)

A.A.C. R12-5-2005

R12-5-2005. Use of Land

[Currentness](#)

**A.** Rights of applicant. Except as may be provided by an exploration permit duly issued pursuant to R12-5-774, the filing of an application for a common mineral material or other natural products sale shall not confer upon the applicant any greater right to the use of the land under application or to the common mineral materials or other natural products therein than were held by the applicant before filing.

**B.** Rights of Buyer. The Buyer shall have the right to use as much of the surface of the premises as is reasonably necessary for the extraction, severance, temporary storage, removal and disposition of the materials from the premises, including the right to wash, screen, crush, sort or otherwise mechanically process those materials, together with the right of ingress to and egress from the premises across other state lands along designated routes approved by the Department. The right herein granted shall be perfected by Buyer obtaining the commercial lease referred to in R12-5-773(D).

**C.** Use by other than Buyer; assignability of Buyer's rights. No one other than the employees or officers of the Buyer or those of an independent contractor engaged in the performance of a written contract with the Buyer shall have the right to enter upon the premises to perform any act permitted Buyer under the sales agreement. However, Buyer may assign its interest upon the prior written approval of the Department upon a form provided for such.

**D.** No reimbursable improvements shall be authorized or recognized by the Department no matter by whom or for what purpose constructed insofar as the Buyer of a common mineral materials or natural products agreement is concerned. The Buyer shall have 90 days following the expiration or termination of the agreement, provided Buyer has performed all acts to be performed by it to remove any improvements; further provided that such removal does not interfere with the land being returned to an acceptable condition. Otherwise, any such improvements shall be deemed abandoned to the trust. Nothing in this provision, however, shall interfere with any right to reimbursement for improvements which Buyer might have by virtue of its status as a lessee of the Department.

**Credits**

Former Section R12-5-775 repealed as an emergency effective October 31, 1977, new Section R12-5-775 adopted effective September 16, 1977 (Supp. 77-5). Former Section R12-5-775 repealed as an emergency now repealed, new Section adopted effective September 21, 1978 (Supp. 78-5). Section R12-5-2005 renumbered from Section R12-5-775 (Supp. 93-3).

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A.A.C. R12-5-2005, AZ ADC R12-5-2005

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A.A.C. R12-5-2006

R12-5-2006. Notice and Conduct of Competitive Sales

[Currentness](#)

**A. Nature**

1. All sales of common mineral materials and natural products, except to governmental agencies, shall be by public auction.
2. Common mineral materials or natural products may be sold to governmental agencies without public auction on terms specified by the Commissioner, provided that the materials or products are sold at their true appraised value and that they are to be used for governmental purposes.

**B. Sales notice.** Public notice of sale at public auction for common mineral materials or natural products shall be published once each week for not less than ten successive weeks in a newspaper of general circulation published regularly at the state Capitol and in a newspaper of general circulation published regularly nearest the location of the interest to be sold and with the same formality as required for the sale of land.

**C. Conduct of sales.** A representative of the Department shall conduct the public auction in a manner as consistent as possible as that provided for sales of land. Specifically, bidding shall be conducted in the following manner.

1. Bidding shall be by voice bid but no bid will be considered or recorded which is not higher than the highest preceding bid, except the initial bid may be for the unit royalty rate established in the notice of sale.
2. No bid shall be accepted for less than the unit royalty rate established in the notice of sale and the Department reserves the right to reject any or all bids, if determined by it to be in the best interests of the state.
3. Before a final bid at public auction is accepted, bidder must present to the auctioneer the amount of money that represents the minimum required in the notice of sale. The successful bidder shall have an additional 30 days from the date of sale in which to pay such additional sums, post such bonds and complete whatever other requirements may be required. Failing to do so will result in the abandonment of such sums already paid to the Department as liquidated damages and the freeing of the Department to reconsider such other bidders as the proper recipient of the sales agreement.

**D. Execution of agreement**

1. Upon approval by the Department of the successful bid for a common mineral materials or other natural products sale, the Department, by mail, will tender the sales agreement to the Buyer for its signature and simultaneously will notify it of the bond coverage required by the Department as a condition of issuing the sales agreement and will further state the execution fee required by law.

a. When the executed sales agreement is filed with the Department by the Buyer and the Buyer has posted the bond or bonds required as a condition of issuance of the agreement, and the agreement has been signed by the Commissioner, the agreement will be in full force and effect.

b. The date of commencement of the agreement will be the date of sale.

**Credits**

Adopted effective September 16, 1977 (Supp. 77-5). Section R12-5-2006 renumbered from Section R12-5-776 (Supp. 93-3).

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A.A.C. R12-5-2006, AZ ADC R12-5-2006

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[Article 20. Common Mineral Materials and Natural Products \(Refs & Annos\)](#)

A.A.C. R12-5-2007

R12-5-2007. Common Mineral Materials

[Currentness](#)

**A.** Material to be specified. Common mineral materials sales agreements will recite the material or materials covered by such agreements and the rights of Buyers will pertain only to such materials as specified in the agreement.

1. It is understood that flora will necessarily be distributed by Buyer's activities, but such disturbance shall be minimal and the Department may so direct Buyer's activities to assure such minimal disturbance.

2. Buyer shall not be entitled to keep, give, sell or otherwise dispose of any flora on the premises unless the agreement so provides, in which event such flora shall have been appraised by or for the Department and a separate price therefore set forth in the agreement.

3. This agreement shall confer the right on the Buyer to extract groundwater from the land area subject to the sale for the purposes stated in R12-5-772, subsection (E) and R12-5-775, subsection (B), and purposes incidental or related thereto which uses and purposes shall be set forth in the Notice of Sale and which shall have been a factor in the establishment of the minimum acceptable unit royalty rate however, groundwater may be separately noted for sale in which event the notice of sale shall specifically so provide.

4. The granting of a right to extract groundwater shall not constitute a representation or guarantee by the Department that there is any groundwater available at any level or any quality for extraction.

5. Any right to extract groundwater conferred hereby is subject to any and all limitations and provisions existing in law or regulation of any agency including any such applicable other regulation of this Department.

6. Nothing herein shall affect any right to the use of groundwater which buyer might otherwise possess by virtue of being a lessee of the Department or having otherwise acquired a groundwater permit through Public Auction Sale by the Department.

**B.** Advertising of sale. The advertising of sale of common mineral materials shall state the location by legal description of the tract or tracts on which the material is being offered, the kind of material, the term, the time and place of auction, the unit, the minimum unit royalty rate, minimum annual production, total bid deposit required, bond requirements, the office where additional information may be obtained and such additional information as the Department may deem necessary.

1. When the materials to be sold on a basis other than the standard one set forth in these rules, the notice of sale shall so state in specific detail.

**C. Appraisals.** Common mineral materials to be sold will be appraised by the Department when the materials are in their undisturbed natural condition (“in situ”) using acceptable appraisal standards. The appraisal will determine the minimum unit royalty rate and minimum annual production.

**D. Annual royalty.** Until any reappraisal goes into effect, the annual royalty shall be the higher of

1. The minimum annual royalty as determined by the bidding process as provided in R12-5-777(E),
2. The number of units of material extracted multiplied by the unit royalty rate.

Upon reappraisal, subsections (D)(1) and (2) shall be adjusted to reflect the reappraisal.

a. The minimum annual royalty payment shall be due and payable in advance on the anniversary of the agreement. Royalty for any material extracted, severed or disposed of in excess of the minimum annual production shall be due and payable in advance on the anniversary of the agreement. Royalty for any material extracted, severed or disposed of in excess of the minimum annual production shall be due and payable monthly within 30 days after billing by the State Land Department.

b. Minimum annual royalty payments shall be applied as a credit to payment for materials for which payment must be made, provided, however, that monies so advanced and not credited against payments for materials shall become the sole property of the state upon termination or expiration of the agreement.

c. For purposes of determining minimum annual royalty payment due in any particular year:

i. Multiply the original minimum annual royalty by the number of years of the agreement;

ii. Subtract the royalties thus far paid by (i);

iii. Divide (ii) by the years remaining and that will give the minimum annual royalty for the year in question.

d. In no event will the minimum royalty be less than 5% of the original minimum annual royalty.

**E. Bids.** Unless otherwise provided by the Commissioner and specifically published in the notice of sale, all bids shall be by the unit royalty rate.

1. In determining the minimum annual royalty, the Department shall multiply the unit royalty rate bid by the successful bidder times the minimum annual production which shall be determined solely by the Department and set forth in the notice of sale.

**F. Reappraisals.** The royalty rate established initially shall remain fixed for the first two years of the agreement. For each subsequent year the Department may reappraise in the following manner:

1. No later than 60 days before the end of any anniversary date, the Department may reappraise the material to determine the unit rate and/or the acceptable minimum annual royalty; that reappraisal shall be effective for the second year following the one in which the reappraisal is made.

2. The Department shall notify the Buyer within 30 days of the reappraisal and Buyer shall be obligated for payments based on such reappraisal for the second year following the one in which the reappraisal is made. If any proper appeal is taken by Buyer and not concluded before the effective date of the reappraisal, the prior royalty shall be paid, with any necessary adjustment being made immediately upon the conclusion of such appeal.

3. The Department is not obligated to reappraise in any particular year and its failure to do so merely means the last appraisal results shall remain in effect until a proper reap-praisal is made.

**G. Provisions of the agreement**

1. Term

a. The term of a common mineral material sales agreement shall not be for more than 20 years.

b. The Department will set the term of each sales agreement in such manner as to best utilize the resources and provide an economically sound term compatible with the law, the best interest of the trust and of the state.

2. For contract administration and sales-related expenses, a charge of 2% will be added to the minimum annual royalty and to royalties paid for production in excess of minimum annual production.

3. The royalty provisions shall be set forth in the agreement.

4. All common mineral materials removed from the premises shall be measured by volume, weight or truck tally or a combination of these methods or any other form of measurement the Department determines to be to the best interest of the state.

5. Buyer's conduct on premises

a. The Buyer will conduct its operations in a workman-like manner at all times, to protect the premises and soils thereof and including, but not limited to:

i. Keeping the premises free of all litter, junk or debris;

ii. Taking precautions as necessary to protect the safety of persons or property upon the premises;

iii. Complying with all flood control regulations which may be applicable to the premises;

iv. Fencing all dangerous workings for the protection of humans and livestock;

v. Complying with all other rules and regulations prescribed from time to time by the Department or any other agency having jurisdiction over the premises or the activities.

b. Upon termination of the agreement, the Buyer will restore the surface of the premises to a reasonable condition in accordance with good mining practices, such restoration to include:

i. The sloping of side banks of the excavation resulting from the operation to a grade of not more than one foot vertical for each two feet of horizontal distance, unless otherwise specified by the Department;

ii. The backfilling into the excavation of all unused waste materials and overburden resulting from the operation, and the leveling of such backfill to a reasonably uniform depth on the floor excavation, unless otherwise specified by the Department;

iii. The removal and restoration of the surface of any new haul roads constructed on state land by Buyer, which roads the Department does not elect to retain, any such election of retention to be made in writing.

c. The Buyer will indemnify, hold and save harmless, the state of Arizona, the Department and all of their officers and employees, against all loss, damage, liability, expense, costs and charges incident to or resulting in any way from use, condition or occupation of the premises.

## 6. Transfers

a. The Buyer, with prior approval of the Commissioner, may assign the agreement.

b. The application for assignment and the assignment and assumption of the agreement will be on such forms as the Department may prescribe.

c. Assignment shall not relieve the Buyer from any duties under the agreement but the assignee shall succeed to all of the rights and be jointly and severally liable, along with the assignor, to all of the obligations existing under the agreement dating from its inception.

d. No transfer of the Buyer's interest or any portion thereof is authorized except as specifically provided in these rules.

#### 7. Termination of sales agreement

a. Upon 30 days' written notice to Buyer, the Department may terminate the agreement for the failure or neglect of the Buyer to perform any of its provisions, including those specified by these rules. Failure to pay royalties when due is such a failure of performance.

b. Notices of termination shall be mailed to the address of record at the Department of the Buyer. Such notice shall set forth the reason for the termination.

c. Provided Buyer is not in default in any of the terms and conditions of the agreement, the Buyer shall have the right to terminate the agreement upon any annual anniversary date thereof by giving the Seller not less than 30 days' prior notice in writing of Buyer's intention to do so.

8. Upon termination or expiration of the agreement, Buyer shall have 90 days, provided it has fully performed under the agreement, to remove any stockpiled material on the premises. The Commissioner may, if the Buyer so requests in writing within ten days before the expiration of any such removal period, or extension thereof, grant a further extension not to exceed 60 days and provided that the cumulative removal period, along with extensions, shall not exceed 210 days. If the Buyer has not fully performed or fails to remove the stockpiled material within that specified time, such material will be deemed abandoned to the Trust. Any subsequent buyer of material on the portion of the premises on which stockpiled will succeed to its ownership and pay the Department the new Buyer's royalty rate therefor upon removal.

9. The agreement shall not provide for any renewal thereof.

#### 10. Bonds

a. The Commissioner may require the Buyer to post a cash deposit or surety bond to guarantee the performance of the sales agreement and the payment of all monies due the state under the sales agreement.

b. Restoration and surface damage bond

i. The Commissioner shall require the Buyer to furnish bond, in a reasonable amount, to be fixed by the Commissioner, conditioned that the Buyer will guarantee restoration of the surface of the land described in

the sales agreement to a reasonable condition in accordance with good mining practices, upon termination of the sales agreement.

ii. The Commissioner shall also require the Buyer to include in the above bond an amount set by the Department as a surety bond in the form, amount, and with surety approved by the Commissioner, conditioned upon prompt payment to the owner or lessee of the surface of state land covered by the common mineral materials sales agreement, or across which the common mineral materials Buyer exercises the right of ingress, for any loss to such owner or lessee for damage or destruction caused by the common mineral materials Buyer or Buyer's agents or employees, to grasses, forage, crops and improvements upon such land.

iii. Assignment of the sales agreement will not relieve the assignor of his obligation as principal under the bond. Release of the assignor's obligation under the bond may be effected through the posting of a replacement bond by the assignee, but only after approval by the Commissioner in lieu of a replacement bond, the bonding company may furnish a bond rider form changing the name of principal.

iv. The Commissioner, in his discretion reasonably exercised, may reduce or increase the principal amount of any bond.

v. After determination by the Commissioner that full discharge of the conditions of the obligation under any bond has been effected, he will, in writing, notify the principal and surety held by the bond so that it may be formally terminated.

vi. Surety on the bond shall have the right to cancel the bond and be relieved of future liability, but not previous liability after the period of notice, by giving 30 days' notice to the Buyer and the Department of its desire to so cancel. Failure by the Buyer to post a replacement bond before the expiration of the 30 days, mentioned next above, shall constitute a default by the Buyer and cause for cancellation of the sales agreement.

## 11. Records and reports

a. A monthly report of production (either affirmative or negative) shall be submitted by the Buyer of each common mineral materials sales agreement within 15 days after the end of the month in which his sales agreement was issued, and by the 15th of each month thereafter.

b. The report shall be in such form as the Commissioner shall prescribe and shall contain such information as the Commissioner shall require, including, but not limited to, the type, volumes, weights and classifications of the common mineral materials removed or disposed of.

c. Each Buyer shall make and keep an accurate account of all operations, showing the sales, prices, dates, purchasers and the total amount of material disposed or removed from the subject premises.

**Credits**

Adopted effective September 16, 1977 (Supp. 77-5). Section R12-5-2007 renumbered from Section R12-5-777 (Supp. 93-3).

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A.A.C. R12-5-2007, AZ ADC R12-5-2007

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A.A.C. R12-5-2008

R12-5-2008. Natural Products - Groundwater

[Currentness](#)

When the law permits and the Department believes it consistent with the best interests of the state, groundwater may be sold at public auction in the same manner and subject to the same forms, insofar as possible, as are common mineral materials.

**Credits**

Adopted effective September 16, 1977 (Supp. 77-5). Section R12-5-2008 renumbered from Section R12-5-778 (Supp. 93-3).

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A.A.C. R12-5-2009

R12-5-2009. All Other Natural Products

[Currentness](#)

When the Department believes it consistent with the best interests of the state, natural products other than groundwater may be sold at public auction in the same manner and subject to the same terms, insofar as possible, as are common mineral materials.

**Credits**

Adopted effective September 16, 1977 (Supp. 77-5). Section R12-5-2009 renumbered from Section R12-5-779 (Supp. 93-3).

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A.A.C. R12-5-2009, AZ ADC R12-5-2009

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[Article 21. Oil and Gas Leases \(Refs & Annos\)](#)

A.A.C. R12-5-2101

R12-5-2101. Completed Oil and Gas Lease Application

[Currentness](#)

An oil and gas lease application, filed pursuant to this Article, shall be on a form prescribed and furnished by the Department. The application is complete if all blank spaces are addressed with all required attachments. The applicant may indicate “not applicable” or “N/A” on any blank, as appropriate. The applicant shall complete the application's certification page pursuant to the instructions. An applicant shall appropriately sign and date the application.

**Credits**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2101 renumbered from Section R12-5-781 (Supp. 93-3). Section expired under [A.R.S. § 41-1056\(E\)](#) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1). New Section made by final rulemaking at 13 A.A.R. 4310, effective January 5, 2008 (Supp. 07-4).

Current through rules published in Arizona Administrative Register Volume 25, Issue 17, April 26, 2019.

A.A.C. R12-5-2101, AZ ADC R12-5-2101

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[Article 21. Oil and Gas Leases \(Refs & Annos\)](#)

A.A.C. R12-5-2104

R12-5-2104. Application for Noncompetitive Lease; Acreage Limitation

[Currentness](#)

**A.** The Department shall not issue an oil and gas lease on land already leased for that purpose. If state lands are not located within a known geological structure of a producing oil or gas field, a person shall submit a noncompetitive oil and gas lease application for a noncompetitive oil and gas lease. State lands under a single oil and gas lease application shall not exceed 2,560 acres which shall be the maximum acreage of state lands in a noncompetitive oil and gas lease. The lands under application shall be in as compact a body as possible. The application may include non-contiguous state lands within a six mile square area if the maximum acreage of contiguous land is not available, but shall not exceed 2,560 acres.

**B.** An applicant shall submit the completed noncompetitive oil and gas lease application to the Department's Phoenix Office, 1616 W. Adams, Phoenix, AZ 85007, to the attention of Public Records, along with payment of the required application fee pursuant to [A.R.S. § 37-108](#) and advanced rent payment as calculated under [A.R.S. § 27-555\(D\)](#). The first applicant to file a complete noncompetitive oil and gas lease application with required fees and advance rental payment has priority to the lease. The Department shall resolve conflicts resulting from simultaneously filed noncompetitive oil and gas lease applications in accordance with Section R12-5-2105.

**Credits**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2104 renumbered from Section R12-5-784 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 4310, effective January 5, 2008 (Supp. 07-4).

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A.A.C. R12-5-2104, AZ ADC R12-5-2104

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[Article 21. Oil and Gas Leases \(Refs & Annos\)](#)

A.A.C. R12-5-2115

R12-5-2115. Competitive Lease; Award of Lease

Currentness

When state lands are located within a known geological structure of a producing oil or gas field, the oil and gas interest in the land shall be leased only by sealed bid.

1. Within 30 days of opening of sealed bids, the Department, subject to its right to reject a bid, shall award the lease to the highest qualified bidder. The Department shall give notice of its decision, by certified mail, to the applicants.
2. The Department shall send a lease offer to the successful bidder. The successful bidder shall execute the leases and pay the first year's rental, within 30 days from receipt of the lease offer.
3. If two or more tracts, where the acreage does not exceed more than two sections of land, are awarded to any bidder the tracts may, if not otherwise prohibited by law, be included in a single lease.

**Credits**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2115 renumbered from Section R12-5-795 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 4310, effective January 5, 2008 (Supp. 07-4).

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A.A.C. R12-5-2115, AZ ADC R12-5-2115

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A.A.C. R12-5-2118

R12-5-2118. Cooperative and Unit Agreements

[Currentness](#)

A lessee seeking the Commissioner's approval of a cooperative or unit agreement under [A.R.S. § 27-557](#), shall comply with the following procedure and requirements.

1. To facilitate the Department's decision making process and to allow an applicant to obtain feedback prior to formal submission, an applicant shall submit the following information no less than 60 days before submitting a cooperative or unit agreement for approval:

- a. A copy of a plat map showing the area to be included in the cooperative or unit agreement;
- b. Structural and geological information that supports the land to be included in the cooperative or unit agreement; and
- c. A draft of the proposed cooperative or unit agreement for the Department's review.
- d. If the proposed cooperative or unit agreement includes federal lands, and if by inclusion of those lands, the federal government requires standard provisions for a cooperative or unit agreement, the applicant shall submit a proposed cooperative or unit agreement that includes the federal provisions.

2. A cooperative or unit agreement does not affect the leasehold of any leased state lands outside of the cooperative or unit area. The cooperative or unit agreement does not affect leaseholds within the cooperative or unit area unless the lessees' land is committed to the cooperative or unit area pursuant to [A.R.S. §§ 27-557](#) or [27-531 et seq.](#)

**Credits**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2118 renumbered from Section R12-5-798 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 4310, effective January 5, 2008 (Supp. 07-4).

Current through rules published in Arizona Administrative Register Volume 25, Issue 17, April 26, 2019.

A.A.C. R12-5-2118, AZ ADC R12-5-2118

[Arizona Administrative Code](#)  
[Title 12. Natural Resources](#)  
[Chapter 5. State Land Department \(Refs & Annos\)](#)  
[Article 21. Oil and Gas Leases \(Refs & Annos\)](#)

A.A.C. R12-5-2120

R12-5-2120. Surrender

[Currentness](#)

A lessee may surrender to the Department a lease or any part of a lease, but not less than an approximate 40 acre parcel. A lessee shall surrender the lease or a part of a lease to the Department by submitting to the Department one copy of the lease and any monies owed.

**Credits**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2120 renumbered from Section R12-5-800 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 4310, effective January 5, 2008 (Supp. 07-4).

Current through rules published in Arizona Administrative Register Volume 25, Issue 17, April 26, 2019.

A.A.C. R12-5-2120, AZ ADC R12-5-2120

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[Arizona Administrative Code](#)  
[Title 12. Natural Resources](#)  
[Chapter 5. State Land Department \(Refs & Annos\)](#)  
[Article 21. Oil and Gas Leases \(Refs & Annos\)](#)

A.A.C. R12-5-2122

R12-5-2122. Monthly Statement

[Currentness](#)

A lessee shall submit to the Department a monthly statement of oil or gas production and other statements required of the lessee under the lease.

**Credits**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2122 renumbered from Section R12-5-802 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 4310, effective January 5, 2008 (Supp. 07-4).

Current through rules published in Arizona Administrative Register Volume 25, Issue 17, April 26, 2019.

A.A.C. R12-5-2122, AZ ADC R12-5-2122

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**APPENDIX B**  
Related Statutes

- A.R.S. § 27-271 Definition of common variety minerals
- A.R.S. § 27-272 Common variety mineral leases; terms and conditions; rules
- A.R.S. § 27-273 Performance and reclamation bonds
- A.R.S. § 27-552 Rules and regulations
- A.R.S. § 27-554 Designation of known geological structures of producing oil and gas fields
- A.R.S. § 27-555 Lease of state lands not located within known geological structure of producing oil and gas field; application; lease extension; provisions of lease; withdrawal of lands from leasing
- A.R.S. § 27-556 Lease of state lands located within known geological structure of producing oil or gas field; sealed bids; call for bids; publication; lease extension; provisions of lease; acreage limitation
- A.R.S. § 27-557 Unit operations; unit agreements
- A.R.S. § 27-562 Surrender
- A.R.S. § 37-132 Powers and duties
- A.R.S. § 37-481 Conservation and administration of products of state lands

[Arizona Revised Statutes Annotated](#)

[Title 27. Minerals, Oil and Gas](#)

[Chapter 2. Mining Rights in Land \(Refs & Annos\)](#)

[Article 5. Lease of State Lands for Common Variety Minerals \(Refs & Annos\)](#)

A.R.S. § 27-271

§ 27-271. Definition of common variety minerals

[Currentness](#)

For purposes of this article, “common variety minerals”:

1. Includes deposits of petrified wood, stone, pumice, pumicite or cinders, decomposed granite, sand, gravel, boulders, common clay, fill dirt and waste rock.
2. Includes deposits that, although they may have value for use in trade, manufacturing and the construction, landscaping and decorative rock industries, do not possess a distinct, special economic value for those uses beyond the normal uses of those deposits.
3. Includes material used as road base material, riprap, ballast, borrow, fill, facing stone, landscaping or ornamental uses and other similar uses.
4. Does not include limestone suitable for use in producing cement, metallurgical or chemical grade limestone or gypsum.

**Credits**

Added by [Laws 1998, Ch. 133, § 13.](#)

[Notes of Decisions \(3\)](#)

A. R. S. § 27-271, AZ ST § 27-271

Current through legislation effective June 7, 2019 of the First Regular Session of the Fifty-Fourth Legislature (2019).

[Arizona Revised Statutes Annotated](#)

[Title 27. Minerals, Oil and Gas](#)

[Chapter 2. Mining Rights in Land \(Refs & Annos\)](#)

[Article 5. Lease of State Lands for Common Variety Minerals \(Refs & Annos\)](#)

A.R.S. § 27-272

§ 27-272. Common variety mineral leases; terms and conditions; rules

[Currentness](#)

**A.** The state land department may dispose of common variety minerals at auction and may execute common variety mineral leases offered at auction for the severance, extraction or disposal of common variety minerals.

**B.** A lease shall be comprised of not more than one legal section of six hundred forty acres, more or less, or lot of the public land survey and shall provide for:

1. A term of not more than ten years unless the commissioner considers a longer term to be necessary, but in no event may the lease issue for a term longer than twenty years.

2. A rental based on a percentage of the appraised land value, payable before the commissioner executes the lease and at the beginning of each subsequent annual period.

3. The right of the lessee:

(a) To use as much of the surface of the premises as is reasonably necessary to extract, sever, temporarily store, remove and dispose of common variety minerals.

(b) To wash, screen, crush, sort or otherwise mechanically process.

(c) Of ingress to and egress from the premises across other state lands along designated routes approved by the department.

(d) To assign the lease, provided that such assignment shall not become effective until a copy of the lease is filed with the department and is approved by the commissioner as being in the best interests of the state.

4. Other terms and conditions as the department may deem for the best interests of the state and that are not in conflict with the enabling act, constitution and laws of this state.

C. The department shall establish in the lease the terms of the royalty to be paid for all common variety minerals severed or extracted from the leased land and disposed of by the lessee. The royalty rate shall be established by auction, but it shall be at least the minimum royalty established by the department based on the appraised value of the common variety minerals. The lease shall provide for:

1. Payment of a minimum annual royalty due and payable on the anniversary date of the lease. The minimum annual royalty shall be based on a minimum annual production rate and shall be applied as a credit to payment for common variety minerals extracted or severed from the land. Royalty for any common variety mineral extracted, severed or disposed of in excess of the minimum annual production is due and payable monthly, within thirty days after billing.

2. The application of minimum annual royalty payments as a credit for payment of common variety minerals for which payment must be made. Monies so advanced and not credited against payments for common variety minerals become the sole property of this state on termination or expiration of the agreement.

D. Common variety minerals are not subject to lease as provided by articles 3 and 4 of this chapter. <sup>1</sup>

E. The department shall adopt rules necessary for the administration of this article.

#### Credits

Added as § 27-271 by Laws 1967, Ch. 11, § 1, eff. March 1, 1967. Renumbered § 27-272 and amended by [Laws 1998, Ch. 133](#), §§ 12, 14.

#### [Notes of Decisions \(1\)](#)

#### Footnotes

<sup>1</sup> Sections 27-231 et seq. and 27-251 et seq.

A. R. S. § 27-272, AZ ST § 27-272

Current through legislation effective June 7, 2019 of the First Regular Session of the Fifty-Fourth Legislature (2019).

[Arizona Revised Statutes Annotated](#)

[Title 27. Minerals, Oil and Gas](#)

[Chapter 2. Mining Rights in Land \(Refs & Annos\)](#)

[Article 5. Lease of State Lands for Common Variety Minerals \(Refs & Annos\)](#)

A.R.S. § 27-273

§ 27-273. Performance and reclamation bonds

[Currentness](#)

**A.** The commissioner may require the lessee to post a cash deposit , a certificate of deposit, a surety bond or any other form of financial assurance acceptable to the commissioner to guarantee the payment of all monies due under the lease as royalty to the state.

**B.** The commissioner shall require the lessee to furnish a cash deposit, a certificate of deposit, a surety bond or any other form of financial assurance acceptable to the commissioner, in a reasonable amount to be fixed by the commissioner, conditioned that the lessee will guarantee reclamation of the surface of the land described in the lease to a reasonable condition in accordance with good mining practices.

**C.** The commissioner shall also require the lessee to file with the department a cash deposit, a certificate of deposit, a surety bond or any other form of financial assurance acceptable to the commissioner, conditioned upon prompt payment to the owner or lessee of the surface of the state land covered by the lease, or across which the lessee exercises the right of ingress, for any loss to such owner or lessee from damage or destruction caused by the lessee or the lessee's agents or employees to grasses, forage, crops and improvements upon such lands.

**D.** On default, the commissioner may use the proceeds of the cash deposit, certificate of deposit, surety bond or other financial assurance for the purposes described in subsection A, B or C.

**Credits**

Added by Laws 1967, Ch. 11, § 1, eff. March 1, 1967. Amended by [Laws 1993, Ch. 169, § 2, eff. April 20, 1993](#); [Laws 1998, Ch. 133, § 15](#).

A. R. S. § 27-273, AZ ST § 27-273

Current through legislation effective June 7, 2019 of the First Regular Session of the Fifty-Fourth Legislature (2019).

[Arizona Revised Statutes Annotated](#)

[Title 27. Minerals, Oil and Gas](#)

[Chapter 4. Oil and Gas \(Refs & Annos\)](#)

[Article 2. Lease of State Lands for Oil and Gas \(Refs & Annos\)](#)

A.R.S. § 27-552

§ 27-552. Rules and regulations

[Currentness](#)

The department may prescribe rules and regulations necessary and appropriate to carry out the purposes of this article.

A. R. S. § 27-552, AZ ST § 27-552

Current through legislation effective June 7, 2019 of the First Regular Session of the Fifty-Fourth Legislature (2019).

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[Arizona Revised Statutes Annotated](#)

[Title 27. Minerals, Oil and Gas](#)

[Chapter 4. Oil and Gas \(Refs & Annos\)](#)

[Article 2. Lease of State Lands for Oil and Gas \(Refs & Annos\)](#)

A.R.S. § 27-554

§ 27-554. Designation of known geological structures of producing oil and gas fields

[Currentness](#)

**A.** The department shall from time to time determine and designate the known geological structures of producing oil and gas fields. The determinations and designations shall be published twice in a newspaper of general circulation in the state, the last publication to be not less than five days from the first date of publication. The determinations and designations shall become effective from the date of first publication. Until such a determination and designation is made by the department, all state lands shall be deemed located not within any known geological structure of a producing oil and gas field.

**B.** The department may refuse to lease any state lands for oil and gas when the lands are being used by the state or any state department for a state purpose.

[Notes of Decisions \(1\)](#)

A. R. S. § 27-554, AZ ST § 27-554

Current through legislation effective June 7, 2019 of the First Regular Session of the Fifty-Fourth Legislature (2019).

[Arizona Revised Statutes Annotated](#)

[Title 27. Minerals, Oil and Gas](#)

[Chapter 4. Oil and Gas \(Refs & Annos\)](#)

[Article 2. Lease of State Lands for Oil and Gas \(Refs & Annos\)](#)

A.R.S. § 27-555

§ 27-555. Lease of state lands not located within known geological structure of producing oil and gas field; application; lease extension; provisions of lease; withdrawal of lands from leasing

Effective: September 26, 2008

[Currentness](#)

**A.** When state lands are not located within any known geological structure of a producing oil and gas field, as determined pursuant to [§ 27-554](#), the person making the first application for the lease shall be issued a lease covering the lands without competitive bidding.

**B.** The noncompetitive leases shall provide for the payment by the lessee of a royalty of twelve and one-half per cent of either:

1. The oil, gas and other hydrocarbons produced and saved from the leased premises.

2. At the option of the department, the market value of such products determined as follows:

(a) At the arm's length price prevailing on the day the product is run into a pipeline or otherwise removed from the leased premises if the production is being sold for an arm's length price.

(b) If an arm's length price is not available for the production, at the publicly available arm's length prices for sales of production of comparable type and quality, in generally comparable quantities, in the vicinity. For the purposes of this subdivision, "vicinity" means the smallest geographical local area containing sufficient data to establish an arm's length price.

(c) If an arm's length price is not available for the production and there are no publicly available arm's length prices for sales of production of comparable type and quality, in generally comparable quantities, in the vicinity, the department may establish market value through appraisal completed by an independent licensed appraiser that conforms with generally recognized appraisal methodologies. The appraisal is not binding on either the department or the lessee, but may serve as evidence of market value.

(d) If a price is determined under subdivision (b) or (c) and a price under a higher ranked alternative becomes available, the price determined under the higher ranked alternative shall be used. If a price is determined under subdivision (b) or (c) and the basis for determining that price is no longer available, the price determined under the next highest-ranking alternative that is available shall be used. If a price is determined by the lessees under subdivision (a), the department may require the lessee to certify that the price used is an arm's length price.

(e) For the purposes of this paragraph, “arm's length price” means a price negotiated between a willing buyer and a willing seller, where the buyer and seller are not affiliates and the seller is not receiving property or other noncash consideration as part of the transaction. For the purposes of this subdivision, “affiliate” means parties that are related by blood or marriage, or, in the case of entities, that are under direct or indirect common control or one of which controls the other.

**C.** Royalties, including shut-in gas royalties, reserved to the state on production from any state lands leased pursuant to this article and committed to a unit plan of development by virtue of a unit agreement shall be paid only on that portion of production allocated to such state lands or any part of the state lands, pursuant to the terms and conditions of the unit agreement.

**D.** The leases shall provide for the payment in advance of an annual rental of one dollar per acre per year for each year of the primary term of the lease. All leases shall provide for a minimum rental of forty dollars per year.

**E.** Each lease issued under this section shall be for a primary term of five years and as long thereafter as oil or gas is produced in paying quantities from the lands covered by the lease, except that:

1. If oil or gas is not being produced from the leased premises at the expiration of the primary term of the lease, the lessee shall have a right to an extension of the term of the lease for an additional term of five years and as long thereafter as oil or gas is produced in paying quantities from the leased premises by paying each year in advance double the rental payable during the primary term of the lease, except that the lessee will have no further right to any additional extension for successive terms. In the exercise of such right, the provisions of [§ 27-556](#) relating to sales made upon competitive bidding by sealed bid shall not apply in any case, but all such extensions shall be upon the terms and conditions contained in the original lease, except that the rental for the extended term shall be as provided in this paragraph, and except further that the rental for the extended term of any lease amended pursuant to subsection L of this section shall be as provided in that subsection.

2. If oil or gas is not being produced from the leased premises at the expiration of the primary term of the lease or any extension of the lease pursuant to paragraph 1, but the owner of the lease is diligently engaged in drilling, completion or reworking operations, the lease continues in force for a period of two years from the date on which the lease would have otherwise expired and as long thereafter as oil or gas is produced in paying quantities from the lands. If oil or gas is produced from any such well or any other well drilled during any two year extension, the lease shall continue in force after such two year extension as long as oil or gas is produced in paying quantities from the leased premises, except that rental requirements at the beginning of any lease extension shall be at the rate in existence at that time.

3. Oil or gas that is produced from any part of a unit in which state lands are included by virtue of a unit agreement and that is allocated to all or any part of such state lands pursuant to the terms and conditions of the unit agreement is deemed to be produced from the state lands or that part of the state lands to which the production is allocated.

4. If for any reason production of oil or gas from the leased lands ceases after the primary term or after extension of the lease, the lease shall not terminate if the lessee commences drilling, completion or reworking operations on the land within ninety days from cessation of production, and if drilling, completion or reworking operations are conducted with reasonable diligence, the lease shall remain in force as long thereafter as such drilling, completion or reworking operations are conducted or as long thereafter as oil or gas is produced in paying quantities from the leased lands, but in no event to extend beyond two years if production is not restored.

**F.** Each lease shall provide that the state's royalties shall be computed after deducting any oil or gas reasonably used in operations on the lease.

**G.** The leases shall contain other terms and provisions, not inconsistent with the provisions of this article or other laws of the state, as in the opinion of the department are for the best interest of the state. The lease shall not contain any provision for a premium, tax, fee or other assessment other than the application fees, rentals and royalties provided in statute. Application fees, rentals, royalties or other charges shall be based upon the application fees, rentals, royalties or other charges as provided in statute in effect at the time that the completed application is received by the department.

**H.** Not more than six miles square shall be included in any one lease. The lands shall be in as compact a body as possible but may include noncontiguous land within the six mile area. A discovery well capable of producing oil and gas in paying quantities will perpetuate a lease of not more than two thousand five hundred sixty acres which must be designated by the lessee within thirty days of completion of the well. The department shall adopt rules that will assure due diligence in the drilling of development wells to fully define the field.

**I.** Each lease shall provide that any combination, understanding or agreement entered into by the lessee, written, verbal or otherwise, for the purpose of delaying discovery or development of oil or gas is an illegal practice, and that upon legal determination thereof shall constitute grounds for cancellation of the lease. In the event of such an illegal practice, appropriate proceedings may be instituted by the attorney general against the lessee in the county in which the land or any part thereof is located. A cooperative or unit plan entered into pursuant to this article or any other conservation statute of this state shall not be held to violate this subsection or any other statute of this state prohibiting monopolies or acts, arrangements, contracts, combinations or conspiracies in restraint of trade or commerce on account of operations conducted under such a plan.

**J.** Applications for noncompetitive leases shall be in writing addressed to the department, shall contain a description of the lands sufficient to identify them and the name and address of the applicant and shall be accompanied by a filing fee and the rental payment for the first year. Each application shall be stamped when received by the department with a stamp showing the day and hour when received. If valid applications covering the same lands are filed simultaneously, the department shall offer the lease to the parties involved in the simultaneous applications by competitive bid, as follows:

1. The department shall issue a notice of the competitive bid containing a description of the land proposed to be leased and the time when the bids will be received and opened.
2. The department shall offer the lease to the highest qualified bidder submitting a sealed bid, on the basis of a cash bonus.
3. All bids, together with a certified check in the amount of the bonus bid, must be submitted to the department at the state capitol and shall be opened at the office of the department at the time specified.
4. If identical bids are received, within ten days of the opening of the bids the department shall request new bids from the submitters of the identical bids, and shall repeat the process until a high bidder is determined.
5. Before accepting any competitive bid for a lease under this subsection, the department shall establish to its satisfaction the responsibility of the bidder.

6. The department shall return all checks accompanying rejected bids.

**K.** The department may withdraw from leasing any specific area of land not located within any known geological structure of a producing oil and gas field when it appears that the withdrawal is in the interest of the state, but no lands shall be withdrawn by the department without the consent of a committee composed of the governor, who shall be chairman, the attorney general, and the dean of the college of mines of the university of Arizona. The committee shall consider the proposed withdrawal presented by the department and determine whether the withdrawal shall be permitted. The land, after being withdrawn from leasing, may again be offered for leasing at any time the department deems in the best interests of the state, subject to the advice and consent of the committee provided for in this section, and pursuant to notice as the committee deems necessary.

**L.** The owner of any state oil and gas lease issued by the department and maintained in good standing according to the terms and conditions of the lease and all applicable statutes and regulations shall have the right to elect at any time to have such lease amended to contain the same term and extension provisions and the same provisions relating to unit operations and unit agreements which have been or may be approved by the state land commissioner as are provided by law for state oil and gas leases upon filing a written notice of such election with the department. Upon such written notice to the department the lease term and extension provisions and the provisions relating to unit operations and unit agreements shall be deemed amended. The lease as amended shall include all other provisions, except those providing for rents, contained in the original lease and shall bear the same commencement date as the original lease. The lease as amended shall require the payment in advance of an annual rental of one dollar fifty cents per acre per year for each year of any extension of the lease beyond the primary term of the lease, except extensions of the primary term based upon the production of oil or gas.

#### **Credits**

Amended by Laws 1970, Ch. 41, § 1; Laws 1973, Ch. 60, § 2; Laws 1980, Ch. 80, § 2; Laws 1982, Ch. 299, § 3; Laws 1985, Ch. 102, § 1; [Laws 2008, Ch. 239, § 1](#).

#### [Notes of Decisions \(5\)](#)

A. R. S. § 27-555, AZ ST § 27-555

Current through legislation effective June 7, 2019 of the First Regular Session of the Fifty-Fourth Legislature (2019).

[Arizona Revised Statutes Annotated](#)

[Title 27. Minerals, Oil and Gas](#)

[Chapter 4. Oil and Gas \(Refs & Annos\)](#)

[Article 2. Lease of State Lands for Oil and Gas \(Refs & Annos\)](#)

A.R.S. § 27-556

§ 27-556. Lease of state lands located within known geological structure of producing oil or gas field; sealed bids; call for bids; publication; lease extension; provisions of lease; acreage limitation

Effective: September 26, 2008

[Currentness](#)

When state lands are located within a known geological structure of a producing oil or gas field, as determined pursuant to [§ 27-554](#), the lands shall be leased only by sealed bids, as follows:

1. Upon receipt of an application to lease any of such lands or whenever, in the opinion of the department, there is a demand for the purchase of leases of the lands, the department shall offer the tract or tracts for lease to the highest qualified bidder submitting a sealed bid, on the basis of a cash bonus.
2. The department shall publish a call for sealed bids twice in a newspaper of general circulation in the state, the last publication to be not less than fifteen days prior to the date fixed for opening the bids. All bids, together with a certified check in the amount of the bonus bid, shall be submitted to the department at the capitol, and opened at the office of the department at the time specified. On or before December 1 each year, the department shall designate by general order the newspaper in which the publications shall be made during the following calendar year. The successful bidder shall pay the cost of the publication and the reasonable expenses of the sale.
3. The publication shall contain a description of the land proposed to be leased, the time when the bids will be received and opened, the royalty to be demanded which the department shall fix prior to call for bids at not less than twelve and one-half per cent, and an annual rental to be demanded in the amount of one dollar per acre for each year.
4. The publication shall set forth the form of lease which the successful bidder will be required to execute. In lieu of publishing the form of lease in its entirety the publication may specify the form of lease by designating the form number of lease on file with the department, copies of which shall be furnished any person on request.
5. Royalties, including shut-in gas royalties, reserved to the state on production from any state lands leased pursuant to this article and committed to a unit plan of development by virtue of a unit agreement shall be paid only on that portion of production allocated to such state lands or any part of the state lands, pursuant to the terms and conditions of such unit agreement.
6. Each lease issued under this section shall be for a primary term of five years and as long thereafter as oil or gas is produced in paying quantities from the lands covered by the lease except that:

(a) If oil or gas is not being produced from the leased premises at the expiration of the primary term of the lease, but the owner of the lease is diligently engaged in drilling, completion or reworking operations, the lease continues in force for a period of two years from the date on which the lease would have otherwise expired and as long thereafter as oil or gas is produced in paying quantities from the lands. If oil or gas is produced from any such well or any other well drilled during any two year extension, the lease shall continue in force after such two year extension as long as oil or gas is produced in paying quantities from the leased premises.

(b) Oil or gas that is produced from any part of a unit in which state lands are included by virtue of a unit agreement and that is allocated to all or any part of such state lands pursuant to the terms and conditions of the unit agreement is deemed to be produced from the state lands or that part of the state lands to which the production is allocated.

(c) If for any reason production of oil or gas from the leased lands ceases after the primary term or any extension, the lease shall not terminate if the lessee commences drilling, completion or reworking operations on the land within ninety days from cessation of production, and if drilling, completion or reworking operations are conducted with reasonable diligence, the lease shall remain in force as long thereafter as such drilling, completion or reworking operations are conducted or as long thereafter as oil or gas is produced in paying quantities from the leased lands, but in no event to extend beyond two years if production is not restored.

7. The lease may contain other terms and provisions not inconsistent with the provisions of this article or other laws of the state, as in the opinion of the department are for the best interests of the state.

8. Each lease shall provide that the state's royalties shall be computed after deducting any oil or gas reasonably used in operations on the lease.

9. Each lease shall provide that any combination, understanding or agreement entered into by the lessee, written, verbal or otherwise, for the purpose of delaying the discovery or development of oil or gas is an illegal practice, and that upon legal determination thereof shall constitute grounds for cancellation of the lease. In the event of such an illegal practice, appropriate proceedings may be instituted by the attorney general against the lessee in the county in which the land, or any part thereof, is located. A cooperative or unit plan entered into pursuant to this article or any other conservation statute of this state shall not be held to violate this paragraph or any other statute of this state prohibiting monopolies or acts, arrangements, contracts, combinations or conspiracies in restraint of trade or commerce on account of operations conducted under such a plan.

10. The owner of any state oil and gas lease issued by the department and maintained in good standing according to the terms and conditions of the lease and all applicable statutes and regulations shall have the right to elect at any time to have such lease amended to contain the same term and extension provisions and the same provisions relating to unit operations and unit agreements which have been or may be approved by the state land commissioner as are provided by law for state oil and gas leases upon filing a written notice of such election with the department. Upon such written notice to the department the lease term and extension provisions and the provisions relating to unit operations and unit agreements shall be deemed amended. The lease as amended shall include all other provisions, except those providing for rents, contained in the original lease and shall bear the same commencement date as the original lease. The lease as amended shall require the payment in advance of an annual rental of one dollar and fifty cents per acre per year for each year of any extension of the lease beyond the primary term of the lease, except extensions of the primary term based upon the production of oil or gas.

11. Before offering any state lands for lease under sealed bids the department shall determine the tract or tracts into which the lands shall be divided for leasing purposes. Each tract shall contain not less than one quarter section of land and not more than two sections of land, but a tract containing less than one quarter section of land may be leased if the tract is segregated from other state lands not then subject to oil and gas lease. All tracts shall be in reasonably compact form.

12. The department shall reserve the right to reject any and all bids on each offer for lease and to again offer the tract or tracts for lease if the bids received are not acceptable to the department.

13. Before acceptance of any bid for a lease under this section, the department shall establish to its satisfaction the responsibility of the bidder.

14. The department shall return all checks accompanying rejected bids.

**Credits**

Amended by Laws 1980, Ch. 80, § 4; [Laws 2008, Ch. 239, § 3](#).

A. R. S. § 27-556, AZ ST § 27-556

Current through legislation effective June 7, 2019 of the First Regular Session of the Fifty-Fourth Legislature (2019).

[Arizona Revised Statutes Annotated](#)

[Title 27. Minerals, Oil and Gas](#)

[Chapter 4. Oil and Gas \(Refs & Annos\)](#)

[Article 2. Lease of State Lands for Oil and Gas \(Refs & Annos\)](#)

A.R.S. § 27-557

§ 27-557. Unit operations; unit agreements

[Currentness](#)

**A.** Each lease issued under the provisions of this article shall provide that the lessee, insofar as its interest in the lease is affected, may join in cooperative or unit plans for the exploration, development and operation of oil and gas pools with the United States, its agencies and its or their lessees and permittees, or with private owners and persons holding oil and gas leases on private lands or on state lands.

**B.** Lessees under oil and gas leases issued by the department may, with the consent of the department, commit the state lands to unit, cooperative or other plans of exploration, development and operation with other state, federal, private or Indian lands.

**C.** The state land commissioner shall, not later than ten days after the date a proposed cooperative or unit plan for the exploration, development or operation of oil and gas pools is filed with the department, give notice in writing of such proposal to the oil and gas conservation commission, the bureau of geology and mineral technology and all holders of oil and gas leases on state lands to be included in the proposed cooperative or unit plan. Any interested person may, within ten days after the date of such notice, file a written protest with the department. Upon receipt of such a protest, the state land commissioner shall, not later than thirty days after receipt of the protest, hold a public hearing at the county seat of the county in which the state lands to be included in the proposed cooperative or unit plan are located. Notice of the public hearing shall be published three times in a newspaper of general circulation in the county, the last publication to be not less than ten days prior to the date of the hearing. The state land commissioner shall, not later than sixty days after the date the proposed cooperative or unit plan is filed with the department or, in the event of a protest and public hearing, not later than thirty days after the date of such public hearing, determine whether it is in the best interests of the state to commit state lands to the cooperative or unit plan as proposed or as modified. A proposed cooperative or unit plan may be modified in a manner agreeable to the state land commissioner and the proponent of the plan after such notice and public hearing as may be required by this subsection. Upon determination by the state land commissioner that it is in the best interests of the state to commit state lands to such cooperative or unit plan, the state land commissioner shall consent to and approve the cooperative or unit plan.

**D.** The execution by the authorized state officer of a cooperative plan or unit agreement is deemed to be an amendment of state leases committed to such plan or unit and has the effect of extending the term of the state leases included in the plan or agreement for the full period of time such plan or unit may remain in effect and of modifying such leases so as to conform the terms and conditions of the leases to the terms and conditions of the plan or unit but otherwise to remain in effect.

**E.** The agreements shall provide for the equitable division on an agreed basis of the oil and gas produced from the unit and for the extension of leases covering any part of the unit as long as drilling, completion or reworking operations are conducted anywhere on the unit or as long as oil or gas in paying quantities is produced from any part of the unit, but no such agreement shall relieve any operator from the obligation to develop reasonably the lands and leases as a whole committed thereto. When

the agreements provide for returning gas to a formation underlying the unit, they may provide that no royalties are required to be paid on the gas returned.

**F.** Any lease issued under this article which is committed to a unit agreement embracing lands that are in part within and in part outside of the area covered by any such agreement shall be segregated into separate leases as to the lands committed and the lands not committed as of the effective date of unitization. Any such lease, as to the nonunitized portion, shall continue in force and effect for a period of time equal to the greater of the remainder of the original term of the lease or two years from the date of such segregation and as long thereafter as oil or gas is produced in paying quantities.

**G.** Any lease issued under this article which is in effect at the termination of any unit agreement to which such lease is committed, unless relinquished, shall continue in effect for a period of time equal to the greater of the remainder of the original term of the lease or two years from the termination of the unit agreement and as long thereafter as oil or gas is produced in paying quantities.

**H.** Notwithstanding any of the foregoing,<sup>1</sup> no lease issued or amended pursuant to this article shall be extended for any term longer than as provided in [article X, § 3 of the Constitution of the state of Arizona](#).

#### **Credits**

Amended by Laws 1980, Ch. 80, § 5.

#### Footnotes

<sup>1</sup> So in original. The unit of reference is unclear.

A. R. S. § 27-557, AZ ST § 27-557

Current through legislation effective June 7, 2019 of the First Regular Session of the Fifty-Fourth Legislature (2019).

[Arizona Revised Statutes Annotated](#)

[Title 27. Minerals, Oil and Gas](#)

[Chapter 4. Oil and Gas \(Refs & Annos\)](#)

[Article 2. Lease of State Lands for Oil and Gas \(Refs & Annos\)](#)

A.R.S. § 27-562

§ 27-562. Surrender

[Currentness](#)

A lessee may surrender any part or all of the lands covered by the lease at any time upon payment to the department of all amounts then due as to the lands surrendered, but no refund of any part of the cash consideration or rental theretofore paid shall be made to the lessee upon such surrender.

[Notes of Decisions \(1\)](#)

A. R. S. § 27-562, AZ ST § 27-562

Current through legislation effective June 7, 2019 of the First Regular Session of the Fifty-Fourth Legislature (2019).

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[Arizona Revised Statutes Annotated](#)  
[Title 37. Public Lands \(Refs & Annos\)](#)  
[Chapter 1. State Agencies and Officers \(Refs & Annos\)](#)  
[Article 2. State Land Commissioner](#)

A.R.S. § 37-132

§ 37-132. Powers and duties

Effective: September 29, 2012

[Currentness](#)

A. The commissioner shall:

1. Exercise and perform all powers and duties vested in or imposed upon the department, and prescribe such rules as are necessary to discharge those duties.
2. Exercise the powers of surveyor-general except for the powers of the surveyor-general exercised by the treasurer as a member of the selection board pursuant to [§ 37-202](#).
3. Make long-range plans for the future use of state lands in cooperation with other state agencies, local planning authorities and political subdivisions.
4. Promote the infill and orderly development of state lands in areas beneficial to the trust and prevent urban sprawl or leapfrog development on state lands.
5. Classify and appraise all state lands, together with the improvements on state lands, for the purpose of sale, lease or grant of rights-of-way. The commissioner may impose such conditions and covenants and make such reservations in the sale of state lands as the commissioner deems to be in the best interest of the state trust. The provisions of this paragraph are subject to hearing procedures pursuant to title 41, chapter 6, article 10<sup>1</sup> and, except as provided in [§ 41-1092.08, subsection H](#), are subject to judicial review pursuant to title 12, chapter 7, article 6.<sup>2</sup>
6. Have authority to lease for grazing, agricultural, homesite or other purposes, except commercial, all land owned or held in trust by the state.
7. Have authority to lease for commercial purposes and sell all land owned or held in trust by the state, but any such lease for commercial purposes or any such sale shall first be approved by the board of appeals.
8. Except as otherwise provided, determine all disputes, grievances or other questions pertaining to the administration of state lands.

9. Appoint deputies and other assistants and employees necessary to perform the duties of the department and assign their duties subject to title 41, chapter 4, article 4<sup>3</sup> and require of them such surety bonds as the commissioner deems proper. The compensation of the deputy, assistants or employees shall be as determined pursuant to [§ 38-611](#).

10. Make a written report to the governor annually, not later than September 1, disclosing in detail the activities of the department for the preceding fiscal year, and publish it for distribution. The report shall include an evaluation of auctions of state land leases held during the preceding fiscal year considering the advantages and disadvantages to the state trust of the existence and exercise of preferred rights to lease reclassified state land.

11. Withdraw state land from surface or subsurface sales or lease applications if the commissioner deems it to be in the best interest of the trust. This closure of state lands to new applications for sale or lease does not affect the rights that existing lessees have under law for renewal of their leases and reimbursement for improvements.

**B.** The commissioner may:

1. Take evidence relating to, and may require of the various county officers information on, any matter that the commissioner has the power to investigate or determine.

2. Under such rules as the commissioner adopts, use private real estate brokers to assist in any sale or long-term lease of state land and pay, from fees collected under [§ 37-107, subsection B](#), paragraph 1, a commission to a broker that is licensed pursuant to title 32, chapter 20<sup>4</sup> and that provides the purchaser or lessee at auction. The purchaser or lessee at auction is not eligible to receive a commission pursuant to this subsection. A commission shall not be paid on a sale or a long-term lease if the purchaser or lessee is a political subdivision of this state.

3. Require a permittee, lessee or grantee to post a surety bond or any form of collateral deemed sufficient by the commissioner for performance or restoration purposes. The commissioner shall use the proceeds of a bond or collateral only for the purposes determined at the time the bond or collateral is posted. For agricultural lessees, the commissioner may require collateral as follows:

(a) As security for payment of the annual assessments levied by the irrigation district in which the state land is located if the lessee has a history of late payments or defaults. The amount of the collateral required shall not exceed the annual assessment levied by the irrigation district.

(b) As security for payment of rent, if an extension of time for payment is requested or if the lessee has a history of late payments of rent. The collateral shall be submitted at the time any extension of time for payment is requested. The amount of the collateral required shall not exceed the annual amount of rent for the land.

(c) A surety bond shall be required only if the commissioner determines that other forms of collateral are insufficient.

4. Withhold market and economic analyses, preliminary engineering, site and area studies and appraisals that are collected during the urban planning process from public viewing before they are submitted to local planning and zoning authorities.

5. Withhold from public inspection proprietary information received during lease negotiations. The proprietary information shall be released to public inspection unless the release may harm the competitive position of the applicant and the information could not have been obtained by other legitimate means.

6. Issue permits for short-term use of state land for specific purposes as prescribed by rule.

7. Contract with a third party to sell recreational permits. A third party under contract pursuant to this paragraph may assess a surcharge for its services as provided in the contract, in addition to the fees prescribed pursuant to [§ 37-107](#).

8. Close urban lands to specific uses as prescribed by rule if necessary for dust abatement, to reduce a risk from hazardous environmental conditions that pose a risk to human health or safety or for remediation purposes.

9. Notwithstanding subsection A, paragraph 4 of this section, authorize, in the best interest of the trust, the extension of public services and facilities either:

(a) That are necessary to implement plans of the local governing body, including plans adopted or amended pursuant to [§ 9-461.06](#) or [11-805](#).

(b) Across state lands that are either:

(i) Classified as suitable for conservation pursuant to [§ 37-312](#).

(ii) Sold or leased at auction for conservation purposes.

**C.** The commissioner or any deputy or employee of the department shall not have, own or acquire, directly or indirectly, any state lands or the products on any state lands, any interest in or to such lands or products, or improvements on leased state lands, or be interested in any state irrigation project affecting state lands.

#### **Credits**

Amended by Laws 1970, Ch. 204, § 142; Laws 1971, Ch. 166, § 1; Laws 1972, Ch. 156, § 2; Laws 1981, 1st S.S., Ch. 1, § 5; Laws 1982, Ch. 121, § 1; Laws 1983, Ch. 288, § 1; [Laws 1989, Ch. 171, § 1](#); [Laws 1992, Ch. 190, § 1](#); [Laws 1992, Ch. 357, § 1](#); [Laws 1993, Ch. 169, § 3, eff. April 20, 1993](#); [Laws 1994, Ch. 177, § 3](#); [Laws 1997, Ch. 221, § 167](#); [Laws 1997, Ch. 249, § 1](#); [Laws 1999, Ch. 209, § 1](#); [Laws 2000, Ch. 10, § 1](#); [Laws 2000, Ch. 113, § 158](#); [Laws 2002, Ch. 336, § 2](#); [Laws 2003, Ch. 69, § 2](#); [Laws 2010, Ch. 243, § 6](#); [Laws 2010, Ch. 244, § 27, eff. Oct. 1, 2011](#); [Laws 2011, Ch. 238, § 34, eff. Oct. 1, 2011](#); [Laws 2012, Ch. 321, § 86, eff. Sept. 29, 2012](#).

[Notes of Decisions \(40\)](#)

Footnotes

[1](#) Section 41-1092 et seq.

[2](#) Section 12-901 et seq.

[3](#) Section 41-741 et seq.

[4](#) Section 32-2101 et seq.

A. R. S. § 37-132, AZ ST § 37-132

Current through legislation effective June 7, 2019 of the First Regular Session of the Fifty-Fourth Legislature (2019).

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[Arizona Revised Statutes Annotated](#)

[Title 37. Public Lands \(Refs & Annos\)](#)

[Chapter 2. Administration of State and Other Public Lands \(Refs & Annos\)](#)

[Article 11. Disposition of Products of State Lands](#)

A.R.S. § 37-481

§ 37-481. Conservation and administration of products of state lands

[Currentness](#)

The state land department shall conserve, sell or otherwise administer the timber products, stone, gravel and other products and property upon lands belonging to the state under rules not in conflict with the enabling act and the constitution.

**Credits**

Amended by [Laws 1999, Ch. 209, § 11.](#)

[Notes of Decisions \(8\)](#)

A. R. S. § 37-481, AZ ST § 37-481

Current through legislation effective June 7, 2019 of the First Regular Session of the Fifty-Fourth Legislature (2019).

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**INDUSTRIAL COMMISSION (F19-1105)**

Title 20, Chapter 5, Article 6, Occupational Safety and Health Standards



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** January 14, 2020

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

**FROM:** Council Staff

**DATE:** December 9, 2019

**SUBJECT: INDUSTRIAL COMMISSION OF ARIZONA (F19-1203)**  
Title 20, Chapter 5, Article 6, Occupational Safety and Health Standards

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### **Summary:**

This Five Year Review Report (5YRR) from the Industrial Commission of Arizona (Commission) relates to rules in Title 20, Chapter 5, Article 6, regarding Occupational Safety and Health Standards. As the Commission indicates, the rules in Article 6 contain occupational safety and health standards for construction, general industry, and agriculture. It also contains rules relating to: (1) occupational safety and health inspections; (2) issuing, abating, and contesting citations for violations of occupational safety and health standards; (3) reporting a workplace accident or fatality; (4) variances; (5) the powers of the Commission in variance-related matters; and (6) retaliation claims.

In this report, the Commission did not review R20-5-601.01 (Fall Protection for Residential Construction) because the Commission intends to let it expire.

In the previous 5YRR for these rules, which the Council approved in March 2014, the Commission stated that it would amend the rules to address issues identified in that report within 18 months of the expiration of the rulemaking moratorium. The rulemaking moratorium has not been lifted, and the Commission did not complete the prior proposed course of action.

## **Proposed Action:**

The Commission has already obtained an exemption from the rulemaking moratorium to conduct a rulemaking to update standards in R20-5-601, R20-5-602, and R20-5-629. It plans to commence this rulemaking in the next 30 days. The Commission further states that it intends to complete a comprehensive rulemaking to amend the rules in Article 6 based on the issues identified in this report by July 31, 2020.

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

Yes. The Agency cites to applicable general and specific statutory authority for these rules.

### **2. Summary of the agency's economic impact comparison and identification of stakeholders:**

The Commission conducted exempt rulemakings in 2016 and 2018 to amend R20-5-601, R20-5-602, and R20-5-629. The Commission indicated that these rule changes related to incorporating changes in federal safety standards that would have little to no economic impact and any costs related to these changes would not affect the economic viability of affected establishments. For all other rules in Article 6, the Commission states that the economic impact does not differ significantly from what was originally determined in the economic, small business, and consumer impact statements (EIS) from prior rulemakings and in prior 5YRRs.

The stakeholders include the Commission, the Occupational Safety and Health Administration (OSHA), employers and employees in the construction and agriculture industry, and the general public.

### **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 Commission indicates that the probable benefits of the rules outweigh the probable costs and that the rules impose the least burden and costs on regulated persons. Although stakeholders may bear some financial burden to meet general safety standards, the increased health and safety of workers outweigh those costs.

### **4. Has the agency received any written criticisms of the rules over the last five years?**

No. The Commission has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Commission states that it conducted 6,372 inspections and documented 8,232 citations issued between 2013 and 2018. Out of the citations issued, 509 were contested. The Commission states that the rules reviewed are effective in achieving their objectives.

The Commission states that the rules in Chapter 6 are mostly clear, concise, and understandable. However, the Department identifies numerous rules in its report that could be amended to improve clarity and understandability.

The Commission states that a number of rules, which are identified in the report, have a "consistency issue" and should be reviewed and/or amended.

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

Yes. The Commission indicates that the rules are enforced as written to the extent that they are consistent with statute.

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

The Commission states that except for R20-5-602.01 (Subpart T, Commercial Diving Operations), R20-5-605 (Hoes for Weeding or Thinning Crops), and R20-5-628 (Safe Transportation of Compressed Air or Other Gases), the rules in this Article are not more stringent than corresponding federal law or regulation. The corresponding federal law is the Occupational Safety and Health Act of 1970, as amended. The corresponding federal regulations are 29 CFR 1904, 1910, 1926, and 1928. For the rules that are more stringent than corresponding federal law and regulation, these rules were adopted pursuant to authority under 29 CFR 1953.5(A) (Special provisions for standards changes).

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The rules in this Article were not adopted after July 29, 2010 and thus do not require a permit.

9. **Conclusion**

Council staff finds that the Commission has properly analyzed the rules in Article 6 and identified rules in need of improvement. It already has an exemption from the rulemaking moratorium to update standards in three rules in Article 6, and intends to complete a comprehensive rulemaking to amend the remaining rules in Article 6 by July 31, 2020. The Commission has provided a plausible justification for this timeline. Council staff recommends approval of this report.

THE INDUSTRIAL COMMISSION OF ARIZONA  
OFFICE OF THE DIRECTOR



DALE L. SCHULTZ, CHAIRMAN  
JOSEPH M. HENNELLY, JR., VICE CHAIR  
SCOTT P. LEMARR, MEMBER  
STEVEN J. KRENZEL, MEMBER

P.O. Box 19070  
Phoenix, Arizona 85005-9070

JAMES ASHLEY, DIRECTOR  
PHONE: (602) 542-4411  
FAX: (602) 542-7889

August 29, 2019

Sent via e-mail to [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Nicole Sornsins, Chair  
Governor's Regulatory Review Council  
Arizona Department of Administration  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

Re: A.A.C. Title 20, Chapter 5, Article 6, Five-year Review Report

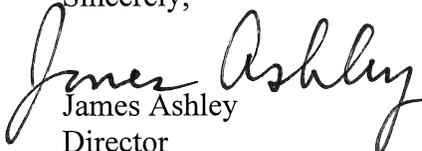
Dear Ms. Sornsins:

The Industrial Commission of Arizona ("Commission"), through its Director, submits for approval by the Governor's Regulatory Review Council ("Council") the attached Five-year Review Report on 20 A.A.C. 5, Article 6. The Commission has timely filed this report on or before Friday August 30, 2019 after receiving a one-year extension from the Council.

An electronic copy of this cover letter, the report, the rules being reviewed, the general and specific statutes authorizing the rules, and the economic impact statements (R20-5-601,602, and 629), are concurrently submitted by email to Krishna Jhaveri. The Commission believes that the report complies with the requirements of A.R.S. § 41-1056.

The Commission has reviewed all rules in Article 6 and has complied with A.R.S. § 41-1091, which requires the Commission to annually publish a directory summarizing the subject matter of all currently applicable rules and substantive policy statements, by posting directories of its current rules and substantive policy statements on the Commission's website, as required by A.R.S. § 41-1091.01(1) & (2). Should you have any questions concerning the report, please contact Chief Counsel Gaetano Testini at (602) 542-5905 or Attorney Afshan Peimani at (602) 542-5293.

Sincerely,

  
James Ashley  
Director

AP/lr  
Enclosures

**THE INDUSTRIAL COMMISSION OF ARIZONA  
OFFICE OF THE DIRECTOR**



DALE L. SCHULTZ, CHAIRMAN  
JOSEPH M. HENNELLY, JR., VICE CHAIR  
SCOTT P. LEMARR, MEMBER  
STEVEN J. KRENZEL, MEMBER

P.O. Box 19070  
Phoenix, Arizona 85005-9070

JAMES ASHLEY, DIRECTOR  
PHONE: (602) 542-4411  
FAX: (602) 542-7889

December 12, 2019

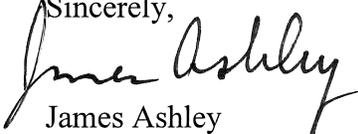
Sent via e-mail to [grrc@azdoa.gov](mailto:grrc@azdoa.gov)  
Nicole Sornsins, Chair  
Governor's Regulatory Review Council  
Arizona Department of Administration  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

Re: A.A.C. Title 20, Chapter 5, Article 6, Five-year Review Report

Dear Ms. Sornsins:

The Industrial Commission of Arizona ("Commission") previously submitted for approval by the Governor's Regulatory Review Council ("Council") the Five-year Review Report on 20 A.A.C. 5, Article 6. The Commission amends the previously submitted cover letter to include its intention for A.A.C. R20-5-601.01 to expire.

Should you have any questions concerning the report, please contact Chief Counsel Gaetano Testini at (602) 542-5905 or Attorney Afshan Peimani at (602) 542-5293.

Sincerely,  
  
James Ashley  
Director

AP/lr

**FIVE-YEAR-REVIEW REPORT**

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

**ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS**

**FIVE-YEAR-REVIEW REPORT**  
**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**  
**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**  
**ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS**

1.	FIVE-YEAR REVIEW SUMMARY	2
2.	FIVE-YEAR REVIEW REPORT	5
3.	RULES REVIEWED	Attached
4.	GENERAL AND SPECIFIC STATUTES	Attached
5.	ECONOMIC IMPACT STATEMENT	Attached

## **FIVE-YEAR REVIEW SUMMARY**

The Industrial Commission of Arizona (the “Commission”) was created in 1925 as a result of legislation (the Arizona Workman’s Compensation Act) implementing the constitutional provisions establishing a workers’ compensation system. From 1925 to 1969, the workers’ compensation system consisted of the State Compensation Fund, which was then a part of the Commission, and self-insured employers which generally comprised the mining and the railroad companies. In 1969, the workers’ compensation system reorganized and expanded to include private insurance companies. The State Compensation Fund was split off from the Commission and established as a separate agency responsible for providing workers’ compensation insurance coverage. The Commission retained both its responsibility as the file of record and its authority over the processing of workers’ compensation claims. Since that time, the role of the Commission has grown to include other labor-related issues such as occupational safety and health, youth employment, resolution of wage-related disputes, minimum wage, vocational rehabilitation, workers’ compensation coverage for claimants of uninsured employers, and self-insured employers.

### **Certification Regarding Compliance with A.R.S. § 41-1091**

In the cover letter for this report, the Commission’s Director certifies that the Commission is in compliance with A.R.S. § 41-1091 with respect to the substantive policy statements relating to the rules in Article 6, as well as other substantive policy statements and all rules, which are available on the Commission’s website.

### **About Article 6 Generally**

Article 6 contains occupational safety and health standards for construction, general industry, and agriculture. Article 6 also includes rules and procedures relating to: (1) conducting occupational safety and health inspections; (2) issuing, abating, and contesting citations for violations of occupational safety and health standards; (3) reporting a workplace accident or fatality; (4) variances; (5) the powers of the Commission in variance-related matters; and (6) retaliation claims.

### **Rulemaking on R20-5-601, R20-5-602, and R20-5-629 in 2016 and 2018**

The Commission conducted the following rulemaking in 2016 and 2018 to amend R20-5-601, R20-5-602, and R20-5-629. This rulemaking was exempt from the requirements of A.R.S. § 41-1056 under A.R.S. § 41-1057(A)(3).

- R20-5-601 (effective March 16, 2016) – Amended to incorporate by reference OSHA rule updates to 29 CFR 1926 (“Safety and Health Regulations for Construction”), as published on June 22, 2012, April 23, 2013, May 29, 2013, and April 4, 2014, in OSHA’s Final Rules titled “Updating OSHA Standards Based on National Consensus Standards; Head Protection”; “Cranes and Derricks in Construction: Underground Construction and Demolition”; “Cranes and Derricks in Construction: Revising the Exemption for Digger Derricks”; and “Electrical Power Generation, Transmission, and Distribution; Electrical Protective.”
- R20-5-601 (effective May 10, 2016) – Amended to incorporate by reference OSHA rule updates to 29 CFR 1926, as published on September 26, 2014, and May 4, 2015, in OSHA’s Final Rules titled “Cranes and Derricks in Construction: Operator Certification” and “Confined Spaces in Construction.”
- R20-5-601 (effective July 23, 2018) – Amended to incorporate by reference OSHA rule updates to 29 CFR 1926, as published on March 25, 2016, in OSHA’s Final Rules titled “Updating OSHA Standards Based on National Consensus Standards; Eye and Face Protection” and “Occupational Exposure to Respirable Crystalline Silica.”
- R20-5-602 (effective March 16, 2016) – Amended to incorporate by reference OSHA rule updates to 29 CFR 1910 (“Occupational Safety and Health Standards”), as published on June 22, 2012, in OSHA’s Final Rule titled “Updating OSHA Standards Based on National Consensus Standards; Head Protection.”
- R20-5-602 (effective July 23, 2018) – Amended to incorporate by reference recent OSHA rule updates to 29 CFR 1910, as published on March 25, 2016, in OSHA’s Final Rules titled “Updating OSHA Standards Based on National Consensus Standards; Eye and Face Protection” and “Occupational Exposure to Respirable Crystalline Silica.”
- R20-5-629 (effective March 16, 2016) – Amended to incorporate by reference recent OSHA rule updates to 29 CFR 1904 (“Recording and Reporting Occupational Injuries and Illnesses”), as published on September 18, 2014, in OSHA’s Final Rule titled

“Occupational Injury and Illness Recording and Reporting Requirements – NAICS Update and reporting Revisions.”

- R20-5-629 (effective July 23, 2018) – Amended to incorporate by reference recent OSHA rule updates to 29 CFR 1904, as published on May 12, 2016, in OSHA’s Final Rule titled “Improve Tracking of Workplace Injuries and Illnesses.”

**FIVE-YEAR-REVIEW REPORT**

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

**ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS**

**1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

The rules in Article 6 have general and specific authorization under A.R.S. § 23-107, A.R.S. § 23-405(4) and A.R.S. § 23-410. A.R.S. § 23-405(4) states that “the Commission shall promulgate standards and regulations as required, pursuant to section 23-410, and promulgate such other rules and regulations as are necessary for the efficient functioning of the [Arizona Division of Occupational Safety and Health].” A.R.S. § 23-410 sets forth the process for developing and updating safety and health standards and rules.

**2. Objective of the rules, including the purposes for the existence of the rules.**

The Commission’s overarching objectives regarding Article 6, in no particular order with respect to priority, are to promulgate safety and health standards that are at least as effective as those of the Occupational Safety and Health Administration and set forth procedures and regulations that are necessary for the efficient functioning of the Arizona Division of Occupational Safety and Health (“ADOSH”).

R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926.

R20-5-601. This rule is exempt from the requirements of A.R.S. § 41-1056 under A.R.S. § 41-1057(A)(3).

R20-5-601.01. Fall Protection for Residential Construction

R20-5-601.01. The Commission is not reporting on R20-5-601.01, as the Commission intends for the rule to expire.

- R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910
- R20-5-602. This rule is exempt from the requirements of A.R.S. § 41-1056 under A.R.S. § 41-1057(A)(3).
- R20-5-602.01. Subpart T, Commercial Diving Operations
- R20-5-602.01. The rule adopts the commercial diving standards contained in Subpart T of the Federal OSHA standards for General Industry, as published in 29 CFR 1910, with amendments as specified in R20-5-602. The rule rejects the exemption set forth in 29 CFR 1910.401(a)(2)(ii) for diving operations performed solely for search, rescue, or related public safety purposes by or under the control of a government agency.
- R20-5-603. The Federal Occupational Safety and Health Standards for Agriculture, 29 CFR 1928
- R20-5-603. This rule is exempt from the requirements of A.R.S. § 41-1056 under A.R.S. § 41-1057(A)(3).
- R20-5-604. Rules of Agency Practice and Procedure concerning OSHA Access to Employee Medical Records, 29 CFR 1913
- R20-5-604. The rule establishes procedures for safeguarding individual privacy and access to identifiable employee medical information.
- R20-5-605. Hoes for Weeding or Thinning Crops
- R20-5-605. The rule provides that a hoe less than four feet long may not be used absent specific exempt operations, including greenhouse or nursery operations.
- R20-5-606. State Definition of Terms Used in Adopting Federal Standards Pursuant to R20-5-601, R20-5-602, R20-5-603 and R20-5-604
- R20-5-606. The rule defines terms, including “Assistant Secretary” and “OSHA,” that are used in federal rules incorporated by reference in R20-5-601 through R20-5-604, so as to be meaningful and consistent in the context of Arizona’s occupational safety and health program.
- R20-5-608. Definitions

- R20-5-608. The rule define terms that are utilized in Article 6 to make the rules understandable, to promote clarity in the rules without needless repetition, and to afford consistent interpretation.
- R20-5-609. Posting of Notice: Availability of the Act, Regulations and Applicable Standards
- R20-5-609. The rule describes the notices that employers must post, sets forth posting requirements, and describes the information that employers must provide employees upon request.
- R20-5-610. Authority for Inspection
- R20-5-610. The rule describe the circumstances under which ADOSH and representatives of the Secretary of Health, Education and Welfare may conduct inspections pursuant to the Arizona Occupational Safety and Health Act of 1972 or related law.
- R20-5-611. Objection to Inspection
- R20-5-611. The rule provides authorization and the procedure for obtaining an inspection warrant when a compliance safety and health officer is refused entry into a workplace or when an inspection is otherwise obstructed.
- R20-5-612. Entry Not a Waiver
- R20-5-612. The rule specifies that a waiver of any cause of action, citation, or penalty may not be granted in return for permission to enter a work site.
- R20-5-613. Advance Notice of Inspections
- R20-5-613. The rule establishes the situations and conditions under which the ADOSH Director is authorized to give advance notice of an inspection. The rule also describes the employer's responsibilities in the event of advance notice of an inspection.
- R20-5-614. Conduct of Inspections
- R20-5-614. The rule describes the rights and responsibilities of an ADOSH compliance safety and health officer during an ADOSH inspection.
- R20-5-615. Representatives of Employers and Employees
- R20-5-615. The rule describes the rights and responsibilities of employer and employee representatives during an ADOSH inspection.
- R20-5-616. Trade Secrets

- R20-5-616. The rule describes the procedures to be followed by ADOSH compliance safety and health officers when trade secrets are encountered during an ADOSH investigation.
- R20-5-617. Consultation with Employees
- R20-5-617. The rule authorizes the ADOSH compliance safety and health officer to privately question or consult with employees during the course of an ADOSH inspection and protects an employee's right to report safety and health violations.
- R20-5-618. Complaints by Employees
- R20-5-618. The rule describes the requirement for providing a copy of a complaint submitted pursuant to A.R.S. § 23-408(I) to an employer and describes the circumstances under which an occupational safety and health inspection will be conducted.
- R20-5-619. Inspection Not Warranted; Informal Review
- R20-5-619. The rule describes the procedure for a complaining party under A.R.S. § 23-408(I) to challenge the ADOSH Director's determination that an inspection is not warranted. The rule also describes the Commission's informal review procedure.
- R20-5-621. Citations: Notices of De Minimis Violations
- R20-5-621. The rule sets forth procedures related to the issuance of citations and notices of de minimis violations, review rights related to ADOSH investigations, and the necessary content that must be included in a citation.
- R20-5-622. Proposed Penalties
- R20-5-622. The rule describes requirements relating to the issuance of penalties pursuant to A.R.S. §§ 23-418 and 23-418.01.
- R20-5-623. Posting of Citations
- R20-5-623. The rule describes when a citation must be posted, how long it must be posted, and where a citation must be posted if it is not practicable to post it at the violation site. The rule also describes when an employer may post a notice of contest.
- R20-5-624. Employer and Employee Contests before the Hearing Division
- R20-5-624. The rule specifies that all notices of contest and abatement period appeals be immediately transmitted to the Administrative Law Judge Division for adjudication.
- R20-5-625. Failure to Correct a Violation for Which a Citation Has Been Issued

- R20-5-625. The rule describes the procedures related to issuance and contest of a notification of failure to correct a violation.
- R20-5-626. Informal Conferences
- R20-5-626. The rule provides affected parties an opportunity to hold an informal conference with the Commission to settle citation, penalty, and abatement issues outside of the formal hearing process.
- R20-5-627. Abatement Verification
- R20-5-627. The rule describes how an employer certifies abatement; what documents are required; the procedure for preparing an abatement plan, progress reports, and employee notification; and how to tag moveable equipment involved in a violation.
- R20-5-628. Safe Transportation of Compressed Air or Other Gases
- R20-5-628. The rule prohibits the use of PVC piping in a place of employment to transport compressed air or other compressed gases in above-ground installations.
- R20-5-629. The Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR 1904
- R20-5-629. This rule is exempt from the requirements of A.R.S. § 41-1056 under A.R.S. § 41-1057(A)(3).
- R20-5-650. Definitions
- R20-5-650. The rule defines terms that are utilized in R20-5-650 through R20-5-669 to make the rules understandable to the reader, achieve clarity in the rules without needless repetition, and afford consistent interpretation.
- R20-5-651. Petitions for Amendments
- R20-5-651. The rule provides the process for a person to petition the Commission in writing to revise, amend, or revoke any provision in R20-5-650 through R20-5-669.
- R20-5-652. Effects of Variances
- R20-5-652. The rule prospectively limits the effectiveness of a variance. If an entity requesting a variance has a pending citation related to the issue of the variance petition, the rule allows the Commission the option of delaying the variance proceeding until the related issues have been cleared.
- R20-5-653. Public Notice of a Granted Variance
- R20-5-653. The rule identifies how approved variances should be communicated to the public.

- R20-5-654. Form of Documents; Subscription; Copies
- R20-5-654. The rule sets forth the required form of a variance application and how a variance application must be processed.
- R20-5-655. Variances
- R20-5-655. The rule describes how an employer or class of employers may apply for a temporary variance from ADOSH rules under A.R.S. § 23-411.
- R20-5-656. Variances under A.R.S. § 23-412
- R20-5-656. The rule describe how an employer or class of employers may apply for a permanent variance from OSHA rules under A.R.S. § 23-412.
- R20-5-657. Renewal of Rules or Orders: Federal Multi-state Variances
- R20-5-657. The rule provides for renewals or extensions of temporary or experimental variances and provides that ADOSH will honor variances granted by Federal OSHA to multi-state corporations operating in Arizona.
- R20-5-658. Action on Applications
- R20-5-658. The rule describes the action the Commission takes regarding defective and adequate applications for variances.
- R20-5-659. Request for Hearings on Petition
- R20-5-659. The rule describes how a party can request a hearing on an order issued under A.R.S. §§ 23-411 or 23-412 and the Commission's right to modify a variance order following a request for hearing.
- R20-5-660. Consolidation of Proceedings
- R20-5-660. The rule allows the Commission to consolidate variance proceedings that involve the same or closely-related issues.
- R20-5-661. Notice of Hearing
- R20-5-661. The rule describe the procedures for service of a notice of hearing and the required contents of a notice of hearing.
- R20-5-662. Manner of Service
- R20-5-662. The rule describes how documents must be served with regard to variance-related hearings.
- R20-5-663. Industrial Commission; Powers and Duties

- R20-5-663. The rule outlines the powers and duties of the Commission with regard to variance hearings. The rule was modeled after federal regulations set forth in 29 CFR 1905.22.
- R20-5-664. Prehearing Conferences
- R20-5-664. The rule identifies topics for pre-hearing conferences for variance-related hearings.
- R20-5-665. Consent Findings and Rules or Orders
- R20-5-665. The rule allows parties to settle variance-related matters prior to or during a hearing. The rule is modeled after federal regulations set forth in 29 CFR 1905.24.
- R20-5-666. Discovery
- R20-5-666. The rule describes the discovery (obtaining information and exchange of documents and exhibits) that may take place between parties prior to a variance-related hearing.
- R20-5-667. Hearings
- R20-5-667. The rule describes the Commission's process for the adjudication of variance-related matters during a hearing. The rule was modeled after federal regulation 29 CFR 1905.26 with the exception of several minor changes needed to conform the rule to the state's program.
- R20-5-668. Decisions of the Commission
- R20-5-668. The rule sets forth the procedure the Commission must follow in reaching its conclusion and decision in variance-related hearings.
- R20-5-669. Judicial Review
- R20-5-669. The rule provides a mechanism for obtaining review of a Commission order in variance-related hearings.
- R20-5-670. Field Sanitation
- R20-5-670. The rule describes requirements for providing drinking water, hand washing facilities, and toilet facilities for employees engaged in agricultural hand-labor operations.
- R20-5-680. Protected Activity
- R20-5-680. The rule defines terms used in A.R.S. § 23-425 and distinguishes between protected and not protected activities.
- R20-5-681. Elements of a Violation of A.R.S. § 23-425

- R20-5-681. The rule describes the elements of a violation of A.R.S. § 23-425.
- R20-5-682. Procedure
- R20-5-682. The rule describes the procedure for filing a complaint under A.R.S. § 23-425.
- Appendix A. Sample Abatement – Certification Letter (Nonmandatory)
- Appendix B. Sample Abatement Plan or Progress Report (Nonmandatory)
- Appendix C. Sample Warning Tag (Nonmandatory)

3. **Effectiveness of the rules in achieving their objectives, including a summary of any available data supporting the conclusion reached**

The Commission conducted 6,372 inspections and documented 8,232 citations issued between 2013 and 2018. Of the citations issued, 509 were contested. The rules reviewed are effective in achieving their respective objectives.

4. **Consistency of the rules with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency**

The following rules have a consistency issue and should be reviewed and/or amended:

R20-5-601, R20-5-602, R20-5-629 – Although exempt from the requirements of A.R.S. § 41-1056 under A.R.S. § 41-1057(A)(3), the agency has received approval from the Governor’s Office and commenced rulemaking on August 29, 2019 to incorporate by reference the following recent OSHA rule updates to 29 CFR 1926 (“Safety and Health Regulations for Construction”), 29 CFR 1910 (“Occupational Safety and Health Standards”), and 29 CFR 1904 (“Recording and Reporting Occupational Injuries and Illnesses”):

- OSHA Final rule published on September 1, 2016, titled “Occupational Exposure to Respirable Crystalline Silica; Correction.”
- OSHA Final rule published on November 18, 2016, titled “Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems).”
- OSHA Final rule published January 9, 2017, titled “Occupational Exposure to

Beryllium.”

- OSHA Direct Final rule published on May 7, 2018 titled “Revising the Beryllium Standard for General Industry.”
- OSHA Final rule published on November 9, 2018, titled “Cranes and Derricks in Construction: Operator Qualification.”
- OSHA Final rule published on January 25, 2019, titled “Tracking of Workplace Injuries and Illnesses.”

R20-5-601.01 – The state statute upon which the rule was promulgated has been repealed and, as such, this rule needs to be expired. The Commission is therefore not reporting on R20-5-601.01 and intends for the rule to expire.

R20-5-603 - Federal OSHA adopted new standards December 8, 2006, The Commission is considering whether the adoption of the newer standards is appropriate.

R20-5-604 – Federal OSHA adopted new standards on April 3, 2006, The Commission is considering whether the adoption of the newer standards is appropriate.

R20-5-608 – In subsection (E), the reference to “subsection A of this Section” should be changed to “R20-5-609.”

R20-5-618 – The citation to A.R.S. § 23-408(E) in subsection (A) should reference A.R.S. § 23-408(I).

R20-5-619 – The two citations to A.R.S. § 23-408(E) should reference A.R.S. § 23-408(I).

R20-5-621 – The two citations to A.R.S. § 23-408(E) in subsections (B) and (C) should reference A.R.S. § 23-408(I). Reference to R20-5-619(A) in subsection (C) should reference R20-5-619 (without (A)).

R20-5-622 – Subsection A should cite A.R.S. § 23-418.01 as well as A.R.S. § 23-418.

R20-5-623 – The reference to A.R.S. § 23-471(A) in subsection (B) should be to A.R.S. § 23-417(A).

R20-5-624 – The title to the rule should be amended to be “Employer and Employee Contests before an Administrative Law Judge.”

R20-5-621(D); R20-623(B) & (C); R20-5-624(A) & (B); R20-5-625(B) & (C) – References to “Hearing Division” and “Review Commission” in the referenced sections should be amended to reference the “Office of Administrative Hearings” and “Review Board.”

R20-5-625 - the term “correct” should be amended to “abate” in the title and subsection A, B, and C and the term “correction” should be changed to “abatement.”

R20-5-626 – The reference to R20-5-624 should be to A.R.S. § 23-417(A).

R20-5-652 - The term “State of Arizona Hearing Division” should be changed to “Office of Administrative Hearings” and “Arizona Review Board” to “Review Board.”

R20-5-663 – Subsection (A)(8) should reference A.R.S. §23-405(5), rather than A.R.S. §23-405.5.

R20-5-680 – The reference to A.R.S. § 23-408(F) in subsection (A)(1) should be to A.R.S. § 23-408(I). The reference to “Administrative Law Judge Division” in subsection (B)(6) should be changed to “administrative law judge.” Finally, the reference to A.R.S. § 23-408(D) in subsection (D)(1) should be changed to A.R.S. § 23-408(E).

R20-5-681 – Subsection (2) should be reviewed to ensure consistency with the Federal Whistleblower’s Investigation Manual.

R20-5-682 – The reference to A.R.S. § 23-408(F) in subsection (A) should be changed to A.R.S. § 23-408(I). Additionally, subsection (C) should be reviewed to ensure consistency with the Federal Whistleblower’s Investigation Manual.

5. **Agency enforcement policy, including whether the rules are currently being enforced and, if so, whether there are any problems with enforcement**

The rules reviewed are enforced as written to the extent they are consistent with statute.

6. **Clarity, conciseness, and understandability of the rules**

Although the rules in Article 6 are, for the most part, clear, concise, and understandable, the following rule need to be reviewed and/or amended to add clarity and understandability:

R20-5-627(B)(4)(a) – The citation to A.R.S. § 23-417(A) has a space between 417 and (A) that should be deleted.

Rule20-5-654 - In subsection (A), the term “proceedings hereunder” should be clarified by replacing the text with “proceedings pursuant to R20-5-655 and R20-5-656.” Heading should add the word “Variances” before “Form of Documents; Subscription; Copies.”

R20-5-655 – Heading should be updated to “Variances under A.R.S. § 23-411.” In addition, the obsolete address stated in subsection (A) should be amended to 800 West Washington Street, Phoenix, Arizona 85007.

R20-5-656 – The obsolete address stated in subsection (A) should be amended to 800 West Washington Street, Phoenix, Arizona 85007.

R20-5-657(A) – The entire subsection should be moved into R20-5-655, as it relates only to temporary or experimental variances. The term “Renewal or” should be “Renewal of” and R20-5-657 would then be re-titled: “Federal Multi-state Variances.”

R20-5-657(B) – The term “Act” is inconsistent with the definition of “Act” in R20-5-650(1). In this context, “Act” means the Federal Williams-Steiger Occupational Safety and Health Act of 1970, and the rule should be revised to clarify this distinction. Additionally, in the fifth line, the term “regulation” should be changed to “rule.”

R20-5-665 - Typographical errors in subsection (A) needs to be corrected. In subsection (A), “. . . of the commission. After consideration . . .” should be changed to “. . . of the commission after consideration. . .”

R20-5-667 – The heading should be updated to “Variance Hearings” for clarity.

R20-5-609(B); R20-5-615(A), (B); R20-5-617; R20-5-618(B); R20-5-619; R20-5-621(A); R20-5-625(C) – The references to “he” should be revised to be gender neutral.

7. **Written criticisms of the rules received by the agency within the five years immediately preceding the five-year review report**

The Commission has not received any written criticisms of the rules within the five years immediately preceding this report.

8. **A comparison of the estimated economic, small business, and consumer impact of the rules with the economic, small business, and consumer impact statement prepared on the last making of the rules or, if no economic, small business, and consumer impact statement was prepared on the last making of the rules, an assessment of the actual economic, small business, and consumer impact of the rules**

In the last five years, the economic impact of changes to R20-5-601, R20-5-602 and R20-5-629 were discussed through economic impact statements included during the rulemaking process. For all other rules, the estimated economic, small business, and consumer impact

of the rules is not substantially different from the economic impact statement provided at the time the rules were promulgated and in prior five-year review reports.

9. **Any analysis submitted to the agency by another person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states**

No business competitiveness analysis has been submitted to the Commission regarding Article 6.

10. **If applicable, whether the agency completed the course of action indicated in the agency's previous five-year-review report**

The previous five year review (2014) proposed that taking action on the then previous (2009) five-year-review report for Article 6 would commence within 18 months after a moratorium on rulemaking was lifted. The 2009 five-year-review stated that "The Commission plans to amend the following rules and file a Notice of Final Rulemaking with the Governor's Regulatory Review Council by July, 2010: R20-5-604, R20-5-605, R20-5-606, R20-5-608 through 619, R205-621 through 627, R20-5-650 through 659, R20-5-661, R20-5-663 through 670, R20-5-680 through 682." However, this proposed a course of action was not completed.

11. **A determination after analysis that probable benefits outweigh probable costs and that the rules impose the least burden and costs on persons regulated**

The Commission has determined that the probable benefits of the rules reviewed outweigh the probable costs and that the rules impose the least burden and costs on the persons regulated.

12. **A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law**

With the exception of R20-5-602.01, R20-5-605 and R20-5-628, the rules reviewed are not more stringent than federal law, specifically, the federal Occupational Safety and Health Act of 1970, as amended, and regulations thereunder in 29 CFR 1904, 1910, 1926, and 1928. These more stringent statutes were adopted pursuant to authority under 29 CFR 1953.5(A).

**13. For rules adopted 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**

There have been no rules adopted after July 29, 2010 that require issuance of a regulatory permit, license, or agency authorization.

**14. Proposed course of action**

In addition to rulemaking to updated standards adopted in R20-5-601, R20-5-602, and R20-5-629, which was recently been approved by the Governor's Office and will be commenced within the next 30 days, the Commission plans to complete a comprehensive rulemaking to update the rules in Article 6 discussed in Sections 4 and 6 (above) by July 31, 2020. The rulemaking will require six months because the Commission will conduct a comprehensive review of Article 6. This comprehensive review and anticipated revisions will require substantial stakeholder input.

**ECONOMIC  
IMPACT  
STATEMENT**

## ECONOMIC IMPACT STATEMENT

### **R20-5-601 (effective March 16, 2016) and R20-5-629 (effective March 16, 2016)**

#### **A summary of the economic, small business and consumer impact:**

The Industrial Commission anticipates that the rule change related to incorporating by reference the recent amendments to federal safety standards related to head protection will have little to no economic impact. According to federal OSHA, there are no protective helmets currently available or in use that manufacturers tested in accordance with the prior ANSI standards. The amendments do not require an employer to update or replace head protection solely as a result of the safety standards if the head protection currently in use meets the revised standards. Federal OSHA estimates approximately \$21.6 million in cost savings nationally with respect to the Cranes and Derricks in Construction: Revising the Exemption for Digger Derricks direct final rule. Federal OSHA determined that the Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment final rule is economically significant and that the final rule will likely have a \$100 million or more effect on the national U.S. economy. Federal OSHA estimated average compliance costs at approximately 0.007 percent of revenues and 0.006 percent of profits in the affected industries, across all entities in the U.S. As a result, federal OSHA anticipates a small increase in electricity prices, approximately 0.007 percent, on average, which may be passed along to U.S. consumers. According to federal OSHA, full compliance with the final rule is expected to prevent approximately 79.6 percent of the relevant injuries and fatalities, compared to 52.9 percent of prevented injuries and fatalities with full compliance of the existing standards, and save approximately 19.75 lives and prevent 118.5 serious injuries in the U.S. annually. Federal OSHA estimated the nation-wide monetized benefits at \$179.2 million annually. The monetized benefits are calculated by applying a monetary value on preventive injuries and fatalities; \$62,000 per preventive injury and \$8.7 million per preventive fatality, multiplied by the estimated prevention of 19.75 fatalities and 118.5 serious injuries per year.

### **R20-5-601 (effective May 10, 2016)**

#### **A summary of the economic, small business and consumer impact:**

The Industrial Commission anticipates that the rule change related to incorporating by reference the recent amendments to federal safety standards related to crane operator certification will have little economic impact. According to federal OSHA estimates that this rule will have a cost savings for employers of \$21.4 million per year for the three years of the extension, this final rule is not economically significant within the meaning of Executive Order 12866. Delaying the operator certification requirement defers a regulatory requirement and should impose no new costs on employers. There will, however, be continuing employer costs for extending the requirement to assess operators under existing § 1926.1427(k)(2); if OSHA had not extended these requirements, they would have expired in 2014 and employers would not have incurred these costs after 2014. Because federal OSHA estimates the cost of any single assessment to be no higher than \$307.48, it believes the economic impact will be minimal on any employer. Most employers will have savings resulting from the three-year extension, particularly employers that planned to pay for operator certification in the year before the original 2014 deadline. The only

entities likely to see a net cost will be entities that planned to hire an operator with compliant certification after November 10, 2014. Without the three-year extension, these entities will have no separate assessment duty, but under the three-year extension they will have the expense involved in assessing operator competency. As noted above, however, OSHA estimated the cost for such assessments (for operators with a type and capacity certification) to be \$76.87 per certified operator. In regards to Confined Space in Construction, OSHA estimates that the final rule will result in yearly compliance costs of \$60.3 million (using a discount rate of 7 percent), and yearly safety benefits, based on lives saved and injuries prevented, of \$93.6 million. Therefore, the benefits of this final standard outweigh the costs of complying with its provisions, yielding net benefits of \$33.3 million a year. Compliance with the final standard will result in approximately \$1.55 of benefits for every dollar of costs. Based on the analysis, federal OSHA concludes that this final standard is technologically and economically feasible for all affected industries. OSHA concludes that compliance with the requirements of the final rule is economically feasible in every affected industry sector.

### **R20-5-601 (effective July 23, 2018) and R20-5-602 (effective July 23, 2018)**

#### **A summary of the economic, small business and consumer impact:**

The Commission anticipates that the rule change related to OSHA's Final Rule titled "Updating OSHA Standards Based on National Consensus Standards; Eye and Face Protection" will have little to no economic, small business, or consumer impact. OSHA indicates that the Final Rule will allow employers to continue to follow the existing ANSI standards referenced in 29 CFR 1910 and 1926 or allow employers to follow the latest version of the same ANSI/ISEA standard. Employers are therefore not required to update or replace protection devices solely as a result of the rule update and may continue to follow their current and usual practices for eye and face protection. Therefore, OSHA concluded that the rule update has no associated compliance or economic burdens.

The Commission anticipates that the rule change related to OSHA's Final Rule titled "Occupational Exposure to Respirable Crystalline Silica" will have an economic, small business, and consumer impact. OSHA reports that, nationally, the updated rule is estimated to prevent 642 fatalities and 918 silica-related illnesses annually once it is fully effective, even though there has been a 93% decline since 1968 in silica-related deaths. The discounted monetized benefits of the new rule are estimated to be \$8.7 billion annually, and the new rule is estimated to generate net benefits of up to \$7.7 billion annually. OSHA estimates that the updated standards will have a total cost of \$1.03 billion per year in 2012 dollars. Of that total, \$370.8 million will be borne by the general industry and maritime sectors, and \$659.0 million will be borne by the construction industry. According to OSHA, the Final Rule is expected to result in annual costs of approximately \$1,524 for the average workplace covered by the rule and approximately \$560 for the average firm with fewer than twenty employees. OSHA's estimate of the annualized cost of the Final Rule in the construction industry ranges from \$360 to \$4,811. For both construction and general industry/maritime, OSHA's estimated costs for the rule represent the additional costs necessary for employers to achieve full compliance with the updated standard, assuming that all firms are compliant with the previous standard. Other studies have concluded that OSHA underestimated the costs associated with the Final Rule. A National Federation of Independent Businesses Research Foundation study predicted an overall loss of 27,000 jobs nationally and lost output of over \$72 billion in the long run, with at least half the loss expected

to occur in the small business sector. An American Chemistry Counsel study estimated economic impacts of \$6.131 billion on 19 general industry sectors (more than 50 times higher than OSHA's general industry cost estimates). And a Construction Industry Safety Coalition ("CISC") study reflects annual costs to construction industries of \$4.9 billion nationally, which includes almost \$3.9 billion of direct compliance costs to construction employers and another \$1.05 billion in costs passed through from general industry to the construction industry. The CISC study translated the estimated \$4.9 billion in annual cost into more than 52,700 lost jobs related to the construction industry. Additional information related to the economic costs and benefits, including tables of annualized compliance costs for affected sectors of general and construction industry (Tables VII-10, VII-11, VII-18, VII-19, VII-20, VII-21, VII-22, and VII-23) and discussion of the above-mentioned studies, is included in the Final Rule, which is available for inspection or reproduction at the Arizona Division of Occupational Safety and Health, 800 West Washington Street, Room 203, Phoenix, AZ 85007, or is electronically available at <https://www.federalregister.gov/documents/2016/03/25/2016-04800/occupational-exposure-to-respirablecrystalline-silica>.

### **R20-5-629 (effective March 16, 2016)**

#### **The preliminary summary of the economic, small business and consumer impact:**

The Industrial Commission anticipates that the rule change related to incorporating by reference the recent amendments to federal safety standards on injury and illness recording and reporting will not have a significant economic impact on a substantial number of small entities. Federal OSHA has determined that this rulemaking has net annualized costs nationally of \$9 million, with total annualized new costs of \$20.6 million to employers, total annualized cost savings of \$11.5 million for employers who no longer have to meet certain recordkeeping requirements, and average annualized costs of \$82 per year for the most-affected firms (those newly required to keep records every year). Thus, this rulemaking imposes far less than \$100 million in annual costs on the economy and, consequently, OSHA has determined that this rule is not "economically significant" within the context of Executive Order (E.O.) 12866. OSHA has also determined that this final rule is economically feasible and will not have a significant economic impact on a substantial number of small entities. By contrast, OSHA estimates that the rulemaking will improve access to information about workplace safety and health, with potential benefits that could include:

- Allowing the Agency to identify the workplaces where workers are at greatest risk, in general and/or from specific hazards, and target its compliance assistance and enforcement efforts accordingly.
- Increasing the ability of employers, employees, and employee representatives to identify and abate hazards that pose serious risks to workers at their workplaces.

OSHA stated that the conversion from SIC to NAICS and the revised reporting requirements have substantially different goals and thus different potential benefits. OSHA said it expects the conversion from SIC to NAICS to result in more useful injury and illness data. The SIC system currently in use is obsolete and has not been used by many other data collection entities for years. Converting to NAICS will enable both affected employers and OSHA to achieve consistency and comparability with other data collection efforts conducted by both public and private entities. OSHA reported there was little controversy concerning the concept of converting from SIC to NAICS. However, there is no way to convert from SIC to NAICS without changing

in some way the number of establishments required to routinely record injuries and illnesses. This result is inevitable because there is no one-for-one mapping from SIC to NAICS for many industries.

The requirement to report all work-related fatalities, in-patient hospitalizations, amputations, and losses of an eye will likely assure better use of inspection and enforcement resources by targeting those resources to establishments with the most serious hazards.

Having data on establishments that experience significant events will improve inspection targeting. Studies have shown that OSHA inspections can lead to a reduction in the rate of injuries and illnesses, and that the effect is greater where injury and illness rates are higher and where the inspection finds violations that result in a citation. Most studies reviewed by OSHA showed reductions in injuries and illnesses at a given facility only when the inspection uncovered safety and health violations that resulted in citations. A working paper, funded by the RAND Corporation, Haviland (Haviland, et al., 2008), estimated that firms with between 20 and 250 employees experience a 19 to 24 percent reduction in injury rates per year for two years following an inspection that results in a citation.

OSHA reported that these provisions in Part 1904 will increase the amount of injury and illness data recorded on employer records and available for review and collection by OSHA. It is believed that improved data availability will likely result in increased inspections in facilities more likely to have violations that result in citations, which will, in turn, have some positive effect on the rates of injuries and illnesses at those facilities. As a result of these considerations, OSHA certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

## **R20-5-629 (effective July 23, 2018)**

### **A summary of the economic, small business and consumer impact:**

In connection with the implementation of OSHA's Final Rule titled "Improve Tracking of Workplace Injuries and Illnesses," OSHA estimated that the Final Rule would have nationwide economic costs of \$15 million per year, including \$13.7 million per year to the private sector, with costs of \$7.2 million per year for electronic submission for affected establishments with 250 or more employees and \$4.6 million for electronic submission for affected establishments with 20 to 249 employees in designated industries. With respect to the updated anti-discrimination requirements of the Final Rule, OSHA estimated a nationwide first-year cost of \$8.0 million and annualized costs of \$0.9 million per year. When fully implemented, the first-year economic cost for all provisions of the Final Rule was estimated at \$28 million. The Final Rule will be phased in, which moves the annual cost for reporting case characteristic data from OSHA Forms 300 and 301 by 33,000 establishments nationwide from 2017 to 2018. This phase-in removes about \$6.9 million from the first year costs, but those costs would reappear in years two through 10. OSHA reported that, for the annual reporting requirement affecting establishments with 250 or more employees, the average cost per affected establishment will be \$215 per year. For the annual reporting requirement, affecting establishments with 20 to 249 employees in designated high-hazard industries, the average cost per affected establishment will be \$11.13 per year. In addition, OSHA reports that the non-discrimination provision will have a cost, on average, of \$5.86 in the first year. OSHA reported that these costs will not affect the economic viability of affected establishments.

# **RULES REVIEWED**

## **ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS**

### **R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926**

Each employer shall comply with the standards in the Federal Occupational Safety and Health Standards for Construction, as published in 29 CFR 1926, with amendments as of June 23, 2016, incorporated by reference. Copies of these referenced materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to construction activity by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1926 published after June 23, 2016.

#### **R20-5-601.01. Fall Protection for Residential Construction**

Each employer shall comply with the requirements in A.R.S. Title 23, Chapter 2, Article 13. These requirements shall apply to all conditions and practices related to residential construction activity by all employers, both public and private, in the state of Arizona.

### **R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910**

Each employer shall comply with the standards in Subparts B through Z inclusive of the Federal Occupational Safety and Health Standards for General Industry, as published in 29 CFR 1910, with amendments as of June 23, 2016, incorporated by reference. Copies of these reference materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to general industry activity by all employers, both public and private, in the state of Arizona; provided that this Section shall not apply to those conditions and practices which are the subject of R20-5-601. This incorporation by reference does not include amendments or editions to 29 CFR 1910 published after June 23, 2016.

#### **R20-5-602.01. Subpart T, Commercial Diving Operations**

Each employer shall comply with the standards in Subpart T of the Federal Occupational Safety and Health Standards for the General Industry as published in 29 CFR 1910, with amendments as specified in R20-5-602, except that the exemption set forth in 29 CFR 1910.401(a)(2)(ii) shall not apply. Subpart T shall apply to any diving operation performed solely for search, rescue, or related public safety purposes by or under the control of a governmental agency.

### **R20-5-603. The Federal Occupational Safety and Health Standards for Agriculture, 29 CFR 1928**

Each employer shall comply with the standards in Subparts A through D inclusive of the Federal Occupational Safety and Health Standards for Agriculture, as published in 29 CFR 1928, with amendments as of March 7, 1996, incorporated by reference and on file with the Office of the Secretary of State. Copies of these referenced materials are available for review at the Industrial

Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. This incorporation by reference does not include amendments or editions to 29 CFR 1928 published after March 7, 1996.

**R20-5-604. Rules of Agency Practice and Procedure concerning OSHA Access to Employee Medical Records, 29 CFR 1913**

Each employer pursuant to A.R.S. § 23-403(B) shall comply with Federal Regulations, Title 29, Part 1913, with amendments as of May 23, 1980 (amendments of May 23, 1980 on file with the Secretary of State), which are hereby adopted and incorporated by reference as if set forth fully herein. This regulation applies to OSHA Access to Employee Medical Records.

**R20-5-605. Hoes for Weeding or Thinning Crops**

- A. The use of a hoe with a handle less than four feet in length for weeding or thinning crops is prohibited. This prohibition is based upon the existence of other practical and adequate alternatives to the use of these short-handle hoes.
- B. This rule does not apply to greenhouse or nursery operations.

**R20-5-606. State Definition of Terms Used in Adopting Federal Standards Pursuant to R20-5-601, R20-5-602, R20-5-603 and R20-5-604**

For the purposes of the standards enumerated in the federal occupational safety and health standards incorporated into R20-5-601, R20-5-602, R20-5-603, and R20-5-604:

1. "Agency" means the Industrial Commission of Arizona.
2. "Assistant Secretary" means the Director of the Arizona Division of Occupational Safety and Health of the Industrial Commission of Arizona.
3. "Assistant Secretary of Labor for Occupational Safety and Health" means the Director of the Arizona Division of Occupational Safety and Health of the Industrial Commission of Arizona.
4. "Office of the Solicitor of Labor" means Legal Counsel for the Industrial Commission of Arizona.
5. "OSHA" means Arizona Division of Occupational Safety and Health.

**R20-5-607. Expired**

**R20-5-608. Definitions**

- A. "Act" means the Arizona Occupational Safety and Health Act of 1972, with amendments effective August 27, 1977 (Arizona Revised Statutes, Title 23, Chapter 2, Article 10).
- B. The definitions and interpretations contained in A.R.S. § 23-401 of the Act shall be applicable to such terms when used in these rules.
- C. "Working days" means Mondays through Fridays but shall not include Saturdays, Sundays, or state holidays. In computing fifteen working days, the day of the receipt of any notice shall not be included, and the last day of the fifteen working days shall be included.

- D. "Compliance Safety and Health Officer" means a person authorized by the Occupational Safety and Health Division, Industrial Commission of Arizona, to conduct inspections.
- E. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: a factory, mill, stores, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment, to the extent that such notices have been furnished by the Industrial Commission of Arizona, Division of Occupational Safety and Health. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, the notice or notices required by this Section shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as traveling salesmen, technicians, engineers, etc., such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with requirements of subsection (A) of this Section.

**R20-5-609. Posting of Notice: Availability of the Act, Regulations and Applicable Standards**

- A. Each employer shall post and keep posted a notice or notices, to be furnished by the Industrial Commission of Arizona, Division of Occupational Safety and Health, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact the employer or the nearest office of the Industrial Commission. Such notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to ensure that such notices are not altered, defaced, or covered by other material.
- B. Copies of the Act, all regulations published in this Chapter and applicable standards will be available at all offices of the Arizona Division of Occupational Safety and Health. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or his authorized representative and the employer.
- C. Any employer failing to comply with the provisions of this Section shall be subject to citation and penalty in accordance with the provisions of A.R.S. § 23-418 of the Act.

**R20-5-610. Authority for Inspection**

- A. The Director of the Division of Occupational Safety and Health or his authorized representative upon presentation of credentials shall be permitted to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, or place of environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee and to review

records required by the Act and regulations published in this Article and other records which are directly related to the purpose of the inspection.

- B.** Representatives of the Secretary of Health, Education, and Welfare are authorized to make inspections and to question employers and employees in order to carry out the functions of the Secretary of Health, Education, and Welfare under the Williams-Steiger Occupational Safety and Health Act. Inspections conducted by Department of Labor Compliance Safety and Health Officers and representatives of the Secretary of Health, Education and Welfare under Section 8 of the Williams-Steiger Occupational Safety and Health Act and pursuant to 29 CFR Part 1903 shall not affect the authority of any state to conduct inspections in accordance with agreements and plans under Section 18 of the Williams-Steiger Occupational Safety and Health Act.
- C.** Prior to inspecting areas containing information which is classified by an agency of the United States government in the interests of national security, Compliance Safety and Health Officers shall have obtained the appropriate security clearance.

#### **R20-5-611. Objection to Inspection**

- A.** Upon a refusal to permit a Compliance Safety and Health Officer, in the exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to privately question any employer, owner, operator, agent, or employee, in accordance with rule R20-5-610, or to permit a representative of employees to accompany the Compliance Safety and Health Officer during the physical inspection of any workplace in accordance with rule R20-5-615, the Compliance Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews concerning which no objection is raised. The Compliance Safety and Health Officer shall endeavor to ascertain the reason for such refusal and shall immediately report the refusal and the reason therefore to the Director of the Division. The Director shall immediately consult with the Industrial Commission and its legal counsel, who shall promptly take appropriate action, including compulsory process if necessary.
- B.** Compulsory process may be sought in advance of an inspection or reinvestigation if, in the judgment of the Director of the Division and the Industrial Commission Chief Legal Counsel, circumstances exist including but not limited to specific evidence of an existing violation or reasonable legislative or administrative standards for conducting an inspection which make pre-inspection process desirable or necessary.
- C.** With the approval of the Industrial Commission, and the Industrial Commission Chief Legal Counsel, compulsory process may also be obtained by the Director of the Division or his designee.
- D.** For purposes of this Section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent.

#### **R20-5-612. Entry Not a Waiver**

Any permission to enter, inspect, review records, or question any person shall not imply or be conditioned upon a waiver of any cause of action, citation, or penalty under the Act. Compliance Safety and Health Officers are not authorized to grant any such waiver.

### **R20-5-613. Advance Notice of Inspections**

- A.** Advance notice of inspections may not be given except in the following situations:
1. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;
  2. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;
  3. Where necessary to ensure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in an inspection; and
  4. In other circumstances where the Division Director determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.
- B.** In the situations described in subsection (A) of this Section, advance notice of inspections may be given only if authorized by the Division Director. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of such representative is known to the employer. (See rule R20-5-615(B) as to situations where there is no authorized representative of employees.) Upon the request of the employer, the Compliance Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Compliance Safety and Health Officer with the identity of such representative and with such other information as is necessary to enable him promptly to inform such representative of the inspection. An employer who fails to comply with his obligation under this subsection promptly to inform the authorized representative of the employees of the inspection or to furnish such information as is necessary to enable the Compliance Safety and Health Officer to promptly inform such representative of the inspection may be subject to citation and penalty under A.R.S. § 23-408 of the Act. Advance notice in any of the situations described in subsection (A) of this Section shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in apparent imminent danger situations and other unusual circumstances.

### **R20-5-614. Conduct of Inspections**

- A.** At the beginning of an inspection, Compliance Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in rule R20-5-610 which they wish to review.
- B.** Compliance Safety and Health Officers shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment.
- C.** In taking photographs and samples, Compliance Safety and Health Officers shall take reasonable precautions to ensure that such actions with flash, spark producing, or other equipment would not be hazardous. Compliance Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.
- D.** The conduct of inspections shall be such as to preclude unreasonable disruption to the operations of the employer's establishment.
- E.** At the conclusion of an inspection, a Compliance Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health

violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Compliance Safety and Health Officer any pertinent information regarding conditions in the workplace.

**R20-5-615. Representatives of Employers and Employees**

- A.** Compliance Safety and Health Officers shall be in charge of inspections and questioning of persons. A Compliance Safety and Health Officer may permit additional employer representatives and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Compliance Officer during each different phase of an inspection if this will not interfere with the conduct of the inspection.
- B.** Compliance Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this rule. If there is no authorized representative of employees, or if the Compliance Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.
- C.** The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Compliance Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Compliance Safety and Health Officer during the inspection.
- D.** Compliance Safety and Health Officers are authorized to deny the right of accompaniment under this Section to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of rule R20-5-616(B). With regard to information classified by an agency of the United States government in the interest of national security, only persons authorized to have access to such information may accompany a Compliance Safety and Health Officer in areas containing such information.

**R20-5-616. Trade Secrets**

- A.** At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Compliance Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with provisions of A.R.S. § 23-426.
- B.** Upon the request of an employer, any authorized representative of employees under rule R20-5-615 in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is no such representative or employee, a Compliance Safety and Health officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

**R20-5-617. Consultation with Employees**

Compliance Safety and Health Officers may privately consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act, which he has reason to believe exists in the workplace, to the attention of the Compliance Safety and Health Officer.

**R20-5-618. Complaints by Employees**

- A. A copy of a complaint submitted pursuant to A.R.S. § 23-408(E) shall be provided to the employer or his agent by the Director of the Division of Occupational Safety and Health or his representative no later than the time of inspection, except that, upon the request of the person giving such notice, his name shall not appear in such copy or in any record published, released, or made available by the Arizona Division of Occupational Safety and Health.
- B. If upon receipt of such notification the Division Director determines that the complaint meets the requirements set forth in subsection (A) of this rule, and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists. Inspections under this rule shall not be limited to matters referred to in the complaint.

**R20-5-619. Inspection Not Warranted; Informal Review**

If the Division Director determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint in accordance with A.R.S. § 23-408(E), he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Industrial Commission and, at the same time, providing the employer with a copy of such statement by certified mail. The employer may submit an opposing written statement of position with the Industrial Commission and, at the same time, provide the complaining party with a copy of such statement by certified mail. Upon the request of the complaining party or the employer, the Industrial Commission, at their discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral views presented, the Industrial Commission shall affirm, modify, or reverse the determination of the Division Director and furnish the complaining party and the employer a written notification of their decision and the reasons therefore. The decision of the Industrial Commission shall be final and not subject to further review. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of A.R.S. § 23-408(E).

**R20-5-620. Expired**

**R20-5-621. Citations: Notices of De Minimis Violations**

- A. The Division Director shall review the inspection reports of the Compliance Safety and Health Officer. If, on the basis of the report, the Division Director believes that the employer has violated a requirement of A.R.S. § 23-403 of the Act, of any standard, rule or order

promulgated pursuant to A.R.S. § 23-410 of the Act, or of any substantive rule published in these rules, he shall, if appropriate, consult with the Industrial Commission's counsel and shall issue to the employer either a citation or notice of de minimis violations. An appropriate citation or notice of de minimis violation shall be issued even though after being informed of an alleged violation by the Compliance Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Any citation or notice of de minimis violations shall be issued with reasonable promptness after termination of the inspection. No citation may be issued under this rule after the expiration of six months following the occurrence of any alleged violation.

- B.** If a citation or notice of de minimis violation issued for a violation alleged in a request for inspection under A.R.S. § 23-408(E), a copy of the citation or notice of de minimis violation shall also be sent to the employee or representative of employees who made such request or notification.
- C.** After an inspection, if the Division Director determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under A.R.S. § 23-408(E), the informal review procedures prescribed in rule R20-5-619(A) shall be applicable. After considering all views presented, the Industrial Commission shall affirm the determination of the Division Director, order a reinspection, or issue a citation if the Industrial Commission believes that the inspection disclosed a violation. The Industrial Commission shall furnish the complaining party and the employer with a written notification of their determination and the reasons therefore. The determination of the Industrial Commission shall be final and not subject to review.
- D.** Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless a citation is affirmed by the Hearing Division or the Review Commission.

#### **R20-5-622. Proposed Penalties**

- A.** All employers shall be notified of any proposed penalties, issued pursuant to A.R.S. § 23-418, by certified mail or by a signed verification in person.
- B.** The Division Director shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations in accordance with the provisions of A.R.S. § 23-418 of the Act.
- C.** Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Compliance Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for de minimis violations which have no direct or immediate relationship to safety or health.

#### **R20-5-623. Posting of Citations**

- A.** Upon receipt of any citation under the Act, the employer shall immediately post such citation, or a copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred, except as provided below. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation

shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employers are engaged in activities which are physically dispersed, the citation may be posted at the location to which the employees report each day. Where employees do not primarily work at or report to a single location, the citation may be posted at the location from which the employees operate to carry out their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material. Notices of de minimis violations need not be posted.

- B. Each citation, or a copy thereof, shall remain posted until the violation has been abated, or for three working days, whichever is later. The filing by the employer of a notice of intention to contest under A.R.S. § 23-471(A) shall not affect his posting responsibility under this rule unless and until the Hearing Division and/or Review Commission issues a final order vacating the citation.
- C. An employer to whom a citation has been issued may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Hearing Division and/or Review Commission, and such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

**R20-5-624. Employer and Employee Contests before the Hearing Division**

- A. All notices to contest citations and/or penalties shall be submitted to the Division Director and immediately transmitted to the Hearing Division in accordance with the Rules of Procedure prescribed by the Industrial Commission.
- B. Any affected employee or employee representative appealing the period allowed an employer to abate a particular violation shall submit the notice of contest to the Division Director who shall immediately transmit such notice to the Hearing Division in accordance with the Rules of Procedure prescribed by the Industrial Commission.

**R20-5-625. Failure to Correct a Violation for Which a Citation Has Been Issued**

- A. All employers failing to correct an alleged violation for which a citation has been issued, within the period permitted for its correction, shall be notified of such failure and any proposed penalties issued pursuant to A.R.S. § 23-418 by certified mail or by signed verification in person.
- B. All notices to contest a notification of failure to correct a violation and of proposed additional penalty shall be submitted to the Division Director and immediately transmitted to the Hearing Division in accordance with the Rules of Procedure prescribed by the Industrial Commission.
- C. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Industrial Commission and not subject to review by any court or agency unless within fifteen working days from the receipt of such notification, the employer notifies the Division Director in writing that he intends to contest the notification or the proposed additional penalty before the Hearing Division.

**R20-5-626. Informal Conferences**

At the request of an affected employer, employee, or representative of employees, the Industrial Commission, or their designee, may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest.

The settlement of any issue at such conference shall be subject to rules and procedures prescribed by the Industrial Commission. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Industrial Commission or their designee. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Industrial Commission or their designee. Any party may be represented by counsel in such conference. No such conference or request for such conference shall operate as a stay of any fifteen working day period for filing a notice of intention to contest as prescribed in rule R20-5-624.

### **R20-5-627. Abatement Verification**

**A. Scope and application.** This Section applies to employers, as defined in A.R.S. § 23-401, who receive a citation for a violation of the Arizona Occupational Safety and Health Act.

**B. Definitions:**

1. Abatement means action by an employer to comply with a cited standard or rule or to eliminate a recognized hazard, as defined in A.R.S. § 23-401, identified by the Division during an inspection.
2. Abatement date means:
  - a. For an uncontested citation item, the later of:
    - i. The date in the citation for abatement of the violation;
    - ii. The date approved by the Division as a result of a petition for modification of the abatement date (PMA); or
    - iii. The date for abatement completion as established in a citation by an informal conference agreement.
  - b. For a contested citation item for which an administrative law judge has issued a final decision affirming the violation, the later of:
    - i. The date identified in the final decision for completion of abatement;
    - ii. The date computed by adding the original period allowed for abatement in the citation to begin 15 days from the final decision date of an administrative law judge; or
    - iii. The date established by a formal settlement agreement.
3. Affected employee means an employee who is exposed to the hazard identified as a violation in a citation.
4. Final order date means:
  - a. The date on which an uncontested citation is deemed final under A.R.S. § 23-417 (A); or
  - b. For a contested citation item: The date on which a decision or order of an administrative law judge becomes final under A.R.S. § 23-421 or § 23-423.
5. Movable equipment means a hand-held or non-hand-held machine or device, powered or unpowered, that is used to do work and is moved within or between workplaces.

**C. Abatement certification.**

1. Within 10 calendar days after the abatement date, an employer shall certify to the Division that the employer has abated each cited violation except as provided in subsection (C)(2). An employer may use Appendix A to certify abatement.
2. An employer is not required to certify abatement if a Compliance Safety and Health Officer, during an onsite inspection:

- a. Observes, within 24 hours after a violation is identified, that abatement has occurred; and
  - b. Notes the abatement action on the citation.
3. An employer's certification that abatement is complete shall include, for each cited violation, in addition to the information required by subsection (H), the completion date and method of abatement and a statement that affected employees and their representatives have been informed of the completed abatement.

**D. Abatement documentation.**

1. Within 10 days after the abatement date, an employer shall submit to the Division, documents which evidence that abatement is complete for each willful or repeat violation and for any serious violation for which abatement documentation is required.
2. Documents which evidence that abatement is complete may include documents for purchase or repair of equipment, photographs or videos of the abatement, or other written records.

**E. Abatement plans.**

1. The Division may require an employer to submit an abatement plan, except for a nonserious violation, when the time permitted for abatement is more than 90 days. The citation shall state that an abatement plan is required. An employer may use Appendix B for an abatement plan.
2. An employer shall submit an abatement plan for each cited violation within 25 days from the date of a final order when the citation states that a plan is required. In the abatement plan, the employer shall identify:
  - a. The violation,
  - b. The steps necessary to achieve abatement,
  - c. A schedule for completing abatement, and
  - d. How the employer will protect employees from the violative condition until abatement is complete.

**F. Progress reports.**

1. The Division may require an employer who submits an abatement plan under subsection (E), to submit periodic progress reports for each cited violation. If the Division requires a periodic progress report, the citation shall include the following information:
  - a. Periodic progress reports are required and the cited violations for which periodic progress reports are required;
  - b. The date on which an initial progress report must be submitted. The date of the initial progress report shall be no sooner than 30 days after the submission date required for abatement;
  - c. Whether additional progress reports are required; and
  - d. The date on which additional progress reports shall be submitted.
2. For each violation, the employer shall summarize in the progress report, the action taken to achieve abatement and the date the action was taken.

**G. Employee notification.**

1. An employer shall inform affected employees and the employees' representative of abatement activities covered by this Section by posting a copy of each document submitted to the Division or a summary of the document at the location of the cited violation.
2. For employers who have mobile work operations, the employer shall:

- a. Post each document or a summary of the document submitted to the Division in a conspicuous place where it can be readily seen by employees and the employee representative; or
  - b. Take other steps to communicate fully to affected employees and the employees' representative about abatement actions.
3. The employer shall inform employees and the employees' representative of the right to examine and copy all abatement documents submitted by the employer to the Division.
    - a. An employee or an employee representative shall submit a written request to examine and copy abatement documents within three working days of receiving notice that the documents have been submitted to the Division.
    - b. An employer shall comply with an employee's or employee representative's written request to examine and copy abatement documents within five working days of receiving the request.
  4. An employer shall ensure that notice in subsection (G)(1) to employees and a employee representative is provided at the same time or before the information is provided to the Division and that abatement documents are:
    - a. Not altered, defaced, or physically covered by other material; and
    - b. Remain posted for at least three working days after submission to the Division.

**H. Transmitting abatement documents.**

1. An employer shall include, in each submission required by this Section, the following information:
  - a. The employer's name and address;
  - b. The inspection number to which the submission relates;
  - c. The citation, item number, and location to which the submission relates;
  - d. A statement that the information submitted is accurate; and
  - e. The signature of the employer or the employer's authorized representative.
2. The date of postmark is the date of submission for mailed documents. For documents transmitted by other means, the date the Division receives the document is the date of submission.

**I. Movable equipment.**

1. For serious, repeat, and willful violations involving movable equipment, an employer shall attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within or between workplaces. The Division shall deem attaching a copy of the citation to the equipment to meet the tagging requirement of subsection (I)(3) and the posting requirement of R20-5-623.
2. The employer shall use a warning tag to warn employees about the nature of the violation involving the movable equipment and identifies the location of the violation. An employer may use the tag in Appendix C to meet this requirement.
3. If a violation has not been abated, an employer shall attach a warning tag or a copy of the citation to the equipment as follows:
  - a. For hand-held equipment, the employer shall attach a warning tag or copy of the citation within eight hours after the employer receives the citation; and
  - b. For non-hand-held equipment, the employer shall attach a warning tag or copy of the citation before moving the equipment within or between workplaces.

4. For the construction industry, a tag that is designed and used in accordance with 29 CFR 1926.20(b)(3) and 29 CFR 1926.200(h) is deemed by the Division to meet the requirements of this Section when the information required by subsection (I)(2) is included on the tag.
5. An employer shall ensure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or physically covered by other material.
6. An employer shall ensure that the tag or copy of the citation attached to movable equipment remains attached until:
  - a. The employer has abated the violation and all abatement verification documents required by this Section have been submitted to the Division;
  - b. The employer has permanently removed the cited equipment from service or the cited equipment is no longer within the employer's control; or
  - c. The Division, administrative law judge, or Review Board vacates the citation.

**Appendix A. Sample Abatement - Certification Letter (Nonmandatory)**

[Name], Director  
 The Industrial Commission of Arizona  
 Division of Occupational Safety and Health  
 P. O. Box 19070  
 Phoenix, Arizona 85005

[Company's Name]  
 [Company's Address]

The hazard referenced in Inspection Number [Insert 9-digit #] for violation identified as:

Citation [insert #] and item [insert #] was corrected on [insert date] by:  
 \_\_\_\_\_.

Citation [insert #] and item [insert #] was corrected on [insert date] by:  
 \_\_\_\_\_.

Citation [insert #] and item [insert #] was corrected on [insert date] by:  
 \_\_\_\_\_.

Citation [insert #] and item [insert #] was corrected on [insert date] by:  
 \_\_\_\_\_.

Citation [insert #] and item [insert #] was corrected on [insert date] by:  
 \_\_\_\_\_.

I attest that the information contained in this document is accurate.

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Typed or Printed Name

**Appendix B. Sample Abatement Plan or Progress Report (Nonmandatory)**

(Name), Director  
 The Industrial Commission of Arizona  
 Division of Occupational Safety and Health

P. O. Box 19070  
Phoenix, Arizona 85005

[Company's Name]  
[Company's Address]

Check one:

Abatement Plan [ ]

Progress Report [ ]

Inspection Number \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_

Citation Number(s)\* \_\_\_\_\_

Item Number(s)\* \_\_\_\_\_

Action	Proposed Completion Date (for abatement plans only)	Completion Date (for progress reports only)
1. .... ..... .....	.... ..... .....	.....   
2. .... ..... .....	.... ..... .....	.....   
3. .... ..... .....	.... ..... .....	.....   
4. .... ..... .....	.... ..... .....	.....   
5. .... ..... .....	.... ..... .....	.....   

Date required for final abatement: \_\_\_\_\_

I attest that the information contained in this document  
is accurate.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

Name of primary point of contact for questions: (optional)

Telephone number: \_\_\_\_\_

\*Abatement plans or progress reports for more than one citation item may be combined in a single abatement plan or progress report if the abatement actions, proposed completion dates, and actual completion dates (for progress reports only) are the same for each of the citation items.

**Appendix C. Sample                      Warning                      Tag                      (Nonmandatory)**

<p>0</p> <p><b>WARNING:</b></p> <p>EQUIPMENT HAZARD BY ADOSH</p> <p>EQUIPMENT CITED: ----- ----- -----</p> <p>HAZARD CITED: ----- ----- -----</p> <p>FOR DETAILED INFORMATION: SEE ADOSH CITATION POSTED AT: ----- -----</p>
--

BACKGROUND COLOR--ORANGE  
MESSAGE COLOR--BLACK

**R20-5-628. Safe Transportation of Compressed Air or Other Gases**

An employer shall not use Polyvinyl Chloride (PVC) piping in a place of employment for the transportation and distribution of compressed air or other compressed gases in an above-ground installation.

**R20-5-629. The Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR 1904**

Each employer shall comply with the standards in the Federal Occupational Safety and Health Standards for Recordkeeping, as published in 29 CFR 1904, with amendments as of January 1, 2017, incorporated by reference. Copies of the incorporated materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government

Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to recordkeeping by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1904 published after January 1, 2017.

- R20-5-630. Repealed**
- R20-5-631. Repealed**
- R20-5-632. Repealed**
- R20-5-633. Repealed**
- R20-5-634. Repealed**
- R20-5-635. Repealed**
- R20-5-636. Repealed**
- R20-5-637. Repealed**
- R20-5-638. Repealed**
- R20-5-639. Repealed**
- R20-5-640. Repealed**
- R20-5-641. Repealed**
- R20-5-642. Repealed**
- R20-5-643. Repealed**
- R20-5-644. Repealed**
- R20-5-645. Repealed**
- R20-5-646. Emergency Expired**
- R20-5-647. Reserved**
- R20-5-648. Reserved**
- R20-5-649. Reserved**

**R20-5-650. Definitions**

As used in rules R20-5-650 through R20-5-669 inclusive, unless the context clearly requires otherwise:

1. “Act” means the Arizona Occupational Safety and Health Act of 1972 (Arizona Revised Statutes, Title 23, Chapter 2, Article 10).
2. “Commission” means the Industrial Commission of Arizona.
3. “Person” means an individual, partnership, association, corporation, business trust, legal representative, an organized group of individuals, or political subdivision.
4. “Party” means a person admitted to participate in a hearing conducted in accordance with subsection (3). An applicant for relief and any affected employee shall be entitled to be named as parties.

5. "Affected employee" means an employee or any one of his authorized representatives, such as his collective bargaining agent, who would be affected by the granting or denial of a variance.

**R20-5-651. Petitions for Amendments**

Any person may at any time petition the Commission in writing to revise, amend, or revoke any provisions of rules R20-5-650 through R20-5-669 inclusive. The petition should set forth either the terms or the substance of the rule desired, with a concise statement of the reasons therefor and the effects thereof.

**R20-5-652. Effects of Variances**

All variances granted hereunder shall have only future effect. In their discretion, the Commission may decline to entertain an application for variance on the subject or issue concerning which a citation has been issued to the employer involved and a proceeding on the citation or a related issue concerning a proposed penalty or period of abatement is pending before the Federal Occupational Safety and Health Review Commission, State of Arizona Hearing Division or the Arizona Review Board until the completion of such proceeding.

**R20-5-653. Public Notice of a Granted Variance**

Every final action granting a variance, shall be published in statewide newspapers. Every such final action shall specify the alternative to the standard involved which the particular variance permits.

**R20-5-654. Form of Documents; Subscription; Copies**

- A. No particular form is prescribed for applications and other papers which may be filed in proceedings hereunder. However, any applications and other papers shall be clearly legible. An original and six copies of any application and other papers shall be filed. The original shall be typewritten. Clear carbon copies or printed or processed copies are acceptable copies.
- B. Each application or other paper which is filed in proceedings hereunder shall be signed by the person filing the same or by his attorney or other authorized representative and where required by these regulations shall be verified by the applicant.

**R20-5-655. Variances**

- A. Application for variance. Any employer, or class of employers, desiring a variance from a standard or regulation or any portion thereof, authorized by A.R.S. § 23-411 of the Act may file a written application containing the information specified in subsection (B) of this Section with the Industrial Commission of Arizona, 1601 West Jefferson, Phoenix, Arizona 85005.
- B. Contents. An application filed pursuant to subsection (A) of this Section shall contain the information specified in A.R.S. § 23-411(B) and (C) of the Act.
- C. Interim order.
  1. Application. In accordance with A.R.S. § 23-411(B)(3) of the Act, an application may also be made for an interim order to be effective until a decision is rendered on the application

for the variance filed previously or concurrently. An application for an interim order shall include a verified statement of facts and arguments supporting such application. The Commission may rule ex parte upon the application.

2. Notice of denial of application. If an application filed pursuant to subsection (C)(1) is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefore.
3. Notice of the grant of an interim order. If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties and the terms of the order shall be published in statewide newspapers. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for variance.

**R20-5-656. Variances under A.R.S. § 23-412**

- A. Application for variance. Any employer, or class of employers, desiring a variance authorized by A.R.S. § 23-412 of the Act may file a written application containing the information specified in subsection (B) of this Section, with the Industrial Commission of Arizona, 1601 W. Jefferson, Phoenix, Arizona 85005.
- B. Contents. An application filed pursuant to subsection (A) of this Section shall contain the information specified in A.R.S. § 23-412 of the Act.
- C. Interim order
  1. Application. An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order shall include a verified statement of facts and arguments supporting such application. The Commission may rule ex parte upon the application.
  2. Notice of denial of application. If an application filed pursuant to subsection (C)(1) is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefore.
  3. Notice of the grant of an interim order. If an interim order is granted, a copy of the order shall be served upon the applicant and other parties, and the terms of the order shall be published in statewide newspapers. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

**R20-5-657. Renewal of Rules or Orders: Federal Multi-state Variances**

- A. Renewal or rules or orders. Any final rule or order issued under A.R.S. § 23-411 of the Act may be renewed or extended as permitted by the applicable Section and in the manner prescribed for its issuance.
- B. Multi-state variances. Where a federal variance has been granted with multi-state applicability, including applicability in this state operating under a state plan approved under Section 18 of the Act, from a standard or portion thereof identical to this state's standard or regulation or portion thereof such variance shall likewise be deemed an authoritative interpretation of the employer(s)' compliance obligation with regard to the state standard or portion thereof provided no objections of substance are found to be interposed by the Commission.

**R20-5-658. Action on Applications****A. Defective applications**

1. If an application filed pursuant to rule R20-5-655, R20-5-656, R20-5-657 and R20-5-658 does not conform to the applicable Section, the Commission may deny the application.
2. Prompt notice of the denial of an application shall be given to the applicant.
3. A notice of denial shall include, or be accompanied by, a brief statement of the grounds for denial.
4. A denial of an application pursuant to this subsection shall be without prejudice to the filing of another application.

**B. Adequate applications**

1. If an application has not been denied pursuant to subsection (A) of this Section, the Commission shall cause to be published in statewide newspapers a notice of the filing of the application.
2. A notice of the filing of an application shall include:
  - a. The terms, or an accurate summary, of the application;
  - b. A reference to the Section of the Act under which the application has been filed;
  - c. An invitation to interested persons to submit within a stated period of time written data, views, or arguments regarding the application; and
  - d. Information to affected employers, employees, of any right to request a hearing on the application.

**R20-5-659. Request for Hearings on Petition**

**A. Request for hearing.** Any employer, employee, authorized employee representative, representative, or other person interested in or affected by an order of the Commission may petition for a hearing on the reasonableness and lawfulness of an order issued under A.R.S. §§ 23-411 or 23-412, by a verified petition filed with the Commission.

**B. Contents of a petition.** A request for a hearing filed pursuant to subsection (A) of this Section shall include:

1. The name and address of the applicant;
2. A concise statement of facts showing how the employer, employee, authorized employee representative, representative, or other person would be affected by the relief applied for;
3. A petition shall set forth specifically and in detail the order upon which a hearing is desired;
4. The reasons why the order is unreasonable or unlawful;
5. The issue to be considered by the Commission on the hearing. Objections other than those set forth in the petition are deemed finally waived.
6. If the applicant is an employer, a certification that the applicant has informed his affected employees of the application by:
  - a. Giving a copy thereof to their authorized representative;
  - b. Posting at the place or places where notices to employees are normally posted, a statement giving a summary of the petition specifying where a copy of the full petition may be examined (or, in lieu of the summary, posting the application itself); and
  - c. Other appropriate means.
7. If the applicant is an affected employee, a certification that a copy of the petition has been furnished to the employer.

**C. The Commission may on its own motion proceed to modify or revoke a rule or order issued under A.R.S. §§ 23-411 or 23-412 of the Act. In such event, the Commission shall cause to be**

published in statewide newspapers a notice of its intention, affording interested persons an opportunity to submit written data, views, or arguments regarding the proposal and informing the affected employer and employees of their right to request a hearing and shall take such other action as may be appropriate to give actual notice to the affected employees. Any request for a hearing shall include a short and plain statement of:

1. How the proposed modification or revocation would affect the requesting party; and
2. What the requesting party would seek to show on the subjects or issues involved.

**R20-5-660. Consolidation of Proceedings**

The Commission on its own motion or that of any party may consolidate or contemporaneously consider two or more proceedings which involve the same or closely related issues.

**R20-5-661. Notice of Hearing**

- A. Service.** Upon request for a hearing as provided in this Section, or upon its own initiative, the Commission shall serve, or cause to be served, a reasonable notice of hearing.
- B. Contents.** A notice of hearing served under subsection (A) of this Section shall include:
1. The time, place, and nature of the hearing;
  2. The legal authority under which the hearing is to be held;
  3. A specification of issues of fact and law.

**R20-5-662. Manner of Service**

Service of any document upon any party may be made by personal delivery of, or by mailing, a copy of the document to the last known address of the party. The person serving the document shall certify to the manner and the date of the service.

**R20-5-663. Industrial Commission; Powers and Duties**

- A. Powers.** The Commissioners shall have all powers necessary or appropriate to conduct a fair, full, and impartial hearing, including the following:
1. To administer oaths and affirmations;
  2. To rule upon offers of proof and receive relevant evidence;
  3. To provide for discovery and to determine its scope;
  4. To regulate the course of the hearing and the conduct of the parties and their counsel therein;
  5. To consider and rule upon procedural requests;
  6. To hold conferences for the settlement or simplification of the issues by consent of the parties;
  7. To make, or to cause to be made, an inspection of the employment or place of employment involved;
  8. To make decisions in accordance with A.R.S. §§ 23-405.5, 23-411, 23-412, and 23-945; and
  9. To take any other appropriate action authorized by the Act, this Section, or A.R.S. § 23-945.
- B. Contumacious conduct;** failure or refusal to appear or obey the rulings of the Commission.

1. Contumacious conduct at any hearing before the Commission shall be grounds for exclusion from the hearing.
  2. If a witness or a party refuses to answer a question after being directed to do so, or refuses to obey an order to provide or permit discovery, the Commission may make such orders with regard to the refusal as are just and appropriate, including an order denying an application of an applicant or regulating the contents of the record of the hearing.
- C. Referral to Rules of Procedure for Occupational Safety and Health hearings. On any procedural question not regulated by this Section, the Act, or A.R.S. § 23-945, Commission shall be guided to the extent practicable by any pertinent provisions of the Rules of Procedure for Occupational Safety and Health hearings before the Industrial Commission of Arizona.

**R20-5-664. Prehearing Conferences**

- A. Convening a conference. Upon its own motion or the motion of a party, the Commission may direct the parties or their counsel to meet with them for a conference to consider:
1. Simplification of the issues;
  2. Necessity or desirability of amendments to documents for purposes of clarification, simplification, or limitation;
  3. Stipulations, admissions of fact, and of contents and authenticity of documents;
  4. Limitation of the number of parties and of expert witnesses; and
  5. Such other matters as may tend to expedite the disposition of the proceeding and to assure a just conclusion thereof.
- B. Record of conference. The Commission shall make an order which recites the action taken at the conference, the amendments allowed to any documents which have been filed, and the agreements made between the parties as to any of the matters considered, and which limits the issues for hearings to those not disposed of by admission or agreements; and such order when entered controls the subsequent course of the hearing, unless modified at the hearing, to prevent manifest injustice.

**R20-5-665. Consent Findings and Rules or Orders**

- A. General. At any time before the reception of evidence in any hearing, or during any hearing, a reasonable opportunity may be afforded to permit the negotiation by the parties of an agreement containing consent findings and a rule or order disposing of the whole or any part of the proceeding. The allowance of such opportunity and the duration thereof shall be in the discretion of the Commission. After consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement which will result in a just disposition of the issues involved.
- B. Contents. Any agreement containing consent findings in rule or other disposing of a proceeding shall also provide:
1. That the rule or order shall have the same force and effect as if made after a full hearing;
  2. That the entire record on which any rule or order may be based shall consist solely of the application and the agreement;
  3. A waiver of any further procedural steps before the Commission; and
  4. A waiver of any right to challenge or contest the validity of the findings and of the rule or order made in accordance with the agreement.

- C. Submission. On or before the expiration of the time granted for negotiations, the parties or their counsel may:
  - 1. Submit the proposed agreement to the Commission for its consideration; or
  - 2. Inform the Commission that agreement cannot be reached.
- D. In the event an agreement containing consent findings and rule or order is submitted within the time allowed therefor, the Commission may accept such agreement by issuing its decision based upon the agreed findings.

## **R20-5-666. Discovery**

### **A. Depositions**

- 1. For reasons of unavailability or for other good cause shown, the testimony of any witness may be taken by deposition. Depositions may be taken orally or upon written interrogatories before any person designated by the Commission and having power to administer oaths.
  - 2. Application. Any party desiring to take the deposition of a witness may make application in writing to the Commission, setting forth:
    - a. The reasons why such deposition should be taken;
    - b. The time when, the place where, and the name and post office address of the person before whom the deposition is to be taken;
    - c. The name and address of each witness; and
    - d. The subject matter concerning which each witness is expected to testify.
  - 3. Notice. Such notice as the Commission may order shall be given by the party taking the deposition to every other party.
  - 4. Taking and receiving in evidence. Each witness testifying upon deposition shall be sworn, and the parties not calling him shall have the right to cross-examine him. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to the witness, subscribed by him, and certified by the officer before whom the deposition is taken. Thereafter, the officer shall seal the deposition, with two copies thereof, in an envelope and mail the same by registered mail to the presiding hearing examiner. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by the party taking it as against any party who was present, represented at the taking of the deposition, or who had due notice thereof. No part of a deposition shall be admitted in evidence unless there is a showing that the reasons for the taking of the deposition in the first instance exist at the time of the hearing.
- B. Other discovery.** Whenever appropriate to a just disposition of any issue in a hearing, the Commission may allow discovery by any other appropriate procedure, such as by written interrogatories upon a party, production of documents by a party, or by entry for inspection of the employment or place of employment involved.

## **R20-5-667. Hearings**

- A. Order of proceeding.** Except as may be ordered otherwise by the Commission, the party applicant for relief shall proceed first at a hearing.
- B. Burden of proof.** The party applicant shall have the burden of proof.

**C. Evidence**

1. Admissibility. A party shall be entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received, but the Commission shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.
2. Testimony of witnesses. The testimony of a witness shall be upon oath or affirmation administered by the Commission.

**D. Official notice.** Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice: provided that the parties shall be given adequate notice, at the hearing or by reference in the Commission's decision, of the matters so noticed and shall be given adequate opportunity to show the contrary.

**E. Record.** Minutes shall be taken of the Commission hearings. Copies of the minutes may be obtained by the parties upon written application filed with the secretary of the Commission and upon the payment of fees at the rate provided in the agreement with the Commission.

**R20-5-668. Decisions of the Commission**

**A.** Proposed findings of fact, conclusions, and rules or orders. Within 10 days after completion of the hearing or such additional time as the Commission may allow, each party may file with the Commission proposed findings of fact, conclusions of law, and rule or order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all other parties and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

**B.** Decisions of the Commission. Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and rule or order, the Commission shall make and serve upon each party its decision, which shall become final upon the 30th day after service thereof, unless exceptions are filed thereto, as provided in rule R20-5-669. The decision of the Commission shall include:

1. A statement of findings and conclusions, with reasons and basis therefor, upon each material issue of fact, law, or discretion presented on the record, and
2. The appropriate rule, order, relief, or denial thereof. The decision of the hearing examiner shall be based upon a consideration of the whole record and shall state all facts officially notice and relied upon. It shall be made on the basis of a preponderance of reliable and probative evidence.

**R20-5-669. Judicial Review**

Any employer, employee, authorized employee representative, representative, or any person in interest is dissatisfied with an order of the Commission may appeal in accordance with A.R.S. § 23-413 of the Act.

**R20-5-670. Field Sanitation**

**A.** This Section applies to any agricultural establishment where a crew of five or more employees are engaged on any given day in hand-labor operations in one location.

**B.** As used in this Section:

1. "Agricultural establishment" means a business operation that uses paid employees in the production of food, fiber or other material such as seed, seedlings, plants or parts of plants.
  2. "Crew of employees" means a group of persons who are employed to perform hand-labor operations as a unit at an agricultural establishment. "Crew of employees" does not include the employer and the employer's immediate family members.
  3. "Hand-labor operations" means agricultural activities or operations performed in the field by hand or with hand tools. Hand-labor operations include the hand-harvest of vegetables, nuts and fruits, hand-weeding of crops and hand-planting of seedlings. Hand-labor operations do not include such activities as logging operations, irrigation operations, the care or feeding of livestock or hand-labor operations in permanent structure, such as canning facilities or packing houses. Hand-labor operations do not include activities in which persons are acting as equipment operators.
  4. "Handwashing facility" means a facility providing either a basin, container or outlet with an adequate supply of potable water, soap and single-use towels.
  5. "Potable water" means water that meets the standards for drinking purposes prescribed by the state or local authority having jurisdiction or water that meets the quality standards prescribed by the United States Environmental Protection Agency's National Interim Primary Drinking Water Regulations, published in 40 CFR Part 141 (July 1983), incorporated by reference and on file in the Office of the Secretary of State.
  6. "Toilet facility" means a facility designed for the purpose of both defecation and urination, including biological or chemical toilets, combustion toilets or sanitary privies, which is supplied with toilet paper adequate for employee needs. Toilet facilities may be either fixed or portable.
- C.** Employers shall provide the following for employees engaged in hand-labor operations at an agricultural establishment without cost to the employee:
1. Potable drinking water as follows:
    - a. Potable water shall be provided and shall be placed in locations readily accessible to all employees.
    - b. The water shall be suitably cool, no more than 80°F, and in sufficient amounts, a minimum of two gallons per employee, taking into account the air temperature, humidity and the nature of the work performed, to meet employees' need.
    - c. The water shall be dispensed in single-use drinking cups or by fountains. The use of common drinking cups or dippers is prohibited.
  2. Toilet and handwashing facilities as follows:
    - a. One toilet facility and one handwashing facility shall be provided for each 40 employees or fraction thereof, except as provided in subsection (D) of this Section.
    - b. Toilet facilities shall have doors that can be closed and latched from the inside and shall be constructed to ensure privacy.
    - c. Toilet and handwashing facilities shall be accessibly located, in close proximity to each other and within 1/4 mile of each employee's place of work in the field. If it is not feasible to locate facilities accessibly and within the required distance due to the terrain, facilities shall be located at the point of closest vehicular access.
- D.** Toilet and handwashing facilities are not required for employees who perform field work for a period of three hours or less (including transportation time to and from the field) during the day.

- E.** Potable drinking water and toilet and handwashing facilities shall be maintained in accordance with appropriate public health sanitation practices, including all of the following:
  - 1. Drinking water containers shall be covered, cleaned and refilled daily.
  - 2. Toilet facilities shall be operational and maintained in clean and sanitary condition and shall be supplied with toilet paper adequate for employee needs.
  - 3. Handwashing facilities shall be maintained in clean and sanitary condition.
  - 4. Disposal of wastes from facilities shall not cause unsanitary conditions.
- F.** Employees shall be allowed reasonable opportunities during the workday to use the facilities.

**R20-5-671. Reserved**

**R20-5-672. Reserved**

**R20-5-673. Reserved**

**R20-5-674. Emergency expired**

**R20-5-675. Reserved**

**R20-5-676. Reserved**

**R20-5-677. Reserved**

**R20-5-678. Reserved**

**R20-5-679. Reserved**

**R20-5-680. Protected Activity**

- A.** All complaints pursuant to A.R.S. § 23-425 shall relate to conditions at the workplace. The filing of complaints need not be in writing for purposes of this subsection except that those complaints filed pursuant to R20-5-682 shall comply with R20-5-682. The term “filed any complaint” as used in A.R.S. § 23-425(A) includes:
  - 1. Employee requests for inspection pursuant to A.R.S. § 23-408(F);
  - 2. Complaints registered with other state, local or federal governmental agencies which have the authority to regulate or investigate occupational safety and health conditions;
  - 3. Complaints lodged with employers; or
  - 4. Complaints filed as specified in R20-5-682.
- B.** The term “instituted or caused to be instituted any proceeding” as used in A.R.S. § 23-425(A) includes:
  - 1. Inspections of worksites under A.R.S. § 23-408(A);
  - 2. Employee contest of abatement date under A.R.S. § 23-417(D);
  - 3. Employee initiation of proceedings for promulgation of an occupational safety and health standard under A.R.S. § 23-410(A);
  - 4. Employee application for modification or revocation of a variance under A.R.S. § 23-413;
  - 5. Employee judicial challenge to a standard under A.R.S. § 23-410(E);
  - 6. Employee appeal of an Administrative Law Judge Division order under A.R.S. § 23-421(C);
  - 7. Exercise of rights by any employee pursuant to A.R.S. § 23-418.01;
  - 8. Any other employee action authorized by the Arizona Occupational Safety and Health Act of 1972; or

9. Setting into motion the activities of others which result in the proceedings specified in subsections (B)(1) through (8).
- C.** The term “testified or is about to testify in any such proceeding” as used in A.R.S. § 23-425(A) includes:
1. Testimony in proceedings instituted or caused to be instituted by the employee; or
  2. Any statements given in the course of judicial, quasi-judicial or administrative proceedings. For this purpose, administrative proceedings include inspections, investigations and administrative rulemaking or adjudicative functions.
- D.** The term “the exercise by such employee on behalf of himself or others of any right afforded by this Article” as used in A.R.S. § 23-425(A) includes:
1. The right to participate as a party in enforcement proceedings pursuant to A.R.S. § 23-408(D);
  2. The right to request information from the Industrial Commission; or
  3. To cooperate with inspections or investigations by the Industrial Commission.
- E.** If the employee, with no reasonable alternative, refuses in good faith to expose himself to a dangerous condition, the employee is engaged in protected activity. The condition causing the employee’s apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the dangers through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer and been unable to obtain a correction of the dangerous condition.
- F.** Employees who refuse to comply with valid occupational safety and health standards or valid safety rules implemented by the employer are not protected by A.R.S. § 23-425.

**R20-5-681. Elements of a Violation of A.R.S. § 23-425**

To establish a violation of A.R.S. § 23-425(A), the employee shall prove all of the following:

1. The employee was engaged in protected activities as defined in R20-5-680.
2. The employer had knowledge of the employee’s protected activities prior to the adverse action which the employee claims to be a discharge or discrimination.
3. The action claimed to be discharge or discrimination was adverse to the employee.
4. The protected activity was a substantial reason for the alleged discharge or discrimination or the alleged discharge or discrimination would not have taken place but for the employee’s engagement in the protected activity.

**R20-5-682. Procedure**

- A.** A complaint of A.R.S. § 23-425(A) discharge or discrimination shall be filed with the Division of Occupational Safety and Health by the employee or by a representative authorized by A.R.S. § 23-408(F) to do so on the employee’s behalf. The complaint shall be written and shall be signed by the person filing the complaint.
- B.** The date of filing a complaint under A.R.S. § 23-425(B) is the date of receipt of the complaint by the Division.
- C.** The Division may accept or deny an employee’s withdrawal of a complaint. The Industrial Commission’s investigatory jurisdiction shall not be foreclosed by unilateral action of the employee.

- D.** The Industrial Commission may resolve an A.R.S. § 23-425 complaint with the employer without the consent of the employee.
- E.** The Industrial Commission's jurisdiction to investigate and determine A.R.S. § 23-425 complaints is independent of the jurisdiction of other agencies or bodies. The Industrial Commission may defer to the results of other such proceedings where:
  - 1. The rights asserted in those other proceedings are substantially the same as the rights pursuant to A.R.S. § 23-425;
  - 2. The factual issues in such proceedings are substantially the same as the factual issues before the Industrial Commission;
  - 3. The proceedings were fair and regular; and
  - 4. The outcome of the proceedings was not inconsistent with the purposes of this Chapter and the Act.
- F.** A determination pursuant to A.R.S. § 23-425(C) includes:
  - 1. A decision to not proceed with the case;
  - 2. To defer the case to another forum; or
  - 3. To proceed to litigation in Superior Court.

**GENERAL  
AND  
SPECIFIC  
STATUTES**

## **A.R.S. § 23-107. General powers**

A. The commission has full power, jurisdiction and authority to:

1. Formulate and adopt rules and regulations for effecting the purposes of this article.
2. Administer and enforce all laws for the protection of life, health, safety and welfare of employees in every case and under every law when such duty is not specifically delegated to any other board or officer, and, when such duty is specifically delegated, to counsel, advise and assist in the administration and enforcement of such laws and for such purposes may conduct investigations.
3. Promote the voluntary arbitration, mediation and conciliation of disputes between employers and employees.
4. License and supervise the work of private employment offices, bring together employers seeking employees and working people seeking employment, and make known the opportunities for employment in the state.
5. Collect, collate and publish all statistical and other information relating to employees, employers, employments and places of employment with other appropriate statistics.
6. Act as the regulatory agency insuring that workers' compensation carriers are processing claims in accordance with chapter 6 of this title.
7. Provide nonpublic, confidential or privileged documents, materials or other information to another state, local or federal regulatory agency for the purpose of the legitimate administrative needs of the programs administered by that agency if the recipient agency agrees and warrants that it has the authority to maintain and will maintain the confidentiality and privileged status of the documents, materials or other information.
8. Receive nonpublic documents, materials and other information from another state, local or federal regulatory agency to properly administer programs of the commission. The commission shall maintain as confidential or privileged any document, material or other information that is identified by the exchange agency as confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.
9. Enter into agreements that govern the exchange of nonpublic documents, materials and other information that are consistent with paragraphs 7 and 8. The commission may request nondisclosure of information that is identified as privileged or confidential. Any disclosure pursuant to paragraph 7 or 8 or this paragraph is not a waiver of any applicable privilege or claim of confidentiality in the documents, materials or other information.

B. Upon petition by any person that any employment or place of employment is not safe or is injurious to the welfare of any employee, the commission has power and authority, with or without notice, to make investigations necessary to determine the matter complained of.

C. The members of the commission may confer and meet with officers of other states and officers of the United States on matters pertaining to their official duties.

D. Notwithstanding any other law, the commission may protect from public inspection the financial information that is received from a private entity that applies to self-insure or that renews its self-insurance plan pursuant to section 23-961, subsection A if the information is kept confidential by the private entity in its ordinary and regular course of business.

**A.R.S. § 23-405. Duties and powers of the industrial commission relative to occupational safety and health**

The commission shall:

1. Administer the provisions of this article through the division of occupational safety and health.
2. Appoint the director of the division of occupational safety and health.
3. Cooperate with the federal government to establish and maintain an occupational safety and health program as effective as the federal occupational safety and health program.
4. Promulgate standards and regulations as required, pursuant to section 23-410, and promulgate such other rules and regulations as are necessary for the efficient functioning of the division.
5. Have the authority to issue reasonable temporary, experimental and permanent variances pursuant to sections 23-411 and 23-412.
6. Exercise such other powers as are necessary to carry out the duties and requirements of this article.

**A.R.S. § 23-408. Inspection of places and practices of employment; closing conference; prohibitions; employee initiation of investigation; violation; classification; injunction**

A. Except as prescribed in section 23-432, subsection E, the director of the division of occupational safety and health, or the director's authorized representative, on presentation of credentials, shall be permitted to inspect places of employment, question employees and investigate conditions, practices or matters in connection with employment subject to this article at reasonable times, as the director or the director's authorized representative may deem appropriate to determine whether any person has violated any provision of this article or any rule or regulation issued pursuant to this article or that may aid in the enforcement of this article. An employer or other person shall not refuse to admit the director or the director's authorized representatives to any place or refuse to permit the inspection if the proper credentials are presented and the inspection is made at a reasonable time.

B. In making inspections and investigations, the director or the director's authorized representative may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage paid to witnesses in the

courts of this state. If any person fails or refuses to obey such an order, the director or the director's authorized representative may apply to any superior court in any county where the person is found, resides or transacts business for an order requiring the person to produce evidence and to give testimony as ordered. Failure to obey such an order is contempt of court.

C. The director or the director's authorized representative shall inspect at least every six months any operation that mixes rock, sand, gravel or similar materials with water and cement or with asphalt and that is not included in the definition of mine in section 27-301. The director or the director's authorized representative shall monitor and work with the mine inspector only to the extent necessary to ensure this state's compliance with federal occupational safety and health act standards, (P.L. 91-596).

D. Notice of an intended inspection shall not be given to an employer before the time of actual entry on the workplace, except by specific authorization by the director.

E. A representative of the employer and a representative authorized by the employer's employees shall be given an opportunity to accompany the director or the director's authorized representative during the physical inspection of any workplace for the purpose of aiding the inspection. Where there is no authorized employee representative, the director or the director's authorized representative shall consult a reasonable number of employees concerning matters of safety and health in the workplace.

F. Except as provided in section 23-426, information and facts developed by the commission, the director or any employee of the commission or division in the course of any inspection or investigation are public records subject to inspection pursuant to title 39, chapter 1, article 2, if, pursuant to section 23-415, subsection D, the inspection or investigation has been closed or a citation has been issued. Such information and facts shall not be admissible in any court or before any administrative body except pursuant to this article. Notwithstanding this subsection, the director or any commission employee is not required to appear at any deposition, trial or hearing concerning a division inspection or investigation unless the appearance is related to a hearing held pursuant to this article. Hearings held pursuant to this article are open to the public.

G. During the inspection or investigation and in deciding whether to recommend and issue a citation, the director or the director's authorized representative and the commission may consider whether an employee has committed misconduct by violating the employer's policies, if any, regarding substance abuse while working, as evidenced by the results of testing for substance abuse or other evidence of impairment while working.

H. An employee of the division or the commission may not:

1. Before, during or after an inspection or investigation, communicate to an employer that the employer should not be represented by an attorney or that the employer may be treated more favorably by the division or the commission if the employer is not represented by an attorney.
2. Conduct an audio recording of an oral statement provided during an interview without the knowledge and consent of the person being interviewed. The employee of the division or the

commission shall inform the person being interviewed of the person's right to receive a copy of the recorded oral statement within a reasonable time.

3. Obtain a written statement during an interview without informing the person of the person's right to receive a copy of the written statement within a reasonable time.

I. An employee or a representative of employees who believes that a violation of a safety or health standard or regulation exists that threatens physical harm or that an imminent danger exists may request an investigation by giving notice to the director or the director's authorized representative of the violation or danger. Any notice shall be in writing, set forth with reasonable particularity the grounds for the notice and be signed by the employees or representative of the employees. On the request of the employee giving the notice, the employee's name and the names of other employees referred to in the notice shall not appear on any copy of the notice or any record published, released or made available. If on receipt of the notice the director determines that there are reasonable grounds to believe that the violation or danger exists, the director shall make an investigation in accordance with this article as soon as practicable to determine if the violation or danger exists. If the director determines there are no reasonable grounds to believe that a violation or danger exists, the director shall notify the employees or representative of the employees in writing of the determination.

J. Any person who violates any provision of this section is guilty of a class 2 misdemeanor.

K. The commission, or the commission's authorized representative, in addition to initiating an action under subsection I of this section, may file in the superior court in the county where the inspection was refused a verified complaint against an employer who violates subsection A of this section and request an injunction against continued refusal to permit an inspection.

#### **A.R.S. § 23-410. Development of standards and rules**

A. Safety and health standards and rules shall be formulated in the following manner:

1. The division shall either propose adoption of national consensus standards or federal standards or draft such rules as it considers necessary after conducting sufficient investigations through the division's employees and through consultation with the occupational safety and health advisory committee and other persons knowledgeable in the business for which the standards or rules are being formulated.

2. Proposed standards or rules, or both, shall be submitted to the commission for its approval. If the commission approves the proposed standards or rules, or both, it shall promulgate them in accordance with the procedures established in title 41, chapter 6.

B. The division shall not propose standards or rules for products distributed or used in interstate commerce which are different from federal standards for such products unless such standards are required by compelling local conditions and do not unduly burden interstate commerce.

C. Any standards or rules promulgated under this section shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all recognized hazards to which they are exposed, relevant symptoms and appropriate emergency treatment and proper conditions and precautions of safe use or exposure. Where appropriate such standards or rules shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standards or rules shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. Any standards or rules promulgated pursuant to this section shall assure, as far as possible, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.

D. In case of conflict between standards and rules, the rules shall take precedence.

E. Any person who may be adversely affected by a standard or rule issued under this article may at any time prior to the sixtieth day after such standard or rule is promulgated file a complaint challenging the validity of such standard or rule with the superior court in the county in which the person resides or has his principal place of business, for a judicial review of such standard or rule. The filing of such a complaint shall not, unless otherwise ordered by the court, operate as a stay of the standard or rule. The determinations of the commission shall be conclusive if supported by substantial evidence in the record considered as a whole.

#### **A.R.S. § 23-411. Temporary and experimental variances**

A. Any employer may apply to the commission for a temporary order granting a variance from a standard or regulation or any provision thereof promulgated under this article.

B. Such temporary order shall be granted only if the employer files an application which meets the requirements of subsection C of this section and establishes all of the following:

1. He is unable to comply with a standard or regulation by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or regulation or because necessary construction or alteration of facilities cannot be completed by the effective date.

2. He is taking all available steps to safeguard his employees against the hazards covered by the standard or regulation.

3. He has an effective program for coming into compliance with the standard or regulation as quickly as practicable. Any temporary order issued under this section shall prescribe the practices, means, methods, operations and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the

standard or regulation. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing before the commission. A hearing must be requested within twenty days of such notice to employees. The commission may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or regulation or six months, whichever is shorter, except that such an order may be renewed not more than once so long as the requirements of this section are met and if an application for renewal is filed at least sixty days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than one hundred eighty days.

C. An application for a temporary order under this section shall contain all of the following:

1. A specification of the standard or regulation or portion thereof from which the employer seeks a variance.
2. A representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that he is unable to comply with the standard or regulation or portion thereof and a detailed statement of the reasons therefor.
3. A statement of the steps he has taken and will take with specific dates to protect employees against the hazard covered by the standard or regulation.
4. A statement of when he expects to be able to comply with the standard or regulation and what steps he has taken and what steps he will take with dates specified to come into compliance with the standard or regulation.
5. A certification that he has informed his employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted and by other appropriate means. A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the commission for a hearing.

D. The commission is authorized to grant an experimental variance from any standard or regulation or portion thereof whenever it determines that such variance is necessary to permit an employer to participate in an experiment approved by the commission and designed to demonstrate or validate new and improved techniques to safeguard the safety or health of workers. An employer applying for an experimental variance must comply with the requirements of subsection C, paragraphs 1, 3 and 5 of this section.

#### **A.R.S. § 23-412. Permanent variances**

Any affected employer may apply to the commission for a rule or order for a variance from a standard or regulation promulgated under this article. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The commission shall issue such rule or order if it determines on the record, after opportunity for an inspection where

appropriate and a hearing before the commission that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard or regulation. The rule or order so issued shall prescribe the conditions the employer must maintain, the practices, means, methods, operations and processes which he must adopt and utilize to the extent they differ from the standard or regulation in question. Such a rule or order may be modified or revoked upon application by an employer, employees or by the commission on its own motion, in the manner prescribed for its issuance under this section at any time after six months from its issuance.

### **A.R.S. § 23-417. Enforcement procedure**

A. If the director, following an inspection or investigation, issues a citation pursuant to section 23-415 he shall, within a reasonable time after termination of the inspection or investigation, notify the employer by mail of any penalty proposed to be assessed pursuant to section 23-418 and that the employer has fifteen working days within which to notify the director in writing if he wishes to contest the citation or proposed assessment of penalty. If the employer fails to notify the director in writing within fifteen working days of receipt of the notice that he intends to contest the citation or penalty and no notice is filed by any employee or representative of employees pursuant to subsection D of this section within such time, the citation and the assessment, as proposed, shall be a final order of the commission and not subject to review by any court or agency.

B. The period permitted for correction of a violation shall not begin to run until the entry of a final order in the case of any review proceedings pursuant to this section initiated by the employer in good faith and not solely for delay or avoidance of penalties. If the division has reason to believe an employer has failed to correct a violation for which a citation has been issued within the period permitted, the director shall notify the employer by mail of such failure, of the penalty proposed to be assessed pursuant to section 23-418 and that the employer has fifteen working days within which to notify the director in writing if he wishes to contest the notification or proposed assessment of penalty. If the employer fails to notify the director in writing within fifteen working days of receipt of the notice that he intends to contest the notice or penalty, the notice and assessment, as proposed, shall be deemed a final order of the commission and not subject to review by any court or agency.

C. Any employer who corrects the violations for which a citation was issued within the period permitted shall so notify the director in writing.

D. Any affected employee or employee representative may request a hearing to appeal the period allowed an employer to abate a particular violation pursuant to section 23-420 if he files such appeal with the director within the abatement period allowed in the citation or within fifteen days from the date of receipt of the citation, whichever is shorter.

E. Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that abatement has not been completed because of factors beyond

the reasonable control of the employer, the commission or its authorized designee, after an opportunity for a hearing as provided in section 23-420, shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection.

**A.R.S. § 23-418. Penalties; violation; classification**

A. Any employer who wilfully or repeatedly violates the requirements of section 23-403 or any standard or regulation adopted pursuant to section 23-410 or 23-414 or any provision of this article may be assessed a civil penalty of not more than seventy thousand dollars for each violation, but not less than five thousand dollars for each wilful violation.

B. Any employer who has received a citation for a serious violation of any provision of this article shall be assessed a civil penalty of up to seven thousand dollars for each such violation.

C. Any employer who has received a citation for a non-serious violation of any provision of this article may be assessed a civil penalty of up to seven thousand dollars for each such violation.

D. Any employer who fails to correct a violation for which a citation has been issued within the abatement period permitted for its correction, which period shall be suspended in case of a review proceeding before an administrative law judge or the review board initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty of not more than seven thousand dollars for each day during which such failure or violation continues after the abatement date.

E. Any employer who knowingly violates the requirements of section 23-403 or any standard or regulation adopted pursuant to section 23-410 or 23-414 or any provision of this article and that violation causes death to an employee is guilty of a class 6 felony, except that if the conviction is for a second or subsequent violation the employer is guilty of a class 5 felony.

F. Any person who knowingly gives advance notice of any inspection to be conducted under this article without authority from the director is guilty of a class 2 misdemeanor.

G. Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this article is guilty of a class 2 misdemeanor.

H. Any employer who violates any of the posting requirements of this article shall be assessed a civil penalty of up to seven thousand dollars for each violation.

I. The commission shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the gravity of the violation, the number of employees employed by the employer, the good faith of the employer and the history of previous violations under this article.

J. Civil penalties owed under this article shall be paid to the commission for deposit in the state general fund. After an order or decision on a civil penalty becomes final pursuant to section 23-417, 23-421 or 23-423, the civil penalty shall act as a judgment against the employer. The commission shall file the civil penalty in the office of the clerk of the superior court in any county in this state and the clerk shall enter the civil penalty in the civil order book and judgment docket. When the civil penalty is filed and entered it is a lien for eight years from the date of the final order or decision on the property of the employer located in the county. Execution may issue on the civil penalty within eight years in the same manner and with like effect as a judgment of the superior court. The civil penalty judgment shall accrue interest pursuant to section 44-1201. The commission may recover reasonable attorney fees incurred pursuant to this section.

### **A.R.S. § 23-425. Employee discharge or discrimination**

A. No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this article or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this article.

B. Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this section may within thirty days after such violation occurs, file a complaint with the commission alleging such discrimination. Upon receipt of such complaint, the commission shall cause such investigation to be made as it deems appropriate. If upon such investigation, the commission determines that the provisions of this section have been violated, it shall bring an action in any appropriate superior court against such person. In any such action the superior court shall have jurisdiction for cause shown to restrain violations of subsection A and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

C. Within ninety days of the receipt of a complaint filed under this section the commission shall notify the complainant of its determination under subsection B.

### **A.R.S. § 23-471. Definitions**

In this article, unless the context otherwise requires:

1. "Authorized representative" means the boiler chief and boiler inspector employed by the division.
2. "Boiler" means a closed vessel in which water or other liquid is heated, steam or vapor is generated or steam or vapor is superheated, or any combination thereof, under pressure or vacuum for a use that is external to itself, by the direct application of heat from the combustion of fuels or from electricity.
3. "Certificate" means a certificate of competency.

4. "Certificate inspection" means an internal inspection, when construction permits, otherwise it means as complete an inspection as possible.
5. "Commission" means the industrial commission of Arizona.
6. "Director" means the director of the division of occupational safety and health.
7. "Division" means the division of occupational safety and health of the commission.
8. "Heating boilers" means a steam or vapor boiler operating at a pressure not exceeding fifteen pounds per square inch or a hot water boiler operating at a pressure not exceeding one hundred sixty pounds per square inch or a temperature not exceeding two hundred fifty degrees Fahrenheit.
9. "High temperature water boiler" means a water boiler intended for operation at pressures in excess of one hundred sixty pounds per square inch or temperatures in excess of two hundred fifty degrees Fahrenheit.
10. "Interested party" means the commission, agents of the commission and any owner or operator who has been issued a notice of violation.
11. "Lined hot water heater" means a fired lined water heater with linings providing corrosion resistance for supplying potable hot water for commercial purposes. Lined hot water heaters are exempted when none of the following limitations are exceeded:
  - (a) Heat input of two hundred thousand British thermal units per hour.
  - (b) Water temperature of two hundred ten degrees Fahrenheit.
  - (c) Nominal water-containing capacity of one hundred twenty gallons.
12. "Owner" or "operator" means any individual or type of organization, including this state and all political subdivisions of this state, that has title to or controls, or has the duty to control, the operation of one or more boilers, pressure vessels or lined hot water heaters.
13. "Power boiler" means a boiler in which steam or other vapor is generated at a pressure more than fifteen pounds per square inch.
14. "Pressure vessel" means a container for the containment of pressure, either internal or external. The pressure may be obtained from an external source, or by the application of heat from a direct or indirect source, or any combination thereof.
15. "Process boiler" means a heating boiler or a power boiler used for processing purposes where the make-up water exceeds ten percent.

### **A.R.S. § 41-1037. General permits; issuance of traditional permit**

A. If an agency proposes a new rule or 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 if the facilities, activities or practices in the class are substantially similar in nature unless any of the following applies:

1. A general permit is prohibited by federal law.
2. The issuance of an alternative type of permit, license or authorization is specifically authorized by state statute.
3. The issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements.
4. The issuance of a general permit would result in additional regulatory requirements or costs being placed on the permit applicant.
5. The permit, license or authorization is issued pursuant to section 8-126, 8-503, 8-505, 23-504, 36-592, 36-594.01, 36-595, 36-596, 36-596.54, 41-1967.01 or 46-807.
6. The permit, license or authorization is issued pursuant to title V of the clean air act.

B. The agency retains the authority to revoke an applicant's ability to operate under a general permit and to require the applicant to obtain a traditional permit if the applicant is in substantial noncompliance with the applicable requirements for the general permit.

### **A.R.S. § 41-1056. Review by agency**

A. At least once every five years, each agency shall review all of its rules, including rules made pursuant to an exemption from this chapter or any part of this chapter, to determine whether any rule should be amended or repealed. The agency shall prepare and obtain council approval of a written report summarizing its findings, its supporting reasons and any proposed course of action. The report shall contain a certification that the agency is in compliance with section 41-1091. For each rule, the report shall include a concise analysis of all of the following:

1. The rule's effectiveness in achieving its objectives, including a summary of any available data supporting the conclusions reached.
2. Written criticisms of the rule received during the previous five years, including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.
3. Authorization of the rule by existing statutes.

4. Whether the rule is consistent with statutes or other rules made by the agency and current agency enforcement policy.
  5. The clarity, conciseness and understandability of the rule.
  6. The estimated economic, small business and consumer impact of the rules as compared to the economic, small business and consumer impact statement prepared on the last making of the rules.
  7. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.
  8. If applicable, that the agency completed the previous five-year review process.
  9. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.
  10. A determination that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.
  11. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license or agency authorization, whether the rule complies with section 41-1037.
- B. An agency may also include as part of the report the text of a proposed expedited rule pursuant to section 41-1027.
- C. The council shall schedule the periodic review of each agency's rules and shall approve or return, in whole or in part, the agency's report on its review. The council may grant an agency an extension from filing an agency's report. If the council returns an agency's report, in whole or in part, the council shall inform the agency of the manner in which its report is inadequate and, in consultation with the agency, shall schedule submission of a revised report. The council shall not approve a report unless the report complies with subsection A of this section.
- D. The council may review rules outside of the five-year review process if requested by at least four council members.
- E. The council may require the agency to propose an amendment or repeal of the rule by a date no earlier than six months after the date of the meeting at which the council considers the agency's report on its rule if the council determines the agency's analysis under subsection A of this section demonstrates that the rule is materially flawed, including that the rule:

1. Is not authorized by statute.

2. Is inconsistent with other statutes, rules or agency enforcement policies and the inconsistency results in a significant burden on the regulated public.

3. Imposes probable costs, including costs to the regulated person, that significantly exceed the probable benefits of the rule within this state.

4. Is more stringent than a corresponding federal law and there is no statutory authority to exceed the requirements of federal law.

5. Is not clear, concise and understandable.

6. Does not use general permits if required under section 41-1037.

7. Does not impose the least burden to persons regulated by the rule as necessary to achieve the underlying regulatory objective of the rule.

8. Does not rely on valid scientific or reliable principles and methods, including a study, if the rule relies on scientific principles or methods, and a person has submitted an analysis under subsection A of this section questioning whether the rule is based on valid scientific or reliable principles or methods. In making a determination of validity or reliability, the council shall consider the factors listed in section 41-1052, subsection G.

F. An agency may request an extension of no longer than one year from the date specified by the council pursuant to subsection E of this section by sending a written request to the council that:

1. Identifies the reason for the extension request.

2. Demonstrates good cause for the extension.

G. The agency shall notify the council of an amendment or repeal of a rule for which the council has set an expiration date under subsection E of this section. If the agency does not amend or repeal the rule by the date specified by the council under subsection E of this section or the extended date under subsection F of this section, the rule automatically expires. The council shall file a notice of rule expiration with the secretary of state and notify the agency of the expiration of the rule.

H. The council may reschedule a report or portion of a report for any rule that is scheduled for review and that was initially made or substantially revised within two years before the due date of the report as scheduled by the council.

I. If an agency finds that it cannot provide the written report to the council by the date it is due, the agency may file an extension with the council before the due date indicating the reason for the extension. The timely filing for an extension permits the agency to submit its report on or before the date prescribed by the council.

J. If an agency fails to submit its report, including a revised report, pursuant to subsection A or C of this section, or file an extension before the due date of the report or if it files an extension and does not submit its report within the extension period, the rules scheduled for review expire and the council shall:

1. Cause a notice to be published in the next register that states the rules have expired and are no longer enforceable.

2. Notify the secretary of state that the rules have expired and that the rules are to be removed from the code.

3. Notify the agency that the rules have expired and are no longer enforceable.

K. If a rule expires as provided in subsection J of this section and the agency wishes to reestablish the rule, the agency shall comply with the requirements of this chapter.

L. Not less than ninety days before the due date of a report, the council shall send a written notice to the head of the agency whose report is due. The notice shall list the rules to be reviewed and the date the report is due.

M. A person who is regulated or could be regulated by an obsolete rule may petition the council to require an agency that has the obsolete rule to consider including the rule in the five-year report with a recommendation for repeal of the rule.

N. A person who is required to obtain or could be required to obtain a license may petition the council to require an agency to consider including a recommendation for reducing a licensing time frame in the five-year report.

### **A.R.S. § 41-1057. Exemptions**

A. In addition to the exemptions stated in section 41-1005, this article does not apply to:

1. An agency which is a unit of state government headed by a single elected official.

2. The corporation commission, which shall adopt substantially similar rule review procedures, including the preparation of an economic impact statement and a statement of the effect of the rule on small business.

3. The industrial commission of Arizona when incorporating by reference the federal occupational safety and health standards as published in 29 Code of Federal Regulations parts 1904, 1910, 1926 and 1928.

4. The Arizona state lottery if making rules that relate only to the design, operation or prize structure of a lottery game.

B. An agency exempt under subsection A of this section may elect to follow the requirements of this article instead of section 41-1044 for a particular rule making. The agency shall include with a final rule making filed with council a statement that the agency has elected to follow the requirements of this article.

**INDUSTRIAL COMMISSION (F19-1203)**  
Title 20, Chapter 5, Article 5, Elevator Safety



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** January 14, 2020

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

**FROM:** Council Staff

**DATE:** December 9, 2019

**SUBJECT: INDUSTRIAL COMMISSION OF ARIZONA (F19-1203)**  
Title 20, Chapter 5, Article 5, Elevator Safety

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### **Summary:**

This Five Year Review Report (5YRR) from the Industrial Commission of Arizona (Commission) relates to rules in Title 20, Chapter 5, Article 5 regarding Elevator Safety. As the Commission indicates, the rules in Article 5 address safety standards for elevators and other conveyances, maintenance and posting requirements related to a certificate of inspection, recordkeeping and reporting rules, and inspection guidelines.

The Commission recently conducted two rulemakings related to R20-5-507 (Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices). The first rulemaking, effective on August 6, 2019, amended the rule to adopt national consensus performance standards for elevators and other conveyances that allow for the use of newer elevator technologies, such as pneumatic elevators.

In the second rulemaking, which the Commission anticipates to become effective in January 2020, the rule was amended to adopt the updated clearance standard contained in Section 5.3.1.7.2 of the ASME A17.1-2016, Safety Code for Elevators and Escalators. The updated clearance standard will replace the existing national consensus standard contained in Section 5.3 of ASME A17.1-2007. The Commission states that the revised clearance rule is intended to protect elevator users from exposure to a potential safety hazard related to the

distance between the hoistway face of the hoistway doors and the hoistway edge of the landing sill for both swinging and sliding doors.

**Proposed Action:**

The Commission plans to complete a further study of the rules in Article 5 and initiate a rulemaking to address the issues identified in this report no later than June 2021. The Commission states that the rulemaking will require 18 months because the Commission will conduct a comprehensive review of Article 5 to determine whether the ASME 2016 standards will be adopted in whole or in part. The Commission states that the comprehensive review and anticipated revisions will require substantial stakeholder input.

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

Yes. The Commission cites to applicable general and specific statutory authority for these rules.

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

The Commission indicates that the economic impact of Article 5 does not differ significantly from what was determined in the economic, small business, and consumer impact statement (EIS) in 2009, the 2014 5YRR, and the EIS submitted with the recent rulemaking related to R20-5-507 in 2019.

The stakeholders include the Commission, the Occupational Safety and Health Administration (OSHA), owners of properties that are equipped with elevators and other conveyances, and the general public.

**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 Commission states that the probable benefits of the rules in Article 5 outweigh the probable costs. The adoption of national consensus standards protect public safety and impose the least burden and costs on the regulated community.

**4. Has the agency received any written criticisms of the rules over the last five years?**

No. The Commission has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Commission indicates that the rules are generally effective in achieving their objectives. The report includes some statistics about the Commission's elevator inspections in State Fiscal Year 2019 and 2020 to date.

The Commission indicates that the rules are generally consistent with state statutes. However, the Commission states that R20-5-502 (Definitions) could be amended to expressly incorporate the definitions in A.R.S. § 23-491 (Definitions).

The Commission states that the rules are mostly clear, concise, and understandable. However, it identifies several rules in the report that could be amended to improve clarity and understandability.

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

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

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

Yes. The rules in Article 5 implement state law, specifically, A.R.S. Title 23, Chapter 2, Article 12 (Safety Conditions for Elevators and Similar Conveyances). The rules in Article 5 are more stringent than corresponding OSHA standards applicable to material hoists, personnel hoists, and grain elevators in the construction industry. The corresponding federal regulations are 29 CFR § 1926.552 (Material hoists, personnel hoists, and elevators) and 29 CFR § 1910.272 (Grain handling facilities). The Commission has statutory authority to adopt more stringent standards than the corresponding federal regulations pursuant to A.R.S. §§ 23-491.04 (Commission powers and duties) and 23-491.06 (Development standards and regulations).

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The rules in this Chapter were not adopted after July 29, 2010 and thus do not require a permit.

9. **Conclusion**

The revisions the Commission intends to make will result in rules that are more clear, concise, understandable, and effective. Council staff notes that the Commission has provided a plausible justification for the approximately 18-month timeline it says is needed to conduct a rulemaking to address the issues identified in this report. Council staff recommends approval of this report.

**FIVE-YEAR-REVIEW REPORT**  
**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**  
**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**  
**ARTICLE 5. ELEVATOR SAFETY**

**FIVE-YEAR-REVIEW REPORT**

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

**ARTICLE 5. ELEVATOR SAFETY**

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## **FIVE-YEAR-REVIEW SUMMARY**

The Industrial Commission of Arizona (the “Commission”) was created in 1925 as a result of legislation (Arizona Workman’s Compensation Act) implementing the constitutional provisions establishing a workers’ compensation system. From 1925 to 1969, the workers’ compensation system consisted of the State Compensation Fund, which was then a part of the Commission, and self-insured employers which generally comprised the mining and the railroad companies. In 1969, the workers’ compensation system reorganized and expanded to include private insurance companies. The State Compensation Fund was split off from the Commission and established as a separate agency responsible for providing workers’ compensation insurance until 2014, when it became a private mutual insurance company. The Commission retained both its responsibility and authority over the processing of workers’ compensation claims. Since that time, the role of the Commission has grown to include other labor-related issues, such as occupational safety and health, youth employment, resolution of wage-related disputes, minimum wage, vocational rehabilitation, workers’ compensation coverage for claimants of uninsured employers, and self-insured employers.

### **Certification Regarding Compliance with A.R.S. § 41-1091**

In the cover letter for this report, the Commission’s Director certifies that the Commission has complied with A.R.S. § 41-1091 with respect to substantive policy statements relating to the rules in Article 5, as well as other substantive policy statements in the Commission’s online Substantive Policy Statement Directory.

### **About Article 5**

The rules in Article 5 address safety standards for elevators and other conveyances, maintenance and posting requirements related to a certificate of inspection, recordkeeping and reporting rules, and inspection guidelines.

### **Recent Rulemaking Related to Article 5**

Since the most-recent Five-Year-Review Report on Article 5, the Commission completed one rulemaking and has started a second, both affecting R20-5-507. In the first rulemaking, effective August 6, 2019, R20-5-507 was amended to adopt national consensus performance standards for elevators and other conveyances that allow for the use of newer elevator technologies, such as pneumatic elevators. In the second rulemaking, which is anticipated to be effective by January 2020, R20-5-507 is being amended to adopt the updated clearance standard contained in Section 5.3.1.7.2 of ASME A17.1-2016, Safety Code for Elevators and Escalators. The updated clearance standard will replace the existing national consensus standard contained in Section 5.3 of ASME A17.1-2007. The revised clearance rule is intended to protect elevator users from exposure to a potential safety hazard related to the distance between the hoistway face of the hoistway doors and the hoistway edge of the landing sill for both swinging and sliding doors.

**FIVE-YEAR REVIEW REPORT**  
**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**  
**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**  
**ARTICLE 5. ELEVATOR SAFETY**

**1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

The rules in Article 5 have general and specific authorization under: (1) A.R.S. § 23-491.04(A)(2), which states, “The commission shall . . . [p]romulgate standards and regulations pursuant to section 23-491.06 as required and promulgate such other rules and regulations and exercise such other powers as are necessary to carry out [A.R.S. Title 23, Chapter 2, Article 12].”; (2) A.R.S. § 23-491.04(B), which provides specific authority for the Commission to “set fees not to exceed the actual cost for inspections performed pursuant to [A.R.S. Title 23, Chapter 2, Article 12]”; and (3) A.R.S. § 23-491.06(A), which sets forth the procedure for adopting safety standards and regulations. In 2010, the Legislature added A.R.S. § 23-491.16, which addresses the subject of private elevator inspectors, allowing the Commission to “authorize an individual to perform initial or annual inspections . . . if the individual . . . [m]eets the qualifications and insurance requirements prescribed by the commission.” A.R.S. § 23-491.16(A)(1). The authorized private elevator inspector must also be “certified by an organization that is accredited by a national society of mechanical engineers” and follow “the inspection procedures established by the commission for private elevator inspectors.” A.R.S. § 23-491.16(A)(2) & (3), respectively.

**2. Objective of the rules, including the purposes for the existence of the rules.**

The Commission’s overarching objectives regarding Article 5, in no particular order with respect to priority, are: (1) to protect all persons who use elevators and other conveyances from hazards to life, health, or property; (2) minimize burden upon the regulated community; and (3) set forth the procedural guidance necessary to implement

Arizona Revised Statutes, Title 23, Chapter 2, Article 12 (Safety Conditions for Elevators and Similar Conveyances).

R20-5-502. Definitions

The rule defines terms utilized in A.A.C., Title 20, Chapter 5, Article 5.

R20-5-504. Safety Standards for Platform Lifts and Stairway Chairlifts

The rule adopts national consensus safety standards for platform lifts and stairway chairlifts by incorporating by reference American Society of Mechanical Engineers (“ASME”) A18.1-2005, with amendments as of November 29, 2005.

R20-5-505. Certificate of Inspection

The rules sets forth requirements for public posting of certificates of inspection and State Serial Numbers.

R20-5-506. Recordkeeping

The rule addresses the assignment of State Serial Numbers to all conveyances; the procedure for notifying the Elevator Safety Section of the Arizona Division of Occupational Safety and Health (“ADOSH”) 90 days before installation, relocation, or major alteration of a conveyance; and the procedure for notifying the Elevator Safety Section of ADOSH within 24 hours of every accident involving personal injury or disabling damage to a conveyance.

R20-5-507. Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices

The rule adopts national consensus safety standards for elevators, escalators, dumbwaiters, moving walks, and material lifts by incorporating by reference ASME A17.1-2007 and A17.7-2007.

R20-5-508. Safety Standards for Belt Manlifts

The rule adopts national consensus safety standards for belt manlifts by incorporating by reference ASME A90.1-2003.

R20-5-509. Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demotion Operations

The rule adopts national consensus safety standards for personnel hoists and employee elevators for construction and demolition operations, incorporating by reference American National Standard Institute (“ANSI”) Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations, ANSI A10.4-2007.

R20-5-510. Safety Requirements for Material Hoists

The rule adopts national consensus safety standards for material hoists by incorporating by reference ANSI Safety Requirements for Material Hoists, ANSI A10.5-2006.

R20-5-511. Guide for Inspection of Elevators, Escalators, and Moving Walks

The rule adopts, by reference, the ASME Guide for Inspection of Elevators, Escalators, and Moving Walks, ASME A17.2-2004.

R20-5-513. Firefighters’ Emergency Operation

The rule sets forth the requirement that conveyances provided with firefighters’ emergency operation installed per ASME, A17.1-2007 must utilize the AZFS Key.

**3. Effectiveness of the rules in achieving their objectives, including a summary of any available data supporting the conclusion reached.**

The rules in Article 5 are generally effective in achieving their objectives (discussed in Section 2, above). Currently, ADOSH’s Elevator Safety Section has eleven inspectors (3 open posts) who perform work across the State. During State Fiscal Year 2019, the Section completed over 4,800 periodic inspections and 371 initial inspections for new

installations. In State Fiscal Year 2020, the Section has completed 684 periodic inspections and 66 initial inspections to date. In addition, the Commission issued 1,896 certificates of inspection and 2,898 correction orders in State Fiscal Year 2019 and has issued 325 certificates of inspection and 549 correction orders to date in State Fiscal Year 2020.

**4. Consistency of the rules with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

Although the rules in Article 5 are generally consistent with Arizona statutes in A.R.S. Title 23, Chapter 2, Article 12 (A.R.S. §§ 23-491 through 23-491.16), the Commission notes the following areas for potential improvement:

- Amend R20-5-502 to expressly incorporate the definitions in A.R.S. § 23-491.

**5. Agency enforcement policy, including whether the rules are currently being enforced and, if so, whether there are any problems with enforcement.**

The rules reviewed are enforced as written. The Commission is not aware of any problems with enforcement of the rules in Article 5.

**6. Clarity, conciseness, and understandability of the rules.**

Although the rules in Article 5 are generally clear, concise, and understandable, the Commission notes the following areas for potential improvement:

- Add definitions of “Platform Lift” and “Stairway Chairlifts” to the definitions in R20-5-502.
- Clarify that the referenced national consensus standards in R20-5-504 apply to platform lifts and stairway chairlifts (as stated in the Section title).
- Amend R20-5-505 and R20-5-506 to use the defined term “conveyance” from A.R.S. § 23-491.

- Delete the terms “Industrial” and “of Inspection” in R20-5-505, as the terms are redundant in light of the definitions in A.R.S. § 23-491.
- Make the final clause of R20-5-505 (“, the State Serial Number shall be affixed to the right, at the lower end of the unit.) a stand-alone sentence to add clarity.
- R20-5-508 and R20-5-511 erroneously refer to the “American National Standard Institute” instead of “American Society of Mechanical Engineers.”
- Reword R20-5-513 to improve clarity, as the current language is somewhat unclear.
- Replace references to “American Society of Mechanical Engineers” with “ASME,” as the phrase is defined in R20-5-502.
- Consistently de-capitalize all terms defined in R20-5-502 throughout the rules.
- De-capitalize “Elevator Inspector” in R20-5-511, as the term is not defined.
- Update the citation in R20-5-511 to reference both A.R.S. §§ 23-491.05 and 23-491.16.
- Amend R20-5-509 and R20-5-510 to clarify where the incorporated material is available.

**7. Written criticisms of the rules received by the agency within the five years immediately preceding the five-year review report.**

No written criticisms of the rules were received by the Commission within the last 5 years.

**8. A comparison of the estimated economic, small business, and consumer impact of the rules with the economic, small business, and consumer impact statement prepared on the last making of the rules or, if no economic, small business, and consumer impact statement was prepared on the last making of the rules, an assessment of the actual economic, small business, and consumer impact of the rules.**

The current estimated economic, small business, and consumer impact of the rules is not substantially different from that set out in the 2009 Economic Impact Statement, the 2014

Five-Year Review Report, and the Economic Impact Statement submitted with the recent rulemaking related to R20-5-507.

9. **Any analysis submitted to the agency by another person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.**

No business competitiveness analysis has been submitted to the Commission regarding Article 5.

10. **If applicable, whether the agency completed the course of action indicated in the agency's previous five-year-review report.**

The previous Five Year Review Report on Article 5 proposed no course of action.

11. **A determination after analysis that probable benefits outweigh probable costs and that the rules impose the least burden and costs on persons regulated.**

The probable benefits of the rules in Article 5 outweigh the probable costs. The adoption of national consensus standards impose the least burden and cost on the regulated community.

12. **A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

The rules in Article 5 implement state law, specifically A.R.S. Title 23, Chapter 2, Article 12. The rules in Article 5 are more stringent than corresponding OSHA standards applicable to material hoists, personnel hoists, and elevators in the construction industry [29 CFR §1926.552] and grain elevators [29 CFR §1910.272 re grain handling facilities].

The Commission has statutory authority to adopt more stringent standards under A.R.S. §§ 23-491.04 and 23-491.06.

**13. For rules adopted 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.**

There have been no rules adopted after July 29, 2010, which require the issuance of a regulatory permit, license, or agency authorization.

**14. Proposed course of action**

The Commission plans to complete a further study of the rules in Article 5 and initiate rulemaking to amend the existing rules consistent with Sections 4 & 6, above, by no later than June 2021. As part of its review, the Commission will determine whether adoption of updated national consensus standards is appropriate for R20-5-504, R20-5-507 through R20-5-511, and R20-5-513. The Commission will also determine whether it is necessary to adopt rules setting forth the qualifications and insurance requirements for private elevator inspectors pursuant to A.R.S. § 23-491.16(A)(1).

The rulemaking will require eighteen months because the Commission will conduct a comprehensive review of Article 5 to determine whether the ASME 2016 standards will be adopted in whole or in part. This comprehensive review and anticipated revisions will require substantial stakeholder input.

# Exhibit 3

**ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT  
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE  
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA  
ARTICLE 5. ELEVATOR SAFETY**

**1. Identification of the rulemaking.**

The following amendments; R20-5-502, R20-5-504, R20-5-505, R20-5-506, R20-5-507, R20-5-508, R20-5-509, R20-5-510, R20-5-511 and R20-5-513 were adopted by the Industrial Commission on December 4, 2008. This economic, small business and consumer impact statement is provided to comply with the provisions of A.R.S § 41-1055.

**2. Identification of the person who will be directly affected by, bears the cost of, or directly benefits from the rulemaking.**

The cost of implementing these amendments to this rule will be borne by the owner operator of an elevator, escalator, personnel hoists or related equipment installed in Arizona.

**3. Cost benefits analysis.**

**a. Probable cost and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the rulemaking.**

The Industrial Commission of Arizona will incur minimal cost, (less than \$1,000), relating to staff time involved in the rulemaking process, the purchase of new code books and the reprinting of the new changes. There will be no additional cost to other agencies as these amendments affect only newly installed equipment. Equipment installed prior to the effective date of these amendments will not be affected by these amendment changes. The Elevator Safety Section of the Industrial Commission of Arizona will benefit because it will enable the Section to enforce the current ASME Code for elevators, escalators, personnel hoist and related equipment installed in Arizona.

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

We do not believe there is a cost to any political subdivision of this state that is associated with the amendments to this rule. These amendments have no affect to currently installed elevator, escalator, personnel hoist or related equipment. The benefit for the political subdivisions of the state would occur when new elevator equipment is purchased and installed.

**c. Probable cost and benefit to business directly affected by the rulemaking, including any anticipated effect in the revenues or payroll expenditure of employees who are subject to the rulemaking.**

The changes to this rule do not effect businesses, business revenues or payroll of any company or employees subject to these rule changes. The new amendments only affect new installation of elevators, escalators and related equipment. These new amendment changes are not retro-active to existing elevator equipment. Existing elevators and escalator installations are required to continue to meet the code requirements that were in effect at the time of installation.

**4. General description of the probable impact on private and public employment on business, agencies, and political subdivisions of this state directly affected by the rulemaking.**

The Industrial Commission of Arizona does not anticipate any direct or indirect financial impact on private or public employment, agencies, or political subdivisions.

**5. Statement of the probable impact on the rulemaking on small business.**

The Elevator Safety Section does not believe there will be an economic impact on any business owners. These amendment changes only affect new installations and the cost of the new equipment is fixed by the elevator manufacturer and has no bearing on these rule changes. Today's equipment is manufactured according to the codes that are being adopted by this rulemaking. Any increase in price of the equipment is not consequential to these amendment changes. Regardless of these amendment changes the business either small or large will pay the market price for the equipment.

**a. Identification of small business subject to the rulemaking.**

None.

**b. Administrative and other cost required for compliance with the rulemaking.**

It is unlikely that there will be any administrative or other costs for compliance with this rulemaking.

**c. Description of methods that the agency may use to reduce the impact on small business.**

**i. Establish less costly compliance requirements in the proposed rulemaking for small business.**

The adoption of this amendment will have no impact on small business. Due to no economic impact we believe there are no less expensive methods available to small business.

**ii. Establish less costly schedules or less stringent deadlines for compliance in the proposed rulemaking.**

There is no less costly alternative available at this time.

**iii. Exemption of small businesses from any or all requirements of the proposed rulemaking.**

All small businesses are required to follow new elevator, escalator and related equipment installation subject to the adoption of these amendment changes to the rule.

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

It is not anticipated that there would be a cost or benefit to private persons and consumers who are directly affected by this rulemaking.

**6. Statement of the probable effects on state revenues.**

The rulemaking is not expected to have any effect on state revenue.

**7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.**

There is no intrusive or less costly alternative method of achieving the goal of the rule, because there is no monetary impact of the rule on small business, consideration of A.R.S. § 41-1035 has not been undertaken.

# Exhibit 4

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT**  
**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**  
**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**  
**ARTICLE 5. ELEVATOR SAFETY**

**1. Identification of the proposed rulemaking:**

The Industrial Commission of Arizona (the “Commission”) is proposing to amend A.A.C. R20-5-507 (Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices) to incorporate by reference national consensus standards contained in ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators).

Currently, R20-5-507 incorporates the national consensus standards contained in ASME A17.1-2007 (Safety Code for Elevators and Escalators), which apply to the construction and installation of elevators and other conveyances. ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators) contains national consensus performance standards for elevators and other conveyances and would permit the use of newer elevator/escalator technologies that may not fall under ASME A17.1-2007. Although ASME A17.1-2007 references ASME A17.7-2007, R20-5-507 does not expressly adopt ASME A17.7-2007. Thus, elevator/escalator technologies not permitted by ASME A17.1-2007 arguably cannot be installed in Arizona. The proposed rulemaking would expressly adopt ASME A17.7-2007, as referenced in ASME A17.1-2007, enabling the construction and installation of more modern equipment (such as pneumatic elevators) which use newer technologies based on the industry mechanical and engineering standards.

**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 that the amendment will primarily benefit property owners seeking to utilize newer technology for the construction and engineering of elevators and other conveyances in residential properties and businesses engaged in the construction and installation of elevators and other conveyances.

**3. A cost benefit analysis of the following:**

- (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 Commission does not anticipate any significant costs or benefits to any state agencies as a result of the proposed rulemaking. The only state agency that is anticipated to be affected is the Commission, as the proposed rulemaking will require an investment in training the Commission's elevator inspectors on the use of the new standards. However, training costs are expected to be nominal, as the Commission already engages in continuous training of inspectors. The Commission does not anticipate the need to hire any new full-time employees as a result of the proposed rulemaking.

- (b) Costs and benefits to political subdivisions directly affected by the rulemaking;  
*and*

The proposed rulemaking does not apply to political subdivisions, except to the extent that a political subdivision seeks to benefit from the proposed rulemaking by utilizing newer technologies for the construction and engineering of elevators and other conveyances.

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

The Commission anticipates that the amendment will primarily benefit property owners seeking to utilize newer technology for the construction and engineering of elevators and other conveyances in residential properties and businesses engaged in the construction and installation of elevators and other conveyances..

**4. Impact on private and public employment in businesses, agencies and political subdivisions:**

The proposed rulemaking would expressly adopt ASME A17.7-2007, as referenced in ASME A17.1-2007, enabling the construction and installation of more modern equipment (such as pneumatic elevators) which use newer technologies based on the industry mechanical and engineering standards. The Commission anticipates that the proposed rulemaking will benefit businesses who manufacture, install, or provide services related to the construction and engineering of elevators and other conveyances. The Commission anticipates that the proposed rulemaking will result in an increase in employment in the elevator industry in Arizona.

**5. Impact on small businesses:**

(a) Identification of the small businesses subject to the rulemaking:

The proposed rulemaking will benefit any business that elects to utilize newer technology for the construction and engineering of elevators and other conveyances, including small businesses.

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

The proposed rulemaking does not impose new obligations, costs, or time constraints on small businesses. Instead, the proposed rulemaking is intended to reduce regulatory burdens.

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

The proposed rulemaking is not intended to impose new obligations, costs, or time constraints on small businesses. *See supra* Section 2.

(d) Cost and benefit to private persons and consumers who are directly affected by proposed rulemaking:

Private persons and consumers who elect to utilize newer technology for the construction and engineering of elevators and other conveyances will benefit from the proposed rulemaking. *See supra* Section 2.

**6. Probable effect on state revenues:**

The Commission does not anticipate that the proposed rules will have any direct effect on state revenues.

**7. Less intrusive or less costly alternative methods considered:**

Because the subject rulemaking will primarily benefit impacted stakeholders, the Commission did not consider less costly alternative methods. *See supra* Section 2.

**8. Data on which the rule is based:**

The subject rulemaking incorporates by reference national consensus standards contained in ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators). A copy of ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators) is available for inspection or reproduction at the Arizona Division of Occupational Safety and Health, 800 West Washington Street, Room 203, Phoenix, AZ 85007, or may be obtained from the American Society of Mechanical Engineers (ASME) at Three Park Avenue, New York, New York 10016- 5990 or at <http://www.asme.org>.

# Exhibit 1

## CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

- b. Justification for variance;
  - c. Component or system involved;
  - d. Supporting documentation for variance;
  - e. Identify the statute, rule, code or standard to justify the variance; and
9. Printed name and title of owner or user, signature of owner or user and date.
- D. If an owner or user does not agree with the variance issued or revoked by the Director, a request for a hearing under A.R.S. § 23-479 can be made with the Commission.

**Historical Note**

New Section made by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-430. Forced Circulation Hot Water Heaters**

- A. All water tube or coil-type hot water heaters that require forced circulation to prevent overheating and failure of the tubes or coils shall have a safety control, to prevent burner operation at a flow rate inadequate to protect the hot water heater unit against overheating, at all allowable firing rates. The safety control shall shut down the burner and prevent restarting until an adequate flow is restored.
- B. All water tube or coil-type hot water heaters that require forced circulation to prevent overheating and failure of the tubes or coils, shall have a manually operated remote shutdown switch or circuit breaker and shall be located just outside the hot water heater room door and marked for easy identification. The shutdown switch shall be installed in a manner to safeguard against tampering. If a hot water heater room door is on the building exterior, the switch shall be located just inside the door. If there is more than one door to the hot water heater room there shall be a switch located at each door. The remote shutdown switch or circuit breaker shall disconnect all power to the burner controls.

**Historical Note**

New Section made by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-431. Code Cases**

Code cases approved for use by the ASME Code Committee are allowed to be used in the design, fabrication and testing of boilers and pressure vessels provided approval from the Chief Boiler Inspector is obtained prior to use.

**Historical Note**

New Section made by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-432. Historical Boilers**

Historical boilers shall require an initial Certificate inspection by an authorized inspector, followed by a Certificate inspection every three years thereafter if stored inside a shelter, or annually if stored outdoors. The initial Certificate inspection shall include ultrasonic thickness testing of all pressure boundaries. Thinning of the pressure retaining boundary shall be monitored and recorded on the inspection report, in accordance with R20-5-407(D), to the owner and the Division's electronic copy.

**Historical Note**

New Section made by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**ARTICLE 5. ELEVATOR SAFETY****R20-5-501. Repealed****Historical Note**

Former Rule E-1. Amended effective November 9, 1979 (Supp. 79-6). R20-5-501 recodified from R4-13-501

(Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1).

**R20-5-502. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "ASME" means American Society of Mechanical Engineers.
2. "AZFS Key" means Arizona Firefighters Service Key, a universal key used by a firefighter to operate a conveyance during an emergency.
3. "Chief" means the head inspector of the Elevator Safety Section of the Division of Occupational Safety and Health.
4. "Elevator Safety Section" means the Elevator Safety Section of the Division of Occupational Safety and Health of the Industrial Commission of Arizona.
5. "Inspection" means the official determination by an inspector of the condition of all parts of the equipment on which the safe operation of an elevator depends.
6. "Major Alteration" means work performed to any conveyance that is not routine maintenance or repair.
7. "State Serial Number" is a unique number assigned by the Chief Elevator Inspector to each individual elevator, dumbwaiter, escalator, and moving walks.

**Historical Note**

Former Rule E-2. R20-5-502 recodified from R4-13-502 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

**R20-5-503. Repealed****Historical Note**

Former Rule E-3. R20-5-503 recodified from R4-13-503 (Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1).

**R20-5-504. Safety Standards for Platform Lifts and Stairway Chairlifts**

Every owner or operator under A.R.S. § 23-491.02 shall comply with the American Society of Mechanical Engineers Safety Standard for Platform Lifts and Stairway Chairlifts ASME A18.1-2005, with amendments as of November 29, 2005, which are incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org>.

**Historical Note**

Former Rule E-4. R20-5-504 recodified from R4-13-504 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

**R20-5-505. Certificate of Inspection**

The owner or operator under A.R.S. § 23-491.02 shall keep the Industrial Commission's Certificate of Inspection at the same location as the elevator, dumbwaiter, escalator, moving walk, or related equipment and make the certificate available for inspection and copying upon request. The State Serial Number shall be posted or displayed in the elevator cab, and on the escalators, the State Serial Number shall be affixed to the right, at the lower end of the unit.

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**Historical Note**

Former Rule E-5. R20-5-505 recodified from R4-13-505 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

**R20-5-506. Recordkeeping**

- A. The Elevator Safety Section shall assign a State Serial Number to every elevator, dumbwaiter, escalator, and moving walk for recordkeeping purposes. The State Serial Number shall be on a tag that is affixed to the controller or mainline disconnect in the elevator machine room.
- B. The owner or operator shall notify the Elevator Safety Section at least 90 days before installation, relocation, or major alteration of a dumbwaiter with automatic transfer device within the state, elevator, escalator, dumbwaiter, moving walk, material lift, wheelchair lift, stairway chairlift, or platform lift.
- C. The building owner or operator shall notify the Elevator Safety Section within 24 hours of every accident involving personal injury or disabling damage to a dumbwaiter with automatic transfer device, an elevator, escalator, dumbwaiter, moving walk, material lift, wheelchair lift, stairway chairlift, or platform lift.

**Historical Note**

Former Rule E-6. Amended effective November 9, 1979 (Supp. 79-6). R20-5-506 recodified from R4-13-506 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

**R20-5-507. Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices**

Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with automatic transfer device, installed on or after the effective date of this Section shall comply with the ASME A17.1-2007 Safety Code for Elevators and Escalators, which is incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and may be obtained from ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org>. Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with an automatic transfer device, installed before the effective date of this Section shall comply with the ASME A17.1 Safety Code for Elevators and Escalators in effect at the time of installation or, as an alternative, may comply with ASME A17.1-2007.

**Historical Note**

Former Rule R4-13-507 repealed, new Section R4-13-507 adopted effective November 9, 1979 (Supp. 79-6). Amended effective March 30, 1981 (Supp. 81-2). Amended effective June 23, 1983 (Supp. 83-3). Amended effective July 24, 1985 (Supp. 85-4). Amended effective September 5, 1989 (Supp. 89-3). Amended effective March 20, 1992 (Supp. 91-2). R20-5-507 recodified from R4-13-507 (Supp. 95-1). Amended effective October 8, 1996 (Supp. 96-4). Amended by final rulemaking at 5 A.A.R. 2935, effective August 4, 1999 (Supp. 99-3). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009

(Supp. 09-2).

**R20-5-508. Safety Standards for Belt Manlifts**

Every owner or operator under A.R.S. § 23-491.02 shall comply with the standards of the American National Standard Institute Safety Standard for Belt Manlifts, ASME A90.1-2003, which is incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org/>.

**Historical Note**

Adopted effective November 9, 1979 (Supp. 79-6). R20-5-508 recodified from R4-13-508 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

**R20-5-509. Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations**

Every owner or operator under A.R.S. § 23-491.02 shall comply with the standards of the American National Standard Institute Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations, ANSI, A10.4-2007, which is incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org>.

**Historical Note**

Adopted effective November 9, 1979 (Supp. 79-6). Amended effective June 23, 1983 (Supp. 83-3). R20-5-509 recodified from R4-13-509 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

**R20-5-510. Safety Requirements for Material Hoists**

Every owner or operator under A.R.S. § 23-491.02 shall comply with the standards of the American National Standard Institute Safety Requirements for Material Hoists, ANSI, A10.5-2006, which is incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is also available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org>.

**Historical Note**

Adopted effective November 9, 1979 (Supp. 79-6). Amended effective June 23, 1983 (Supp. 83-3). R20-5-510 recodified from R4-13-510 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

**R20-5-511. Guide for Inspection of Elevators, Escalators, and Moving Walks**

Every Elevator Inspector under A.R.S. § 23-491.05 shall use the American National Standard Institute, Guide for Inspection of Elevators, Escalators, and Moving Walks, ASME, A17.2-2004, which is incorporated by reference. This incorporation by reference does

## CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

not include any later amendments or editions of the incorporated matter. A copy of this referenced material is also available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org>.

**Historical Note**

Adopted effective March 30, 1981 (Supp. 81-2). R20-5-511 recodified from R4-13-511 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

**R20-5-512. Expired****Historical Note**

Adopted effective March 30, 1981 (Supp. 81-2). R20-5-512 recodified from R4-13-512 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 2320, effective May 19, 2005 (Supp. 05-2).

**R20-5-513. Firefighters' Emergency Operation**

All conveyances provided with firefighters' emergency operation installed per ASME, A17.1-2007, incorporated by reference, shall utilize the AZFS Key.

**Historical Note**

New Section made by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

**ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS****R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926**

Each employer shall comply with the standards in the Federal Occupational Safety and Health Standards for Construction, as published in 29 CFR 1926, with amendments as of June 23, 2016, incorporated by reference. Copies of these referenced materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to construction activity by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1926 published after June 23, 2016.

**Historical Note**

Editorial correction (Supp. 75-1). Amended as an emergency effective November 16, 1977 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6). Amended as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-601 repealed, former emergency adoption effective October 29, 1980, adopted effective March 2, 1981 (Supp. 81-2). Amended effective June 17, 1981 (Supp. 81-3). Amended effective November 14, 1984 (Supp. 84-6). Amended effective March 3, 1987 (Supp. 87-1). Amended effective April 22, 1988; amended effective May 26, 1988 (Supp. 88-2). Amended effective October 14, 1988 (Supp. 88-4). Amended effective September 14, 1989 (Supp. 89-3). Amended effective April 2, 1990 (Supp. 90-2). Amended effective August 6, 1990 (Supp. 90-3). Amended effective February 8, 1991 (Supp. 91-1). Amended effective November 21, 1991 (Supp. 91-4). Amended effective February 28, 1992 (Supp. 91-2). Amended effective October 22, 1992; amended effective December 23, 1992 (Supp. 92-4).

Amended effective September 13, 1993 (Supp. 93-3). Amended effective October 21, 1993; amended effective December 17, 1993 (Supp. 93-4). Amended effective May 11, 1994 (Supp. 94-2). Amended effective November 18, 1994 (Supp. 94-4). Amended effective January 12, 1995; R20-5-601 recodified from R4-13-601 (Supp. 95-1). Amended effective August 28, 1996 (Supp. 96-3). Amended effective April 1, 1997 (Supp. 97-2). Amended effective December 12, 1997 (Supp. 97-4). Amended effective August 27, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 592, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 851, effective February 5, 2002 (Supp. 02-1). Amended by final rulemaking at 9 A.A.R. 2108, effective June 2, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 4102, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 1417, effective March 30, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 2711, effective June 17, 2008 (Supp. 08-2). Amended by final rulemaking at 16 A.A.R. 1469, effective September 11, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 1264, effective June 13, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 1492, effective August 5, 2012 by Notice of Public Information at 18 A.A.R. 1653 (Supp. 12-2). Amended by final rulemaking at 18 A.A.R. 3007, effective October 24, 2012 (Supp. 12-4). Amended by final rulemaking at 22 A.A.R. 773, effective March 16, 2016 (Supp. 16-1). Amended by final rulemaking at 22 A.A.R. 1391, effective May 10, 2016 (Supp. 16-2). Amended by final rulemaking at 24 A.A.R. 2316, effective July 23, 2018 (Supp. 18-3).

**R20-5-601.01. Fall Protection for Residential Construction**

Each employer shall comply with the requirements in A.R.S. Title 23, Chapter 2, Article 13. These requirements shall apply to all conditions and practices related to residential construction activity by all employers, both public and private, in the state of Arizona.

**Historical Note**

New Section made by exempt rulemaking at 18 A.A.R. 1144, effective May 25, 2012 (Supp. 12-2).

**R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910**

Each employer shall comply with the standards in Subparts B through Z inclusive of the Federal Occupational Safety and Health Standards for General Industry, as published in 29 CFR 1910, with amendments as of June 23, 2016, incorporated by reference. Copies of these reference materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to general industry activity by all employers, both public and private, in the state of Arizona; provided that this Section shall not apply to those conditions and practices which are the subject of R20-5-601. This incorporation by reference does not include amendments or editions to 29 CFR 1910 published after June 23, 2016.

**Historical Note**

Editorial correction (Supp. 75-1). Amended as an emergency effective November 16, 1977 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6). New Section R4-13-602 adopted effective July 30, 1980 (Supp. 80-4). Amended as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-602 repealed,



NOTICES OF FINAL RULEMAKING

This section of the Arizona Administrative Register contains Notices of Final Rulemaking. Final rules have been through the regular rulemaking process as defined in the Administrative Procedures Act. These rules were either approved by the Governor's Regulatory Review Council or the Attorney General's Office. Certificates of Approval are on file with the Office.

The final published notice includes a preamble and

text of the rules as filed by the agency. Economic Impact Statements are not published.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the final rules should be addressed to the agency that promulgated them. Refer to Item #5 to contact the person charged with the rulemaking. The codified version of these rules will be published in the Arizona Administrative Code.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R19-170]

PREAMBLE

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

R20-5-507

Rulemaking Action

Amend

2. Citations to agency's statutory rulemaking authority to include the authorizing statute and the implementing statute:

Authorizing statute: A.R.S. § 23-491.04(A)(2)

Implementing statute: A.R.S. § 23-491.06

Note: An exemption from Executive Order 2019-01 was provided for this rulemaking by Kaitlin Harrier, Policy Advisor in the Office of the Arizona Governor, by e-mail dated March 4, 2019.

3. The effective date of the rules:

August 6, 2019

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

The Industrial Commission of Arizona (the "Commission") is requesting an immediate effective date pursuant to A.R.S. § 41-1032(A)(5) because the rule is less stringent than the rule that is currently in effect and does not have an adverse impact on the public health, safety, welfare or environment.

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

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

Notice of Rulemaking Docket Opening: 25 A.A.R. 895, April 12, 2019

Notice of Proposed Rulemaking: 25 A.A.R. 878, April 12, 2019

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

Name: Jessie Atencio, Director

Address: Division of Occupational Safety and Health  
Industrial Commission of Arizona  
800 W. Washington St., Suite 203  
Phoenix, AZ 85007

Telephone: (602) 542-5795

Fax: (602) 542-1614

E-mail: Jessie.atencio@azdosh.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:

Pursuant to A.R.S. §§ 23-491.04(A)(2) and 23-491.06, the Commission is required to promulgate standards and regulations necessary to carry out Title 23, Chapter 2, Article 12 (Safety Conditions for Elevators and Similar Conveyances), including adopting national consensus standards. The Commission is proposing to amend A.A.C. R20-5-507 (Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices) to incorporate by reference national consensus standards contained in ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators).

Currently, R20-5-507 incorporates the national consensus standards contained in ASME A17.1-2007 (Safety Code for Elevators and Escalators), which apply to the construction and installation of elevators and other conveyances. ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators) contains national consensus performance standards for elevators and other



conveyances and would permit the use of newer elevator/escalator technologies that may not fall under ASME A17.1-2007. Although ASME A17.1-2007 references ASME A17.7-2007, R20-5-507 does not expressly adopt ASME A17.7-2007. Thus, elevator/escalator technologies not permitted by ASME A17.1-2007 arguably cannot be installed in Arizona. The proposed rulemaking would expressly adopt ASME A17.7-2007, as referenced in ASME A17.1-2007, enabling the construction and installation of more modern equipment (such as pneumatic elevators) which use newer technologies based on the industry mechanical and engineering standards.

**7. A reference to any study relevant to the rule that the agency reviewed and proposes either to 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 Commission did not review or rely on any study relevant to the proposed amended rule.

**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 Commission anticipates that the proposed rulemaking will have no adverse economic, small business, or consumer impact. The proposed rulemaking is intended to reduce regulatory burden by enabling the construction and installation of new elevator/escalator technologies that are currently not permitted under A.A.C. R20-5-507.

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

None

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

No written or oral comments were received by the Commission.

**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:**

Not applicable

**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 proposed amended rule does not require issuance of a regulatory permit or 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:**

There is not a federal law applicable to the subject of the proposed 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 rules:**

The Commission is proposing to amend R20-5-507 (Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices) to incorporate by reference national consensus standards contained in ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators). A copy of ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators) is available for inspection or reproduction at the Arizona Division of Occupational Safety and Health, 800 West Washington Street, Room 203, Phoenix, AZ 85007, or may be obtained from the American Society of Mechanical Engineers (ASME) at Three Park Avenue, New York, New York 10016- 5990 or at <http://www.asme.org>.

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

Not applicable

**15. The full text of the rules follows:**

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

**ARTICLE 5. ELEVATOR SAFETY**

Section

R20-5-507. Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices



**ARTICLE 5. ELEVATOR SAFETY**

**R20-5-507. Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices**

Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with automatic transfer device, installed on or after the effective date of this Section shall comply with the ASME A17.1-2007 (Safety Code for Elevators and Escalators) or ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators) as referenced in ASME A17.1-2007, which ~~is~~ are incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and may be obtained from ASME at Three Park Avenue, New York, New York 10016- 5990 or at <http://www.asme.org>. ~~Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with an automatic transfer device, installed between May 5, 2009, and the effective date of this Section shall comply with ASME A17.1- 2007 or, as an alternative, may comply with ASME A17.7- 2007.~~ Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with an automatic transfer device, installed before the effective date of this Section ~~May 5, 2009,~~ shall comply with the ASME A17.1 Safety Code for Elevators and Escalators in effect at the time of installation or, as an alternative, may comply with ASME A17.1-2007 or ASME 17.7-2007.

# Exhibit 2

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# WESTLAW

Arizona Revised Statutes Annotated  
Title 23. Labor

§ 23-491.04. Commission powers and duties  
AZ ST § 23-491.04 Arizona Revised Statutes Annotated Title 23. Labor Effective August 9, 2017 (Approx. 2 pages)  
Article 12. Safety Conditions for Elevators and Similar Conveyances (Refs & Annos)

**Effective: August 9, 2017**

A.R.S. § 23-491.04

## § 23-491.04. Commission powers and duties

Currentness

**A.** The commission shall:

1. Administer this article through the division of occupational safety and health.
2. Promulgate standards and regulations pursuant to § 23-491.06 as required and promulgate such other rules and regulations and exercise such other powers as are necessary to carry out this article.

**B.** The commission, by rule and regulation, may set fees not to exceed the actual cost for inspections performed pursuant to this article.

### Credits

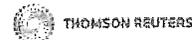
Added by Laws 1978, Ch. 92, § 6. Amended by Laws 2017, Ch. 147, § 20.

A. R. S. § 23-491.04, AZ ST § 23-491.04

Current through the First Regular Session of the Fifty-Fourth Legislature (2019)

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# WESTLAW

Arizona Revised Statutes Annotated  
 Title 23. Labor  
 Chapter 9. Employment Practices and Working Conditions  
 § 23-491.06. Development of standards and regulations  
 AZ ST § 23-491.06 Arizona Revised Statutes Annotated, Title 23, Labor, Effective August 9, 2017. (Approx. 2 pages)  
 Article 12. Safety Conditions for Elevators and Similar Conveyances (Refs & Annos)

**Effective: August 9, 2017**

A.R.S. § 23-491.06

## § 23-491.06. Development of standards and regulations

Currentness

**A.** Safety standards and regulations shall be formulated in the following manner:

1. The division shall either propose adoption of national consensus standards or federal standards or draft such regulations as it considers necessary after conducting sufficient investigations through the division's employees and through consultation with other persons knowledgeable in the business for which the standards or regulations are being formulated.
2. Proposed standards or regulations, or both, shall be submitted to the commission for approval.

**B.** Any person who may be adversely affected by a standard or regulation issued under this article may, at any time within sixty days after such standard or regulation is promulgated by the commission, file a complaint challenging the validity of such standard or regulation with the superior court in the county in which the person resides or has the person's principal place of business, for a judicial review of such standard or regulation. The filing of a complaint shall not, unless otherwise ordered by the court, operate as a stay of the standard or regulation. The determinations of the commission shall be conclusive if supported by substantial evidence in the record considered as a whole.

**C.** In case of conflict between standards and regulations, the regulations shall take precedence.

### Credits

Added by Laws 1978, Ch. 92, § 6. Amended by Laws 2017, Ch. 147, § 21.

A. R. S. § 23-491.06, AZ ST § 23-491.06

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WESTLAW

Arizona Revised Statutes Annotated  
 Title 23. Labor

§ 23-491. Definitions Chapter 2. Employment Practices and Working Conditions

AZ ST § 23-491 Arizona Revised Statutes Annotated, Title 23. Labor, Effective: August 9, 2017, (Approx. 3 pages)  
 Article 12. Safety Conditions for Elevators and Similar Conveyances (Refs & Annos)

**Effective: August 9, 2017**

A.R.S. § 23-491

§ 23-491. Definitions

Currentness

In this article, unless the context otherwise requires:

1. "Authorized representative" means the elevator chief and elevator inspector employed by the division.
2. "Certificate" means a certificate of inspection issued by the division.
3. "Commission" means the industrial commission of Arizona.
4. "Conveyance" means an elevator, dumbwaiter, escalator, moving walk, manlift, personnel hoist, material hoist, stage lift and special purpose personnel elevator, excluding conveyances located at mines and subject to regulation and inspection by the state mine inspector pursuant to title 27, chapter 3.<sup>1</sup>
5. "Director" means the director of the division of occupational safety and health.
6. "Division" means the division of occupational safety and health of the industrial commission.
7. "Dumbwaiter" means a hoisting and lowering mechanism with a car of limited capacity and size that moves in guides in a substantially vertical direction and that is used exclusively for carrying material.
8. "Elevator" means a hoisting and lowering mechanism equipped with a car or platform that moves in guides in substantially vertical direction and that serves two or more floors of a building or structure.
9. "Elevator company" means a person that is engaged in the business of erecting, constructing, installing, altering, servicing, repairing or maintaining conveyances.
10. "Escalator" means a power driven, inclined, continuous stairway used for raising or lowering passengers.
11. "Interested party" means the commission and its agents and the owner or operator who has been issued a correction order.
12. "Manlift" means a device consisting of a power driven endless belt moving in one direction only and provided with steps or platforms and attached handholds for the transportation of personnel from floor to floor.
13. "Material hoist" means a hoist for raising and lowering materials only and prohibiting the hoisting of persons.

14. "Moving walk" means a type of passenger carrying device on which passengers stand or walk and in which the passenger carrying surface remains parallel to its direction of motion and is uninterrupted.

15. "Owner" or "operator" means an individual or organization including this state and all political subdivisions of this state who has title to, controls or has the duty to control the operation of one or more conveyances, but shall not include an individual or organization engaged in mining or metallurgical operations whose operation is subject to regulation and inspection by the state mine inspector pursuant to title 27, chapter 3.

16. "Personnel hoist" means a mechanism for use in connection with the construction, alteration, maintenance or demolition of a building, structure or other work, used for hoisting and lowering workers and materials and equipped with a car that moves on guide members during its vertical movement. The term includes a hoistway of a personnel hoist.

17. "Private elevator inspector" means an individual who is authorized by the commission under § 23-491.16 to conduct inspections under this article.

18. "Special purpose personnel elevator" means a passenger, hand powered, counterweighted device or an electric powered device that travels vertically in guides and that serves two or more landings.

19. "Stage lift" means a hoisting and lowering mechanism equipped with a platform that moves in guides in a substantially vertical direction and that serves one or more landings.

#### Credits

Added by Laws 1978, Ch. 92, § 6. Amended by Laws 2010, Ch. 66, § 1; Laws 2017, Ch. 147, § 19.

#### Footnotes

1 Section 27-301 et seq.

A. R. S. § 23-491, AZ ST § 23-491  
Current through the First Regular Session of the Fifty-Fourth Legislature (2019)

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Arizona Revised Statutes Annotated  
 Title 23. Labor  
 Chapter 2. Employment Practices and Working Conditions  
**§ 23-491.01. Administration**  
 AZ ST § 23-491.01 Arizona Revised Statutes Annotated, Title 23, Labor, (Ariz. 2019)  
 Article 12. Safety Conditions for Elevators and Similar Conveyances (Refs & Annos)

A.R.S. § 23-491.01

§ 23-491.01. Administration

Currentness

The division shall administer the provisions of this article.

**Credits**

Added by Laws 1978, Ch. 92, § 6.

A. R. S. § 23-491.01, AZ ST § 23-491.01

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Arizona Revised Statutes Annotated  
Title 23, Labor

Chapter 9, Employment Practices and Working Conditions  
**§ 23-491.02. Owner's and operator's duty**  
AZ ST § 23-491.02 Arizona Revised Statutes Annotated, Title 23, Labor, Effective July 29, 2010, (Approx. 2 pages) &  
Article 12, Safety Conditions for Elevators and Similar Conveyances (REIS &  
Annos)

**Effective: July 29, 2010**

A.R.S. § 23-491.02

§ 23-491.02. Owner's and operator's duty

Currentness

Every owner and operator of a conveyance shall:

1. Construct, furnish, maintain and provide safe and adequate devices with which to safely and properly convey or move all persons and material utilizing the services offered by the owner or operator of such device.
2. Comply with all standards and regulations issued pursuant to this article.
3. Ensure that a conveyance is inspected at all of the following times:
  - (a) Before placing a conveyance in operation after the initial installation of the conveyance.
  - (b) After modification or alteration of a conveyance.
  - (c) After the inspection pursuant to subdivision (a), annually or as otherwise directed by the commission.

**Credits**

Added by Laws 1978, Ch. 92, § 6. Amended by Laws 2010, Ch. 66, § 2.

A. R. S. § 23-491.02, AZ ST § 23-491.02

Current through the First Regular Session of the Fifty-Fourth Legislature (2019)

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Arizona Revised Statutes Annotated  
 Title 23. Labor  
 Chapter 9. Employment Practices and Working Conditions  
**§ 23-491.03. Existing conveyances**  
 AZ ST § 23-491.03 Arizona Revised Statutes Annotated, Title 23, Labor (Approx. 20 pages)  
 Article 12. Safety Conditions for Elevators and Similar Conveyances (Refs & Annos)

A.R.S. § 23-491.03

§ 23-491.03. Existing conveyances

Currentness

Existing conveyances lawfully installed prior to the effective date of this article may continue in use if the use is, in the opinion of the director, not a hazard to life, health or property.

**Credits**

Added by Laws 1978, Ch. 92, § 6.

A. R. S. § 23-491.03, AZ ST § 23-491.03

Current through the First Regular Session of the Fifty-Fourth Legislature (2019)

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Arizona Revised Statutes Annotated

Title 23. Labor

Chapter 9. Employment Practices and Working Conditions

§ 23-491.04. Commission powers and duties

AZ ST § 23-491.04 Arizona Revised Statutes Annotated, Title 23, Labor, Effective August 9, 2017. (Approx. 2 pages)

Annos)

**Effective: August 9, 2017**

A.R.S. § 23-491.04

§ 23-491.04. Commission powers and duties

Currentness

A. The commission shall:

1. Administer this article through the division of occupational safety and health.
2. Promulgate standards and regulations pursuant to § 23-491.06 as required and promulgate such other rules and regulations and exercise such other powers as are necessary to carry out this article.

B. The commission, by rule and regulation, may set fees not to exceed the actual cost for inspections performed pursuant to this article.

**Credits**

Added by Laws 1978, Ch. 92, § 6. Amended by Laws 2017, Ch. 147, § 20.

A. R. S. § 23-491.04, AZ ST § 23-491.04

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Arizona Revised Statutes Annotated

Title 23. Labor

Chapter 2. Employment Practices and Working Conditions

§ 23-491.05. Division powers

AZ ST § 23-491.05 Arizona Revised Statutes Annotated, Title 23, Labor, Effective July 29, 2010, (Ar. Rev. Stat. & Annos)

Annos)

**Effective: July 29, 2010**

A.R.S. § 23-491.05

§ 23-491.05. Division powers

Currentness

The division may:

1. Inspect conveyances when deemed necessary or appropriate by the division.
2. Recommend to the commission for approval or disapproval standards and regulations and amendments to such standards and regulations.
3. Enforce, pursuant to § 23-491.09, all standards and regulations promulgated by the commission.

**Credits**

Added by Laws 1978, Ch. 92, § 6. Amended by Laws 2010, Ch. 66, § 3.

A. R. S. § 23-491.05, AZ ST § 23-491.05

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Arizona Revised Statutes Annotated

Title 23. Labor

Chapter 9. Employment Practices and Working Conditions

**§ 23-491.06. Development of standards and regulations**

AZ ST § 23-491.06 Arizona Revised Statutes Annotated, Title 23, Labor, Effective August 9, 2017. (Approx. 2 pages)

Article 12. Safety Conditions for Elevators and Similar Conveyances (Refs &

Annos)

**Effective: August 9, 2017**

A.R.S. § 23-491.06

**§ 23-491.06. Development of standards and regulations**

Currentness

**A.** Safety standards and regulations shall be formulated in the following manner:

1. The division shall either propose adoption of national consensus standards or federal standards or draft such regulations as it considers necessary after conducting sufficient investigations through the division's employees and through consultation with other persons knowledgeable in the business for which the standards or regulations are being formulated.

2. Proposed standards or regulations, or both, shall be submitted to the commission for approval.

**B.** Any person who may be adversely affected by a standard or regulation issued under this article may, at any time within sixty days after such standard or regulation is promulgated by the commission, file a complaint challenging the validity of such standard or regulation with the superior court in the county in which the person resides or has the person's principal place of business, for a judicial review of such standard or regulation. The filing of a complaint shall not, unless otherwise ordered by the court, operate as a stay of the standard or regulation. The determinations of the commission shall be conclusive if supported by substantial evidence in the record considered as a whole.

**C.** In case of conflict between standards and regulations, the regulations shall take precedence.

**Credits**

Added by Laws 1978, Ch. 92, § 6. Amended by Laws 2017, Ch. 147, § 21.

A. R. S. § 23-491.06, AZ ST § 23-491.06

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Arizona Revised Statutes Annotated  
Title 23. Labor

Chapter 12. Employment Practices and Working Conditions

§ 23-491.07. Certificate of inspection

AZ ST § 23-491.07 Arizona Revised Statutes Annotated, Title 23, Labor, (Approx. 2 pages)  
Article 12. Safety Conditions for Elevators and Similar Conveyances (Refs & Annos)

A.R.S. § 23-491.07

§ 23-491.07. Certificate of inspection

Currentness

No conveyance shall be operated in this state without an annual certificate of inspection issued by the division. The division shall issue such certificate of inspection if, after inspection, the conveyance is found to comply with the standards and regulations adopted pursuant to this article.

**Credits**

Added by Laws 1978, Ch. 92, § 6.

A. R. S. § 23-491.07, AZ ST § 23-491.07

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Arizona Revised Statutes Annotated  
Title 23. Labor

Chapter 9. Employment Practices and Working Conditions  
§ 23-491.08. Notice requesting investigation; confidentiality; determination of grounds

AZ ST § 23-491.08 Arizona Revised Statutes Annotated, Title 23, Labor (Approx. 20866)  
Article 12. Safety Conditions for Elevators and Similar Conveyances (Refs & Annos)

A.R.S. § 23-491.08

§ 23-491.08. Notice requesting investigation; confidentiality;  
determination of grounds

Currentness

A. Any person may make a request for an investigation by the division into alleged violations of § 23-491.02 by giving notice to the director or the director's authorized representative of such violation or danger. Such notice shall be in writing, shall set forth with reasonable particularity the grounds for the notice and shall be signed by the person making the request. Upon the request of the person signing the notice, such person's name shall not appear on any copy of such notice or any record published, released or made available.

B. If upon receipt of such notification the director determines that there are reasonable grounds to believe that such violation or danger exists, the director shall make an investigation in accordance with the provisions of this article as soon as practicable to determine if such violation or danger exists. If the director determines there are no reasonable grounds to believe that a violation or danger exists, the director shall notify the requesting party in writing of such a determination.

**Credits**

Added by Laws 1978, Ch. 92, § 6.

A. R. S. § 23-491.08, AZ ST § 23-491.08

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Arizona Revised Statutes Annotated  
 Title 23. Labor  
 Chapter 2. Employment Practices and Working Conditions  
**§ 23-491.09. Enforcement**  
 AZ ST § 23-491.09 Arizona Revised Statutes Annotated, Title 23, Labor (Approx. 2 pages)  
 Article 12. Safety Conditions for Elevators and Similar Conveyances (Refs & Annos)

A.R.S. § 23-491.09

§ 23-491.09. Enforcement

Currentness

**A.** If the division, following an inspection or investigation, determines that there is reasonable cause to believe that there is a violation of a standard or regulation, the division shall issue a correction order directing any repairs, improvements, changes or additions necessary to eliminate the hazard. Each correction order shall be in writing, delivered either by mail or in person and shall contain the following:

1. A particular description of the nature of the violation, including a reference to the provision of this article or of any standard or regulation alleged to have been violated.
2. A reasonable time for the abatement of the violation.

**B.** No correction order may be issued after the expiration of a period of six months from the date of the inspection or investigation which produced evidence of the violation.

**C.** If in the opinion of the director or the director's authorized representative the continued operation of the defective device constitutes an immediate danger to the safety of the persons operating or being conveyed by such device, the director or the director's authorized representative may condemn such device and require it to be returned to a condition allowing safe operation before its use is resumed.

**D.** Upon failure of an owner or operator to comply with either the requirements of a correction order issued pursuant to subsection A or condemnation pursuant to this subsection,<sup>1</sup> the commission may file an action in the superior court of the county where the violation occurred to enjoin the owner or operator from engaging in further acts in violation of the requirements of the correction order or the condemnation. Any person found to be in contempt of an injunctive order of the court shall be fined not less than fifty nor more than three hundred dollars with each day of violation constituting a separate contempt.

**Credits**

Added by Laws 1978, Ch. 92, § 6.

**Footnotes**

<sup>1</sup> So in original. Probably should read "subsection C".

A. R. S. § 23-491.09, AZ ST § 23-491.09  
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Arizona Revised Statutes Annotated  
 Title 23. Labor  
 Chapter 4. Employment Practices and Working Conditions  
**§ 23-491.10. Hearing rights and procedures**  
 AZ ST § 23-491.10 Arizona Revised Statutes Annotated, Title 23, Labor, (Approx. 2 pages)  
 Article 12. Safety Conditions for Elevators and Similar Conveyances (Refs & Annos)

A.R.S. § 23-491.10

§ 23-491.10. Hearing rights and procedures

Currentness

- A. Any interested party may request a hearing before the commission to contest any correction order issued pursuant to this article.
- B. A request for hearing shall be made in writing, signed by or on behalf of the interested party and include such party's address.
- C. The commission shall refer the request for the hearing to the administrative law judge division for determination as expeditiously as possible. The presiding administrative law judge may dismiss a request for hearing if it appears that the disputed issues have been resolved by the parties. Any interested party who objects to such dismissal may request a review pursuant to § 23-491.12.
- D. At least twenty days' prior notice of the time and place of the hearing shall be given to all parties in interest by mail at their last known address. Hearings shall be held in the county where the alleged violation occurred or such other place selected by the administrative law judge.
- E. A record of all proceedings at the hearing shall be made but need not be transcribed unless a party applies to the court of appeals for<sup>1</sup> a petition for special action pursuant to § 23-491.14. The record of the proceedings if not transcribed shall be kept for at least two years.
- F. Except as otherwise provided in this section and rules or procedures established by the commission, the administrative law judge is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure and may conduct the hearing in any manner that will achieve substantial justice.
- G. Any party shall be entitled to issuance and service of subpoenas under the general subpoena powers of the commission. Any party or a representative may serve such subpoenas.
- H. Upon the filing of a request for hearing, any interested party or his authorized agent is entitled to inspect the file of the commission provided the authorized agent has filed the authorization to inspect with the commission.
- I. Within thirty days after the date of notice of hearing, any interested party to a hearing before the commission may file an affidavit for change of administrative law judge against any administrative law judge of the commission hearing such matter or commencing to hear such matter, setting forth any of the grounds as provided in subsection J of this section. The administrative law judge shall immediately transfer the matter to another administrative law judge of the commission who shall preside. Not more than one change of administrative law judge shall be granted to any one party.
- J. Grounds which may be alleged for change of administrative law judge are that:

1. The administrative law judge has been engaged as counsel in the hearing prior to appointment as administrative law judge.
2. The administrative law judge is otherwise interested in the hearing.
3. The administrative law judge is related to a party to the hearing.
4. The administrative law judge is a material witness in the hearing.
5. The party filing the affidavit has cause to believe and does believe, that on account of the bias, prejudice or interest of the administrative law judge, he cannot obtain a fair and impartial hearing.

**Credits**

Added by Laws 1978, Ch. 92, § 6. Amended by Laws 1980, Ch. 246, § 14.

**Footnotes**

1 So in original. Probably should read "by".

A. R. S. § 23-491.10, AZ ST § 23-491.10

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Arizona Revised Statutes Annotated  
Title 23. Labor

§ 23-491.11. Decisions of administrative law judge; contents; disposition and effect

AZ ST § 23-491.11 Arizona Revised Statutes Annotated, Title 23, Labor (Approx. 208966)  
Article 12. Safety Conditions for Elevators and Similar Conveyances (Refs & Annos)

A.R.S. § 23-491.11

§ 23-491.11. Decisions of administrative law judge; contents; disposition and effect

Currentness

A. Upon the conclusion of any hearing, or prior to the conclusion with concurrence of the parties, the administrative law judge shall, not later than thirty days after the matter is submitted for decision, determine the matter and make a decision in accordance with the determination.

B. In the event of the demise, resignation, retirement, termination of employment or other incapacitation of the presiding administrative law judge, the decision shall be determined by the chief administrative law judge or an appointee.

C. The decision shall become a part of the commission file. A copy of the decision shall be sent immediately by mail to all parties in interest.

D. The decision is final when entered unless within fifteen days after the date on which a copy of the decision is mailed to the parties, one of the parties files a request for review pursuant to § 23-491.12. The decision shall contain a statement explaining the rights of the parties pursuant to such section.

**Credits**

Added by Laws 1978, Ch. 92, § 6. Amended by Laws 1980, Ch. 246, § 15.

A. R. S. § 23-491.11, AZ ST § 23-491.11

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## WESTLAW

Arizona Revised Statutes Annotated

Title 23. Labor

Chapter 9. Employment Practices and Working Conditions

§ 23-491.12. Decision upon review

AZ ST § 23-491.12 Arizona Revised Statutes Annotated, Title 23, Labor, (Approx. 2006)

Article 12. Safety Conditions for Elevators and Similar Conveyances (Refs & Annos)

A.R.S. § 23-491.12

§ 23-491.12. Decision upon review

Currentness

A. The request for review of an administrative law judge decision need only state that the party requests a review of the decision. The request may be accompanied by a memorandum of points and authorities, in which event any other interested party shall have fifteen days from the date of filing in which to respond. Failure to respond will not be deemed an admission against interest.

B. The request for review shall be filed with the division and copies of the request shall be mailed to all other parties to the proceeding.

C. When review has been requested, the record of such oral proceedings at the hearings before the administrative law judge for purposes of the review shall be transcribed at the expense of the party requesting review.

D. Notice of the review shall be given to the parties by mail.

E. The review shall be made by the presiding administrative law judge and shall be based upon the record and the memorandum submitted pursuant to subsection A of this section.

F. The presiding administrative law judge may affirm, reverse, rescind, modify or supplement the decision and make such disposition of the case as is determined to be appropriate. A decision upon review shall be made within sixty days after the review has been requested.

G. The decision upon review shall become a part of the commission file and a copy shall be sent by mail to the parties.

H. The decision upon review shall be final unless within fifteen days after the date of mailing of copies of such decision to the parties one of the parties applies to the court of appeals by a petition for special action pursuant to § 23-491.14. The decision shall contain a statement explaining the rights of the parties pursuant to this section and § 23-491.14.

**Credits**

Added by Laws 1978, Ch. 92, § 6. Amended by Laws 1980, Ch. 246, § 16.

A. R. S. § 23-491.12, AZ ST § 23-491.12

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WESTLAW

Arizona Revised Statutes Annotated  
Title 23. Labor

Chapter 9. Employment Practices and Working Conditions  
§ 23-491.13. Effective date of orders; time for compliance; effect of orders  
AZ ST § 23-491.13 Arizona Revised Statutes Annotated, Title 23, Labor (Approx. 2 pages)  
Article 12. Safety Conditions for Elevators and Similar Conveyances (Refs & Annos)

A.R.S. § 23-491.13

§ 23-491.13. Effective date of orders; time for compliance; effect of orders

Currentness

A. The commission shall, upon application of any owner or operator, grant such time as reasonably necessary for compliance with an order. A person may petition the commission for an extension of time to comply with an order which the commission shall grant if it finds the extension necessary.

B. All orders of the commission in conformity with law shall be valid and in force and prima facie reasonable and lawful until found otherwise in an action brought for such purpose pursuant to the provisions of this article or until altered or revoked by the commission.

C. A substantial compliance with the requirements of this article shall be sufficient to give effect to the orders of the commission, and they shall not be declared inoperative, illegal or void for an omission of a technical nature.

**Credits**

Added by Laws 1978, Ch. 92, § 6.

A. R. S. § 23-491.13, AZ ST § 23-491.13

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WESTLAW

Arizona Revised Statutes Annotated  
Title 23. Labor

Chapter: Employment Practices and Working Conditions  
§ 23-491.14. Petition for special action to review lawfulness of decision, order or decision upon review; procedure  
AZ ST § 23-491.14 Arizona Revised Statutes Annotated, Title 23, Labor - (Approx. 2 pages)  
Article 12. Safety Conditions for Elevators and Similar Conveyances (Refs & Annos)

A.R.S. § 23-491.14

§ 23-491.14. Petition for special action to review lawfulness of decision,  
order or decision upon review; procedure

Currentness

A. Any party affected by a decision of the commission or by a decision upon review pursuant to § 23-491.12 may apply to the court of appeals by a petition for special action to review the lawfulness of the decision, order or decision upon review.

B. The petition for special action provided by subsection A of this section and by § 23-491.12 shall be made returnable within ten days and shall direct the commission to certify its record, proceedings and evidence to the court of appeals. The court of appeals may quash or dismiss the petition for special action upon the grounds of dismissal applicable to civil appeals. The review shall be limited to determining whether or not the commission acted without or in excess of its power and, if findings of fact were made, whether or not such findings of fact support the order or decision. If necessary, the court may review the evidence.

C. Each party to the proceedings before the commission may appear in the court of appeals.

D. The court of appeals shall enter judgment either affirming or setting aside the order or decision.

E. The rules of civil procedure relating to special actions shall apply so far as applicable and not in conflict with this article.

**Credits**

Added by Laws 1978, Ch. 92, § 6.

A. R. S. § 23-491.14, AZ ST § 23-491.14

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Arizona Revised Statutes Annotated

Title 23. Labor

Chapter 9. Employment Practices and Working Conditions

§ 23-491.15. Nonimpairment of other agencies

AZ ST § 23-491.15 Arizona Revised Statutes Annotated, Title 23, Labor, (Approx. 2 pages)  
Article 12. Safety Conditions for Elevators and Similar Conveyances (Refs & Annos)

A.R.S. § 23-491.15

§ 23-491.15. Nonimpairment of other agencies

Currentness

Nothing contained in this article shall in any way impair the authority or responsibility of political subdivisions of this state with regard to the local enforcement or licensing, safety or police regulation authorized by local ordinance or state statute if, upon determination by the commission, the standards employed by such political subdivision are found to be at least equal to those promulgated by the commission.

**Credits**

Added by Laws 1978, Ch. 92, § 6.

A. R. S. § 23-491.15, AZ ST § 23-491.15

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Arizona Revised Statutes Annotated

Title 23. Labor

Chapter 4. Employment Practices and Working Conditions

§ 23-491.16. Private elevator inspector; qualifications; civil penalty; prohibited conduct; exemption from rule making

AZ ST § 23-491.16 Arizona Revised Statutes Annotated, Title 23, Labor, Effective: July 29, 2010, (Approx. 3 pages)

Article 12. Safety Conditions for Elevators and Similar Conveyances (REIS & Annos)

**Effective: July 29, 2010**

A.R.S. § 23-491.16

§ 23-491.16. Private elevator inspector; qualifications; civil penalty;  
prohibited conduct; exemption from rule making

Currentness

A. The commission may authorize an individual to perform initial or annual inspections under this article or any other inspection under this article designated by the commission, if the individual does all of the following:

1. Meets the qualifications and insurance requirements prescribed by the commission.
2. Is certified by an organization that is accredited by a national society of mechanical engineers in accordance with a national standard for safety of elevators, dumbwaiters, escalators and moving walks as determined by the commission.
3. Follows the inspection procedures established by the commission for private elevator inspectors.

B. A private elevator inspector shall register with the commission annually and provide proof of all of the following with the registration:

1. Completion of at least eight hours of continuing education approved by the commission.
2. That the certification prescribed in subsection A is in good standing.
3. That the private elevator inspector is maintaining the insurance prescribed by the commission.

C. The commission may suspend or revoke a private elevator inspector's authorization to perform inspections for any reason related to the performance of an inspection under this article or for any other good cause as determined by the commission.

D. The commission may impose a civil penalty of one thousand dollars on a private elevator inspector or an elevator company for each instance the inspector or company does any of the following:

1. Makes a false statement as to a material matter in an application for authorization under this article.
2. Commits fraud, misrepresentation or bribery in regard to conveyances or any inspection or action taken pursuant to this article.
3. Commits a violation of this article or the rules or inspection procedures adopted pursuant to this article.

E. A private elevator inspector shall not do any of the following:

1. Inspect a conveyance owned, operated or last serviced by any of the following:

- (a) The private elevator inspector.
  - (b) A company owned by the private elevator inspector.
  - (c) A company for which the private elevator inspector is an employee at the time of the inspection.
  - (d) A company affiliated with a company owned by the private elevator inspector or for which the private elevator inspector is an employee at the time of the inspection.
2. Engage in the sale or service of anything related to elevators.
3. Conduct an inspection pursuant to this article unless the inspector has the current certification and commission authorization pursuant to subsection A.
- F. This state is not liable for any act or omission of a private elevator inspector. The commission is not obligated to pay any fee charged or other consideration sought by a private elevator inspector for an inspection pursuant to this article. The fee or consideration is the sole obligation of the owner or operator that retained or contracted with the private elevator inspector.
- G. The commission shall compile a list of private elevator inspectors that are currently authorized pursuant to subsection A. An owner or an operator may hire a private elevator inspector.
- H. An owner or operator is not relieved of the obligations under this article by the use of a private elevator inspector.
- I. The commission is exempt from the rule making requirements of title 41, chapter 6,<sup>1</sup> in the adoption of private elevator inspector qualifications and inspection procedures.
- J. Civil penalties and interest assessed pursuant to this section act as a judgment in the same manner and with like effect as if they were a judgment of the superior court. The commission may recover reasonable attorney fees incurred in collecting any civil penalty assessed under this section. All monies collected pursuant to this section shall be deposited in the administrative fund established by § 23-1081.

**Credits**

Added by Laws 2010, Ch. 66, § 4.

**Footnotes**

<sup>1</sup> Section 41-1001 et seq.

A. R. S. § 23-491.16, AZ ST § 23-491.16  
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**ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F19-1205)**

Title 9, Chapter 22, Article 12, Behavioral Health Services



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** January 14, 2020

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

**FROM:** Council Staff

**DATE:** November 29, 2019

**SUBJECT:** ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F19-1205)  
Title 9, Chapter 22, Article 12, Behavioral Health Services

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### Summary

This Five-Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS) relates to Title 9, Chapter 22, Article 12 regarding behavioral health services. This 5YRR was originally due in September 2014. However, AHCCCS received an extension of the deadline to January 2015. AHCCCS later received approval from the Council to reschedule this report pursuant to A.R.S. § 41-1056(H). The report is now before the Council.

The last 5YRR for these rules was approved by the Council in November 2009. In that 5YRR, AHCCCS proposed amending the following rules: R9-22-1201, R9-22-1202, R9-22-1203, R9-22-1204, R9-22-1205, R9-22-1206, and R9-22-1207. AHCCCS proposed to submit a rulemaking to address these amendments to the Council by September 2012. While a rulemaking package was not submitted to the Council by September 2012, it appears the applicable amendments were implemented in a later rulemaking which became effective January 4, 2015.

### Proposed Action

AHCCCS intends to amend R9-22-1202 and R9-22-1207 to replace all references to ADHS with references to AHCCCS. AHCCCS intends to request an exception to the

rulemaking moratorium from the Governor's office to begin an expedited rulemaking within 180 days of the Council's approval of this report.

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

Yes. AHCCCS cites to both general and specific statutory authority for these rules.

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

AHCCCS is Arizona's Medicaid agency that offers health care programs to serve Arizona residents. Individuals must meet certain income and other requirements to obtain services.

These regulations govern administration of behavioral health services to AHCCCS members, as well as eligibility for such coverage by AHCCCS. There is no economic, small business or consumer financial impact beyond the existing cost of the agency operations. The changes suggested are clarifying so the impact on the economy remains the same.

The stakeholders include: AHCCCS, AHCCCS members, the Arizona Department of Health Services, Children's Rehabilitative Services, contractors, health care providers, and the public.

**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 indicates that the changes that are proposed in the five-year review are meant for clarifying purposes and do not impose any additional burdens or costs to regulated persons. They also believe that they impose the least burden and cost to achieve the same benefits as the Article currently provides to regulated persons. AHCCCS intends to request an expedited rulemaking within 180 days of the approval of the review report in order to make changes and update cross references for the ease of use of AHCCCS's members.

**4. Has the agency received any written criticisms of the rules over the last five years?**

AHCCCS indicates it has not received any written criticism of the rules in the last five years.

**5. Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

AHCCCS indicates its rules are clear, concise, understandable and effective. However, AHCCCS indicates that both R9-22-1202 and R9-22-1207 are not consistent with other rules and statutes because references to "ADHS" should be changed to "AHCCCS."

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

AHCCCS indicates the rules are currently enforced as written.

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

The rules are not more stringent than the corresponding federal law, 42 C.F.R. 438.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

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

9. **Conclusion**

AHCCCS indicates that its rules are clear, concise, understandable, and effective, but are not consistent in that they reference ADHS rather than AHCCCS. AHCCCS intends to amend R9-22-1202 and R9-22-1207 to replace all references to ADHS with references to AHCCCS. AHCCCS intends to request an exception to the rulemaking moratorium from the Governor's office to begin an expedited rulemaking within 180 days of the Council's approval of this report to address the issues outlined above. Council staff recommends approval of this report.

September 27, 2019

**VIA EMAIL:** [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 22, Article 12, Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five Year Review Report of AHCCCS for Title 9, Chapter 22, Article 12 which is due on September 28, 2019.

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](mailto:nicole.fries@azahcccs.gov).

Sincerely,



Matthew Devlin  
Assistant Director

Attachments

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

**5 YEAR REVIEW REPORT**

**A.A.C. Title 9, Chapter 22, Article 12**

**September 2019**

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

General Statutory Authority: A.R.S. § 36-2903.01(F)

Specific Statutory Authority: A.R.S. § 36-2907

**2. The objective of each rule:**

Rule	Objective
R9-22-1201	This rule provides definitions for terms used in behavioral health services by AHCCCS.
R9-22-1202	This rule explains the responsibilities of ADHS, Contractor, Administration and CRS from AHCCCS.
R9-22-1203	This rule explains the eligibility requirements for covered services by AHCCCS.
R9-22-1204	This rule explains general service requirements by AHCCCS.
R9-22-1205	This rule outlines the scope and coverage of behavioral health services offered by AHCCCS.
R9-22-1207	This rule explains the general provisions for payment for claim submissions.

**3. Are the rules effective in achieving their objectives?**

Yes X No \_\_\_

**4. Are the rules consistent with other rules and statutes?**

Yes \_\_\_ No X

Rule	Objective
R9-22-1202	All references to ADHS should be changed to AHCCCS.
R9-22-1207	All references to ADHS should be changed to AHCCCS.

**5. Are the rules enforced as written?**

Yes X No \_\_\_

**6. Are the rules clear, concise, and understandable?**

Yes X No \_\_\_

**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:** These regulations govern administration of behavioral health services to AHCCCS members, as well as eligibility for such coverage by AHCCCS. There is no economic, small business or consumer financial impact beyond the existing cost of the agency operations. The changes suggested are clarifying so the impact on the economy remains the same.

**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?**

In the 5YRR for September 2009 there were a number of proposed courses of action, however in the intervening years the Division of Behavioral Health came under the jurisdiction of AHCCCS and the proposed changes are no longer necessary since such structural agency changes have occurred.

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 changes that are proposed in this 5YRR are meant for clarifying purposes and do not impose any additional burdens or costs to regulated persons. In addition they are they impost the least burden and cost to achieve the same benefits as the Article currently provides to regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes  No

It is not more stringent than 42 C.F.R. 438.

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**

The Administration intends to request from the Governor's office to begin an expedited rulemaking within 180 days of GRRC's approval of this report in order to make these changes and update the cross references for the ease of use of AHCCCS's members.

## CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).  
Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

**R9-22-1107. Reserved****R9-22-1108. Request for a Compromise**

- A.** To request a compromise, the person shall file a written request with AHCCCS within 30 days from the date of receipt of the Notice of Intent. The written request for compromise shall contain the person's reasons for the reduction or modification of the penalty, assessment, or penalty and assessment.
- B.** Within 30 days from the date of receipt of the request for compromise from the person, AHCCCS shall send a Notice of Compromise Decision that accepts, denies, or offers a counter proposal to the person's request for compromise. If AHCCCS offers a counter proposal the amount of the counter proposal shall represent the penalty, assessment, or penalty and assessment.
1. If AHCCCS does not withdraw the Notice of Intent under R9-22-1112 or denies the request for compromise the original penalty, assessment, or penalty and assessment is upheld.
  2. To dispute the Compromise Decision, the person shall file a request for a State Fair Hearing under R9-22-1110 within 30 days from the date of receipt of the Notice of Compromise Decision.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).  
Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

**R9-22-1109. Failure to Respond to the Notice of Intent**

If a person fails to respond timely to the Notice of Intent, AHCCCS shall uphold the original penalty, assessment, or penalty and assessment.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).  
Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

**R9-22-1110. Request for State Fair Hearing**

- A.** To request a State Fair Hearing regarding a dispute concerning a penalty, assessment, or penalty and assessment, the person shall file a written request for a State Fair Hearing with AHCCCS within 60 days from the date of the receipt of the Notice of Intent under R9-22-1106 or within 30 days from the date of receipt of the Notice of Compromise Decision under R9-22-1108, if applicable.
- B.** AHCCCS shall mail a Notice of Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a timely request for a State Fair Hearing from the person.
- C.** AHCCCS shall mail a Director's Decision to the person no later than 30 days after the date the Administrative Law Judge sends the decision of the Office of Administrative Hearings (OAH) to AHCCCS.
- D.** 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 A.R.S. § 41-1092 et seq. If AHCCCS mailed a Notice of Hearing under A.R.S. § 41-1092 et seq., a person may withdraw the hearing request only by sending a written request for withdrawal to OAH.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).  
Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

**R9-22-1111. Issues and Burden of Proof**

- A.** Preponderance of evidence. In any State Fair Hearing conducted under R9-22-1110, AHCCCS shall prove by a preponderance of the evidence that a person presented or caused to be presented each claim in violation of this Article and any aggravating circumstances under R9-22-1105. A person shall bear the burden of producing and proving by a preponderance of the evidence any circumstance that would justify reducing the amount of the penalty, assessment, or penalty and assessment.
- B.** Statistical sampling.
1. In meeting the burden of proof described in subsection (A), AHCCCS may introduce the results of a statistical sampling study as evidence of the number and amount of claims that were presented or caused to be presented by the person. A statistical sampling study constitutes prima facie evidence of the number and amount of claims if computed by valid statistical methods.
  2. The burden of proof shall shift to the person to produce evidence reasonably calculated to rebut the findings of the statistical sampling study once AHCCCS has made a prima facie case as described in subsection (B)(1). AHCCCS shall be given the opportunity to rebut this evidence.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).  
Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

**R9-22-1112. Withdrawal and Continuances**

AHCCCS may withdraw the Notice of Intent at any time. Prior to referring a matter to the Office of Administrative Hearings the parties may mutually agree to a continuance.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).

**ARTICLE 12. BEHAVIORAL HEALTH SERVICES****R9-22-1201. Definitions**

Definitions. The following definitions apply to this Article:

"Adult behavioral health therapeutic home" as defined in 9 A.A.C. 10, Article 1.

"Agency" for the purposes of this Article means a behavioral health facility, a classification of a health care institution, including a mental health treatment agency defined in A.R.S. § 36-501, that is licensed to provide behavioral health services according to A.R.S. Title 36, Chapter 4.

"Assessment" means an analysis of a patient's need for physical health services or behavioral health services to determine which services a health care institution will provide to the patient.

"Behavior management services" means services that assist the member in carrying out daily living tasks and other activities essential for living in the community, including personal care services.

"Behavioral health therapeutic home care services" means interactions that teach the client living, social, and communication skills to maximize the client's ability to live and participate in the community and to function independently,

## CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

including assistance in the self-administration of medication and any ancillary services indicated by the client's treatment plan, as appropriate.

"Behavioral health services" means medical services, nursing services, health-related services, or ancillary services provided to an individual to address the individual's behavioral health issue.

"Behavioral health technician" means an individual who is not a behavioral health professional who provides behavioral health services at or for a health care institution according to the health care institution's policies and procedures that:

If the behavioral health services were provided in a setting other than a licensed health care institution, the individual would be required to be licensed as a behavioral professional under A.R.S. Title 32, Chapter 33; and

Are provided with clinical oversight by a behavioral health professional.

"Case management" for the purposes of this Article, means services and activities that enhance treatment, compliance, and effectiveness of treatment.

"Certified psychiatric nurse practitioner" means a registered nurse practitioner who meets the psychiatric specialty area requirements under A.A.C. R4-19-505(C).

"Clinical oversight" means as described under 9 A.A.C. 10.

"Cost avoid" means to avoid payment of a third-party liability claim when the probable existence of third-party liability has been established under 42 CFR 433.139(b).

"Court-ordered evaluation" has the same meaning as "evaluation" in A.R.S. § 36-501.

"Court-ordered pre-petition screening" has the same meaning as "pre-petition screening" in A.R.S. § 36-501.

"Court-ordered treatment" means treatment provided according to A.R.S. Title 36, Chapter 5.

"Crisis services" means immediate and unscheduled behavioral health services provided to a patient to address an acute behavioral health issue affecting the patient.

"Direct supervision" has the same meaning as "supervision" in A.R.S. § 36-401.

"Emergency medical services provider" has the same meaning as in A.R.S. § 36-2201.

"Health care institution" has the same meaning as defined in A.R.S. § 36-401.

"Health care practitioner" means a:

Physician;

Physician assistant;

Nurse practitioner; or

Other individual licensed and authorized by law to use and prescribe medication and devices, as defined in A.R.S. § 32-1901.

"Licensee" means the same as in 9 A.A.C. 10, Article 1.

"Medical practitioner" means a physician, physician assistant, or nurse practitioner.

"Partial care" means a day program of services provided to individual members or groups that is designed to improve the

ability of a person to function in a community, and includes basic, therapeutic, and medical day programs.

"Physician assistant" means the same as in A.R.S. § 32-2501 except that when providing a behavioral health service, the physician assistant shall be supervised by an AHCCCS-registered psychiatrist.

"Psychiatrist" means a physician who meets the licensing requirements under A.R.S. § 32-1401 or a doctor of osteopathy who meets the licensing requirements under A.R.S. § 32-1800, and meets the additional requirements of a psychiatrist under A.R.S. § 36-501.

"Psychologist" means a person who meets the licensing requirements under A.R.S. §§ 32-2061 and 36-501.

"Qualified behavioral health service provider" means a behavioral health service provider that meets the requirements of R9-22-1206.

"Respite" means a period of care and supervision of a member to provide rest or relief to a family member or other person caring for the member. Respite provides activities and services to meet the social, emotional, and physical needs of the member during respite.

"TRBHA" or "Tribal Regional Behavioral Health Authority" means a Native American tribe under contract with ADHS/DBHS to coordinate the delivery of behavioral health services to eligible and enrolled members of the federally-recognized tribal nation.

#### Historical Note

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

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

- A.** ADHS responsibilities. ADHS is responsible for payment of behavioral health services provided to members, except as specified under subsection (D). ADHS' responsibility for payment of behavioral health services includes claims for inpatient hospital services, which may include physical health services, when the principal diagnosis on the hospital claim is a behavioral health diagnosis. Behavioral health diagnoses are identified as "mental disorders" in the latest International Classification of Diseases (ICD) code set as required by AHCCCS claims and encounters.
- B.** ADHS/DBHS may contract with a TRBHA for the provision of behavioral health services for American Indian members. American Indian members may receive covered behavioral health services:
1. From an IHS or tribally operated 638 facility,
  2. From a TRBHA, or

## CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

3. From a RBHA.
- C. Contractor responsibilities. A contractor shall:
  1. Refer a member to a RBHA under the contract terms;
  2. Provide EPSDT developmental and behavioral health screening as specified in R9-22-213;
  3. Coordinate a member's transition of care and medical records; and
  4. Be responsible for providing covered inpatient hospital services, which may include behavioral health inpatient hospital services, when the principal diagnosis on the hospital claim is not a behavioral health diagnosis.
- D. Administration and CRS responsibilities.
  1. The Administration shall be responsible for payment of behavioral health services provided to an ALTCS FFS or an FES member and for behavioral health services provided by IHS and tribally operated 638 facilities. The Administration is also responsible for payment of behavioral health services provided to these members during prior quarter coverage.
  2. CRS shall be responsible for payment of behavioral health services provided to members enrolled with CRS.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended to correct typographical errors, filed in the Office of the Secretary of State October 30, 2001 (Supp. 01-4). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4). Amended by final rulemaking at 21 A.A.R. 1225, effective July 7, 2015 (Supp. 15-3).

**R9-22-1203. Eligibility for Covered Services**

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

**Historical Note**

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

(Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

**R9-22-1204. General Service Requirements**

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

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective January 1, 1996; filed with the Secretary of State December 22, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

**R9-22-1205. Scope and Coverage of Behavioral Health Services**

- A. Inpatient behavioral health services. The following inpatient services are covered subject to the limitations and exclusions in this Article and Article 2.
  1. Covered inpatient behavioral health services include all behavioral health services, medical detoxification, accommodations and staffing, supplies, and equipment, if the service is provided under the direction of a physician in a Medicare-certified:
    - a. General acute care hospital,
    - b. Inpatient psychiatric unit in a general acute care hospital, or
    - c. Behavioral health hospital.
  2. Inpatient service limitations:
    - a. Inpatient services, other than emergency services specified in this Section, are not covered unless prior authorization is obtained.
    - b. Inpatient services and room and board are reimbursed on a per diem basis. The per diem rate includes all services, except the following licensed or certified providers may bill independently for services:
      - i. A licensed psychiatrist,
      - ii. A certified psychiatric nurse practitioner,
      - iii. A licensed physician assistant,
      - iv. A licensed psychologist,

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- v. A licensed clinical social worker,
  - vi. A licensed marriage and family therapist,
  - vii. A licensed professional counselor,
  - viii. A licensed independent substance abuse counselor, and
  - ix. A medical practitioner.
- B.** Behavioral Health Inpatient facility for children. Services provided in a Behavioral Health Inpatient facility for children as defined in 9 A.A.C. 10, Article 3 are covered subject to the limitations and exclusions under this Article.
1. Behavioral Health Inpatient facility for children services are not covered unless provided under the direction of a licensed physician in a licensed Behavioral Health Inpatient facility for children accredited by an AHCCCS-approved accrediting body as specified in contract.
  2. Covered Behavioral Health Inpatient facility for children services include room and board and treatment services for behavioral health and substance abuse conditions.
  3. Inpatient Behavioral Health Inpatient facility for children service limitations.
    - a. Services are not covered unless prior authorized, except for emergency services as specified in this Section.
    - b. Services are reimbursed on a per diem basis. The per diem rate includes all services, except the following licensed or certified providers may bill independently for services:
      - i. A licensed psychiatrist,
      - ii. A certified psychiatric nurse practitioner,
      - iii. A licensed physician assistant,
      - iv. A licensed psychologist,
      - v. A licensed clinical social worker,
      - vi. A licensed marriage and family therapist,
      - vii. A licensed professional counselor,
      - viii. A licensed independent substance abuse counselor, and
      - ix. A medical practitioner.
  4. The following may be billed independently if prescribed by a provider as specified in this Section who is operating within the scope of practice:
    - a. Laboratory services, and
    - b. Radiology services.
- C.** Covered Inpatient sub-acute agency services. Services provided in a inpatient sub-acute facility as defined in 9 A.A.C. 10, Article 1 are covered subject to the limitations and exclusions under this Article.
1. Inpatient sub-acute facility services are not covered unless provided under the direction of a licensed physician in a licensed inpatient sub-acute facility that is accredited by an AHCCCS-approved accrediting body.
  2. Covered Inpatient sub-acute facility services include room and board and treatment services for behavioral health and substance abuse conditions.
  3. Services are reimbursed on a per diem basis. The per diem rate includes all services, except the following licensed or certified providers may bill independently for services:
    - a. A licensed psychiatrist,
    - b. A certified psychiatric nurse practitioner,
    - c. A licensed physician assistant,
    - d. A licensed psychologist,
    - e. A licensed clinical social worker,
    - f. A licensed marriage and family therapist,
    - g. A licensed professional counselor,
    - h. A licensed independent substance abuse counselor, and
- D.** Behavioral health residential facility services. Services provided in a licensed behavioral health residential facility as defined in 9 A.A.C. 10, Article 1 are covered subject to the limitations and exclusions under this Article.
1. Behavioral health residential facility services are not covered unless provided by a licensed behavioral health residential facility.
  2. Covered services include all non-prescription drugs as defined in A.R.S. § 32-1901, non-customized medical supplies, and clinical oversight or direct supervision of the behavioral health residential facility staff, whichever is applicable. Room and board are not covered services.
  3. The following licensed and certified providers may bill independently for services:
    - a. A licensed psychiatrist,
    - b. A certified psychiatric nurse practitioner,
    - c. A licensed physician assistant,
    - d. A licensed psychologist,
    - e. A licensed clinical social worker,
    - f. A licensed marriage and family therapist,
    - g. A licensed professional counselor,
    - h. A licensed independent substance abuse counselor, and
- E.** Partial care. Partial care services are covered subject to the limitations and exclusions in this Article.
1. Partial care services are not covered unless provided by a licensed and AHCCCS-registered behavioral health agency that provides a regularly scheduled day program of individual member, group, or family activities that are designed to improve the ability of the member to function in the community. Partial care services include basic, therapeutic, and medical day programs.
  2. Partial care services. Educational services that are therapeutic and are included in the member's behavioral health treatment plan are included in per diem reimbursement for partial care services.
- F.** Outpatient services. Outpatient services are covered subject to the limitations and exclusions in this Article and Article 2.
1. Outpatient services include the following:
    - a. Screening provided by a behavioral health professional or a behavioral health technician as defined in R9-22-1201;
    - b. A behavioral health assessment provided by a behavioral health professional or a behavioral health technician;
    - c. Counseling including individual therapy, group therapy, and family therapy provided by a behavioral health professional or a behavioral health technician;
    - d. Behavior management services as defined in R9-22-1201; and
    - e. Psychosocial rehabilitation services as defined in R9-22-201.
  2. Outpatient service limitations.
    - a. The following licensed or certified providers may bill independently for outpatient services:
      - i. A licensed psychiatrist;
      - ii. A certified psychiatric nurse practitioner;
      - iii. A licensed physician assistant as defined in R9-22-1201;
      - iv. A licensed psychologist;

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- v. A licensed clinical social worker;
  - vi. A licensed professional counselor;
  - vii. A licensed marriage and family therapist;
  - viii. A licensed independent substance abuse counselor;
  - ix. A medical practitioner; and
  - x. An outpatient treatment center or substance abuse transitional facility licensed under 9 A.A.C. 10, Article 14, that is an AHCCCS-registered provider.
- b. A behavioral health practitioner not specified in subsections (F)(2)(a)(i) through (x), who is contracted with or employed by an AHCCCS-registered behavioral health agency shall not bill independently.

- G.** Emergency behavioral health services are covered subject to the limitations and exclusions under this Article. In order to be covered, behavioral health services shall be provided by qualified service providers under R9-22-1206. ADHS/DBHS shall ensure that emergency behavioral health services are available 24 hours per day, seven days per week in each GSA for an emergency behavioral health condition for a non-FES member as defined in R9-22-201.
- H.** Other covered behavioral health services. Other covered behavioral health services include:
1. Case management as defined in 9 A.A.C. 10, Article 1;
  2. Laboratory and radiology services for behavioral health diagnosis and medication management;
  3. Medication;
  4. Monitoring, administration, and adjustment for psychotropic medication and related medications;
  5. Respite care as described within subsection (J);
  6. Behavioral health therapeutic home care services provided by a RBHA in a professional foster home defined in 6 A.A.C. 5, Article 58 or in an adult behavioral health therapeutic home as defined in 9 A.A.C. 10, Article 1;
  8. Other support services to maintain or increase the member's self-sufficiency and ability to live outside an institution.
- I.** Transportation services. Transportation services are covered under R9-22-211.
- J.** Limited Behavioral Health services. Respite services are limited to no more than 600 hours per benefit year.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed, new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 5480, effective December 6, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Amended by exempt rulemaking at 17 A.A.R. 1870, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013

(Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

**R9-22-1206. Repealed****Historical Note**

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

**R9-22-1207. General Provisions for Payment**

- A.** Claims submissions.
1. A provider of behavioral health services shall submit a claim for non-emergency behavioral health services provided to a member to the appropriate RBHA.
  2. A provider of behavioral health services shall submit a claim for non-inpatient emergency behavioral health services provided to a member to the appropriate RBHA.
  3. A provider of behavioral health services shall submit a claim for non-inpatient emergency behavioral health services provided to a member enrolled in a TRBHA to the Administration.
  4. A provider of behavioral health services shall submit a claim for non-emergency behavioral health services provided to a member enrolled in a TRBHA to the Administration.
  5. A provider of emergency behavioral health services, that are the responsibility of ADHS/DBHS or a contractor, shall submit a claim to the entity responsible for emergency behavioral health services under R9-22-210.01(A).
  6. A provider shall comply with the time-frames and other payment procedures in Article 7 of this Chapter, if applicable, and A.R.S. § 36-2904.
  7. ADHS/DBHS or a contractor, whichever entity is responsible for covering behavioral health services, shall cost avoid any behavioral health service claims if it establishes the existence or probable existence of first-party liability or third-party liability.
- B.** Prior authorization. Payment to a provider for behavioral health services or items requiring prior authorization may be denied if a provider does not obtain prior authorization from a RBHA, ADHS/DBHS, a TRBHA, the Administration or a contractor.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13,

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1999 (Supp. 99-4). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

**R9-22-1208. Repealed****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 11 A.A.R. 5480, effective December 6, 2005 (Supp. 05-4).

**ARTICLE 13. CHILDREN'S REHABILITATIVE SERVICES (CRS)**

*Article 13, consisting of Sections R9-22-1301 through R9-22-1306, made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3).*

*Article 13, consisting of Sections R9-22-1301 through R9-22-1306, made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Exemption to promulgate rules repealed under Laws 2012, Chapter 299, Section 7 (Supp. 13-3).*

*Article 13, consisting of Sections R9-22-1301 through R9-22-1309, repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004. The subject matter of Article 13 is now in 9 A.A.C. 34 (Supp. 04-1).*

**R9-22-1301. Children's Rehabilitative Services (CRS) related Definitions**

In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Article have the following meanings unless the context explicitly requires another meaning:

"Active treatment" means there is a current need for treatment of the CRS qualifying condition(s) or it is anticipated that treatment or evaluation for continuing treatment of the CRS qualifying condition(s) will be needed within the next 18 months from the last date of service for treatment of any CRS qualifying condition.

"CRS application" means a submitted form with any additional documentation required by the Administration to determine whether an individual is medically eligible for CRS.

"CRS condition" means a list of medical condition(s) in R9-22-1303 and which are referred to as covered conditions in A.R.S. § 36-2912.

"Functionally limiting" means a restriction having a significant effect on an individual's ability to perform an activity of daily living as determined by a provider.

"Medically eligible" means meeting the medical eligibility requirements of R9-22-1303.

"Redetermination" means a decision made by the Administration regarding whether a member continues to meet the requirements in R9-22-1302.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10,

2013 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 2022, effective October 1, 2015 (Supp. 15-3).

**R9-22-1302. Children's Rehabilitative Services (CRS) Eligibility Requirements**

Beginning October 1, 2013, an AHCCCS member who needs active treatment for one or more of the qualifying medical condition(s) in R9-22-1303 shall be given a CRS Designation. An American Indian member can choose to receive CRS services through an American Indian Health Plan or a contractor. A member enrolled in CMDP shall obtain CRS services through CMDP. The contractor shall provide covered services necessary to treat the condition(s) and other services described within the contract. The effective date of the CRS Designation shall be as specified in contract.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3). Amended by final rulemaking at 24 A.A.R. 2855, effective November 16, 2018 (Supp. 18-3).

**R9-22-1303. Medical Eligibility**

The following lists identify those medical condition(s) that do qualify for CRS services as well as those that do not qualify for CRS services. The list of condition(s) that qualify for a CRS Designation is all inclusive. The list of condition(s) that do not qualify for a CRS Designation is not an all-inclusive list.

1. Cardiovascular System
  - a. CRS condition(s) that qualify for CRS medical eligibility:
    - i. Arrhythmia,
    - ii. Arteriovenous fistula,
    - iii. Cardiomyopathy,
    - iv. Conduction defect,
    - v. Congenital heart defect other than isolated small Ventricular Septal Defects (VSD), Patent Ductus Arteriosus (PDA), Atrial Septal Defects (ASD),
    - vi. Coronary artery and aortic aneurysm,
    - vii. Renal vascular hypertension,
    - viii. Rheumatic heart disease, and
    - ix. Valvular disorder.
  - b. Condition(s) not medically eligible for CRS:
    - i. Arteriovenous fistula that is not expected to cause cardiac failure or threaten loss of function;
    - ii. Benign heart murmur;
    - iii. Branch artery pulmonary stenosis;
    - iv. Essential hypertension;
    - v. Patent foramen ovale (PFO);
    - vi. Peripheral pulmonary stenosis;
    - vii. Postural orthopedic tachycardia; and
    - viii. Premature atrial, nodal or ventricular contractions that are of no hemodynamic significance.
2. Endocrine system:
  - a. CRS condition(s) that qualify for CRS medical eligibility:
    - i. Addison's disease,
    - ii. Adrenogenital syndrome,

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

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

B. The director shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and

medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.

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

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

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

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

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

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

ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

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

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

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

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

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

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

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

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall

include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

or I. The director may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

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

1. The type of third-party payments to be monitored pursuant to this subsection.
2. The percentage of third-party payments that is collected by a contractor or noncontracting provider and that the contractor or noncontracting provider may keep and the percentage of such payments that the contractor or noncontracting provider may be required to pay to the administration. Contractors and noncontracting providers must pay to the administration one hundred percent of all third-party payments that are collected and that duplicate administration fee-for-service payments. A contractor that contracts with the administration pursuant to section 36-2904, subsection A may be entitled to retain a percentage of third-party payments if the payments collected and retained by a contractor are reflected in reduced capitation rates. A contractor may be required to pay the administration a percentage of third-party payments that are collected by a contractor and that are not reflected in reduced capitation rates.

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

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

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

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

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

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

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

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

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

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

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

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

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

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

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

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

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.

2. A copayment of five dollars for each physician office visit.
3. A copayment of ten dollars for each urgent care visit.
4. A copayment of thirty dollars for each emergency department visit.

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

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

36-2907. Covered health and medical services; modifications; related delivery of service requirements; definition

A. Subject to the limitations and exclusions specified in this section, contractors shall provide the following medically necessary health and medical services:

1. Inpatient hospital services that are ordinarily furnished by a hospital for the care and treatment of inpatients and that are provided under the direction of a physician or a primary care practitioner. For the purposes of this section, inpatient hospital services exclude services in an institution for tuberculosis or mental diseases unless authorized under an approved section 1115 waiver.
2. Outpatient health services that are ordinarily provided in hospitals, clinics, offices and other health care facilities by licensed health care providers. Outpatient health services include services provided by or under the direction of a physician or a primary care practitioner, including occupational therapy.
3. Other laboratory and X-ray services ordered by a physician or a primary care practitioner.
4. Medications that are ordered on prescription by a physician or a dentist licensed pursuant to title 32, chapter 11. Persons who are dually eligible for title XVIII and title XIX services must obtain available medications through a medicare licensed or certified medicare advantage prescription drug plan, a medicare prescription drug plan or any other entity authorized by medicare to provide a medicare part D prescription drug benefit.
5. Medical supplies, durable medical equipment, insulin pumps and prosthetic devices ordered by a physician or a primary care practitioner. Suppliers of durable medical equipment shall provide the administration with complete information about the identity of each person who has an ownership or controlling interest in their business and shall comply with federal bonding requirements in a manner prescribed by the administration.
6. For persons who are at least twenty-one years of age, treatment of medical conditions of the eye, excluding eye examinations for prescriptive lenses and the provision of prescriptive lenses.
7. Early and periodic health screening and diagnostic services as required by section 1905(r) of title XIX of the social security act for members who are under twenty-one years of age.
8. Family planning services that do not include abortion or abortion counseling. If a contractor elects not to provide family planning services, this election does not disqualify the contractor from delivering all other covered health and medical services under this chapter. In that event, the administration may contract directly with another contractor, including an outpatient surgical center or a noncontracting provider, to deliver family planning services to a member who is enrolled with the contractor that elects not to provide family planning services.
9. Podiatry services that are performed by a podiatrist who is licensed pursuant to title 32, chapter 7 and ordered by a primary care physician or primary care practitioner.
10. Nonexperimental transplants approved for title XIX reimbursement.
11. For persons who are at least twenty-one years of age, emergency dental care and extractions in an annual amount of not more than one thousand dollars per member.
12. Ambulance and nonambulance transportation, except as provided in subsection G of this section.
13. Hospice care.
14. Orthotics, if all of the following apply:

(a) The use of the orthotic is medically necessary as the preferred treatment option consistent with medicare guidelines.

(b) The orthotic is less expensive than all other treatment options or surgical procedures to treat the same diagnosed condition.

(c) The orthotic is ordered by a physician or primary care practitioner.

B. The limitations and exclusions for health and medical services provided under this section are as follows:

1. Circumcision of newborn males is not a covered health and medical service.

2. For eligible persons who are at least twenty-one years of age:

(a) Outpatient health services do not include speech therapy.

(b) Prosthetic devices do not include hearing aids, dentures, bone-anchored hearing aids or cochlear implants. Prosthetic devices, except prosthetic implants, may be limited to twelve thousand five hundred dollars per contract year.

(c) Percussive vests are not covered health and medical services.

(d) Durable medical equipment is limited to items covered by medicare.

(e) Nonexperimental transplants do not include pancreas-only transplants.

(f) Bariatric surgery procedures, including laparoscopic and open gastric bypass and restrictive procedures, are not covered health and medical services.

C. The system shall pay noncontracting providers only for health and medical services as prescribed in subsection A of this section and as prescribed by rule.

D. The director shall adopt rules necessary to limit, to the extent possible, the scope, duration and amount of services, including maximum limitations for inpatient services that are consistent with federal regulations under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)). To the extent possible and practicable, these rules shall provide for the prior approval of medically necessary services provided pursuant to this chapter.

E. The director shall make available home health services in lieu of hospitalization pursuant to contracts awarded under this article. For the purposes of this subsection, "home health services" means the provision of nursing services, home health aide services or medical supplies, equipment and appliances that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on the orders of a physician or a primary care practitioner. Home health agencies shall comply with the federal bonding requirements in a manner prescribed by the administration.

F. The director shall adopt rules for the coverage of behavioral health services for persons who are eligible under section 36-2901, paragraph 6, subdivision (a). The administration acting through the regional behavioral health authorities shall establish a diagnostic and evaluation program to which other state agencies shall refer children who are not already enrolled pursuant to this chapter and who may be in need of behavioral health services. In addition to an evaluation, the administration acting through regional behavioral health authorities shall also identify children who may be eligible under section 36-2901, paragraph 6, subdivision (a) or section 36-2931, paragraph 5 and shall refer the children to the appropriate agency responsible for making the final eligibility determination.

G. The director shall adopt rules for the provision of transportation services and rules providing for copayment by members for transportation for other than emergency purposes. Subject to approval by the centers for

medicare and medicaid services, nonemergency medical transportation shall not be provided except for stretcher vans and ambulance transportation. Prior authorization is required for transportation by stretcher van and for medically necessary ambulance transportation initiated pursuant to a physician's direction. Prior authorization is not required for medically necessary ambulance transportation services rendered to members or eligible persons initiated by dialing telephone number 911 or other designated emergency response systems.

H. The director may adopt rules to allow the administration, at the director's discretion, to use a second opinion procedure under which surgery may not be eligible for coverage pursuant to this chapter without documentation as to need by at least two physicians or primary care practitioners.

I. If the director does not receive bids within the amounts budgeted or if at any time the amount remaining in the Arizona health care cost containment system fund is insufficient to pay for full contract services for the remainder of the contract term, the administration, on notification to system contractors at least thirty days in advance, may modify the list of services required under subsection A of this section for persons defined as eligible other than those persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). The director may also suspend services or may limit categories of expense for services defined as optional pursuant to title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) for persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). Such reductions or suspensions do not apply to the continuity of care for persons already receiving these services.

J. Additional, reduced or modified hospitalization and medical care benefits may be provided under the system to enrolled members who are eligible pursuant to section 36-2901, paragraph 6, subdivision (b), (c), (d) or (e).

K. All health and medical services provided under this article shall be provided in the geographic service area of the member, except:

1. Emergency services and specialty services provided pursuant to section 36-2908.

2. That the director may permit the delivery of health and medical services in other than the geographic service area in this state or in an adjoining state if the director determines that medical practice patterns justify the delivery of services or a net reduction in transportation costs can reasonably be expected. Notwithstanding the definition of physician as prescribed in section 36-2901, if services are procured from a physician or primary care practitioner in an adjoining state, the physician or primary care practitioner shall be licensed to practice in that state pursuant to licensing statutes in that state similar to title 32, chapter 13, 15, 17 or 25 and shall complete a provider agreement for this state.

L. Covered outpatient services shall be subcontracted by a primary care physician or primary care practitioner to other licensed health care providers to the extent practicable for purposes including, but not limited to, making health care services available to underserved areas, reducing costs of providing medical care and reducing transportation costs.

M. The director shall adopt rules that prescribe the coordination of medical care for persons who are eligible for system services. The rules shall include provisions for the transfer of patients, the transfer of medical records and the initiation of medical care.

N. For the purposes of this section, "ambulance" has the same meaning prescribed in section 36-2201.

**ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F19-1206)**

Title 9, Chapter 22, Article 13, Children's Rehabilitative Services



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** January 14, 2020

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

**FROM:** Council Staff

**DATE:** December 10, 2019

**SUBJECT:** ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F19-1206)  
Title 9, Chapter 22, Article 13, Children's Rehabilitative Services

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### **Summary**

This Five-Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS) relates to Title 9, Chapter 22, Article 13 regarding Children's Rehabilitative Services. This is the first 5YRR for all the rules in this Article, which were adopted in 2013.

### **Proposed Action**

AHCCCS intends to amend R9-22-1303 to correct some conjunctive phrases to disjunctive phrases. Also, AHCCCS indicates a set of parentheses are in the wrong part of the rule. AHCCCS also intends to make additional technical and conforming changes. Following approval of this 5YRR, AHCCCS states it will seek approval from the Governor's office to initiate a rulemaking within 180 days to make these changes.

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

Yes. AHCCCS cites to both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

AHCCCS oversees Children Rehabilitative Services (CRS), created to treat children on AHCCCS with medically complex health care needs. In the last 5 years, there have been no changes to the economic impact of the rule.

The stakeholders include: AHCCCS, AHCCCS members and their families, CRS healthcare providers, the State, and the general public.

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 has reviewed the current rules and determined they do not impose any additional burdens or costs to stakeholders. After approval of the 5YRR, AHCCCS intends to make changes to the rule to improve clarity.

4. **Has the agency received any written criticisms of the rules over the last five years?**

AHCCCS indicates it has not received any written criticism of the rules in the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

AHCCCS indicates that the rules are not clear, concise, and understandable. Specifically, AHCCCS indicates that R9-22-1303 contains conjunctive phrases that should be disjunctive phrases. Furthermore, AHCCCS indicates a set of parentheses are in the wrong part of the rule. AHCCCS is also recommending additional technical and conforming changes.

Nevertheless, AHCCCS indicates the rules are consistent with other rules and statutes and effective in achieving their regulatory objectives.

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

AHCCCS indicates the rules are currently enforced as written.

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

AHCCCS indicates the rules are not more stringent than corresponding federal law, 42 C.F.R. 438.

**8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

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

**9. Conclusion**

AHCCCS indicates the rules are not clear, concise, and understandable and intends to amend R9-22-1303 to replace conjunctive with disjunctive phrases, correct misplaced parentheses, and make additional technical and conforming changes. AHCCCS indicates the rules are consistent with other rules and statutes and enforced as written. AHCCCS intends to request an exception to the rulemaking moratorium from the Governor's office to begin an expedited rulemaking within 180 days of the Council's approval of this report to address the issues outlined above. Council staff recommends approval of this report.

September 27, 2019

**VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)**

Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 22, Article 13, Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five Year Review Report of AHCCCS for Title 9, Chapter 22, Article 13 which is due on September 28, 2019.

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](mailto:nicole.fries@azahcccs.gov).

Sincerely,



Matthew Devlin  
Assistant Director

Attachments

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

**5 YEAR REVIEW REPORT**

**A.A.C. Title 9, Chapter 22, Article 13**

**September 2019**

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

General Statutory Authority: A.R.S. §§ 36-2904 and 36-2903.01

Specific Statutory Authority: A.R.S. § 36-261

**2. The objective of each rule:**

Rule	Objective
R9-22-1301	This rule provides definitions for terms related to Children’s Rehabilitative Services offered by AHCCCS.
R9-22-1302	This rule explains the eligibility requirements for Children’s Rehabilitative Services by AHCCCS.
R9-22-1303	This rule explains the medical eligibility requirements for CRS by AHCCCS.
R9-22-1304	This rule outlines the referral and disposition process of CRS Medical Eligibility by AHCCCS.
R9-22-1305	This rule outlines how continued eligibility for CRS services shall be redetermined by AHCCCS.
R9-22-1307	This rule explains the covered services provided by the AHCCCS administration.

**3. Are the rules effective in achieving their objectives?** Yes X No    

**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	Objective
R9-22-1303	Some conjunctive phrases should be corrected to disjunctive phrases. A set of parenthesis were in the wrong part of the article. Additional technical and conforming changes recommended.

**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:** There is no economic, small business or consumer financial impact beyond the cost of the agency operations. The changes suggested are clarifying so the impact on the economy remains the same.

**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?**

Yes, in the intervening rulemaking.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The changes that are proposed in this 5YRR are meant for clarifying purposes and do not impose any additional burdens or costs to regulated persons. In addition they are they impost the least burden and cost to achieve the same benefits as the Article currently provides to regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes  No

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**

Following approval of this 5YRR by GRRRC, approval from the Governor's Office will be sought and a rulemaking will be initiated within 180 days to make the above changes. Additional technical and clarifying changes may also occur in the rulemaking.

## Arizona Health Care Cost Containment System - Administration

3. A provider of behavioral health services shall submit a claim for non-inpatient emergency behavioral health services provided to a member enrolled in a TRBHA to the Administration.
  4. A provider of behavioral health services shall submit a claim for non-emergency behavioral health services provided to a member enrolled in a TRBHA to the Administration.
  5. A provider of emergency behavioral health services, that are the responsibility of ADHS/DBHS or a contractor, shall submit a claim to the entity responsible for emergency behavioral health services under R9-22-210.01(A).
  6. A provider shall comply with the time-frames and other payment procedures in Article 7 of this Chapter, if applicable, and A.R.S. § 36-2904.
  7. ADHS/DBHS or a contractor, whichever entity is responsible for covering behavioral health services, shall cost avoid any behavioral health service claims if it establishes the existence or probable existence of first-party liability or third-party liability.
- B.** Prior authorization. Payment to a provider for behavioral health services or items requiring prior authorization may be denied if a provider does not obtain prior authorization from a RBHA, ADHS/DBHS, a TRBHA, the Administration or a contractor.

**Historical Note**

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

**R9-22-1208. Repealed****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 11 A.A.R. 5480, effective December 6, 2005 (Supp. 05-4).

**ARTICLE 13. CHILDREN'S REHABILITATIVE SERVICES (CRS)**

*Article 13, consisting of Sections R9-22-1301 through R9-22-1306, made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3).*

*Article 13, consisting of Sections R9-22-1301 through R9-22-1306, made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Exemption to promulgate rules repealed under Laws 2012, Chapter 299, Section 7 (Supp. 13-3).*

*Article 13, consisting of Sections R9-22-1301 through R9-22-1309, repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004. The subject matter of Article 13 is now in 9 A.A.C. 34 (Supp. 04-1).*

**R9-22-1301. Children's Rehabilitative Services (CRS) related Definitions**

In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Article have the following meanings unless the context explicitly requires another meaning:

"Active treatment" means there is a current need for treatment of the CRS qualifying condition(s) or it is anticipated that treatment or evaluation for continuing treatment of the CRS qualifying condition(s) will be needed within the next 18 months from the last date of service for treatment of any CRS qualifying condition.

"CRS application" means a submitted form with any additional documentation required by the Administration to determine whether an individual is medically eligible for CRS.

"CRS condition" means a list of medical condition(s) in R9-22-1303 and which are referred to as covered conditions in A.R.S. § 36-2912.

"Functionally limiting" means a restriction having a significant effect on an individual's ability to perform an activity of daily living as determined by a provider.

"Medically eligible" means meeting the medical eligibility requirements of R9-22-1303.

"Redetermination" means a decision made by the Administration regarding whether a member continues to meet the requirements in R9-22-1302.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 2022, effective October 1, 2015 (Supp. 15-3).

**R9-22-1302. Children's Rehabilitative Services (CRS) Eligibility Requirements**

Beginning October 1, 2013, an AHCCCS member who needs active treatment for one or more of the qualifying medical condition(s) in R9-22-1303 shall be enrolled with the CRS contractor. An American Indian member shall obtain CRS services through the CRS contractor. A member enrolled in CMDP shall also obtain CRS services through the CRS contractor. Initial enrollment with the CRS contractor is limited to individuals under the age of 21. The CRS contractor shall provide covered services necessary to treat the CRS condition(s) and other services described within the CRS contract. The effective date of enrollment in CRS shall be as specified in contract.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3).

**R9-22-1303. Medical Eligibility**

The following lists identify those medical condition(s) that do qualify for the CRS program as well as those that do not qualify for the

## Arizona Health Care Cost Containment System - Administration

CRS program. The list of condition(s) that qualify for CRS medical eligibility is all inclusive. The list of condition(s) that do not qualify for CRS medical eligibility is not an all-inclusive list.

1. Cardiovascular System
  - a. CRS condition(s) that qualify for CRS medical eligibility:
    - i. Arrhythmia,
    - ii. Arteriovenous fistula,
    - iii. Cardiomyopathy,
    - iv. Conduction defect,
    - v. Congenital heart defect other than isolated small Ventricular Septal Defects (VSD), Patent Ductus Arteriosus (PDA), Atrial Septal Defects (ASD),
    - vi. Coronary artery and aortic aneurysm,
    - vii. Renal vascular hypertension,
    - viii. Rheumatic heart disease, and
    - ix. Valvular disorder.
  - b. Condition(s) not medically eligible for CRS:
    - i. Arteriovenous fistula that is not expected to cause cardiac failure or threaten loss of function;
    - ii. Benign heart murmur;
    - iii. Branch artery pulmonary stenosis;
    - iv. Essential hypertension;
    - v. Patent foramen ovale (PFO);
    - vi. Peripheral pulmonary stenosis;
    - vii. Postural orthopedic tachycardia; and
    - viii. Premature atrial, nodal or ventricular contractions that are of no hemodynamic significance.
2. Endocrine system:
  - a. CRS condition(s) that qualify for CRS medical eligibility:
    - i. Addison's disease,
    - ii. Adrenogenital syndrome,
    - iii. Cystic fibrosis (including atypical cystic fibrosis),
    - iv. Diabetes insipidus,
    - v. Hyperparathyroidism,
    - vi. Hyperthyroidism,
    - vii. Hypoparathyroidism, and
    - viii. Panhypopituitarism.
  - b. Condition(s) not medically eligible for CRS:
    - i. Diabetes mellitus,
    - ii. Hypopituitarism associated with a malignancy and requiring treatment of less than 90 days,
    - iii. Isolated growth hormone deficiency, and
    - iv. Precocious puberty.
3. Genitourinary system medical condition(s):
  - a. CRS condition(s) that qualify for CRS medical eligibility:
    - i. Ambiguous genitalia,
    - ii. Bladder extrophy,
    - iii. Deformity and dysfunction of the genitourinary system secondary to trauma 90 days or more after the trauma occurred,
    - iv. Ectopic ureter,
    - v. Hydronephrosis, that is not resolved with antibiotics,
    - vi. Polycystic and multicystic kidneys,
    - vii. Pyelonephritis when treatment with drugs or biologicals has failed to cure or ameliorate and surgical intervention is required,
    - viii. Ureteral stricture, and
    - ix. Vesicoureteral reflux, at a grade 3 or higher.
  - b. Condition(s) not medically eligible for CRS:
    - i. Enuresis,
    - ii. Hydrocele,
    - iii. Hypospadias,
    - iv. Meatal stenosis,
    - v. Nephritis, infectious or noninfectious,
    - vi. Nephrosis,
    - vii. Phimosis, and
    - viii. Undescended testicle.
4. Ear, nose, or throat medical condition(s):
  - a. CRS condition(s) that qualify for CRS medical eligibility:
    - i. Cholesteatoma,
    - ii. Congenital/Craniofacial anomaly that is functionally limiting,
    - iii. Deformity and dysfunction of the ear, nose, or throat secondary to trauma, 90 days or more after the trauma occurred,
    - iv. Mastoiditis that continues 90 days or more after the first diagnosis of the condition,
    - v. Microtia that requires multiple surgical interventions,
    - vi. Neurosensory hearing loss, and
    - vii. Significant conductive hearing loss due to an anomaly in one ear or both ears equal to or greater than a pure tone average of 30 decibels that despite medical treatment, requires a hearing aid.
  - b. Condition(s) not medically eligible for CRS:
    - i. A craniofacial anomaly that is not functionally limiting,
    - ii. Adenoiditis,
    - iii. Cranial or temporal mandibular joint syndrome,
    - iv. Hypertrophic lingual frenum,
    - v. Isolated preauricular tag or pit,
    - vi. Nasal polyp,
    - vii. Obstructive apnea,
    - viii. Perforation of the tympanic membrane,
    - ix. Recurrent otitis media,
    - x. Simple deviated nasal septum,
    - xi. Sinusitis,
    - xii. Tonsillitis, and
    - xiii. Uncontrolled salivation.
5. Musculoskeletal system medical condition(s):
  - a. CRS condition(s) that qualify for CRS medical eligibility:
    - i. Achondroplasia,
    - ii. Arthrogryposis (multiple joint contractures),
    - iii. Bone infection that continues 90 days or more after the initial diagnosis,
    - iv. Chondrodysplasia,
    - v. Chondroectodermal dysplasia,
    - vi. Clubfoot,
    - vii. Collagen vascular disease, including but not limited to, ankylosis spondylitis, polymyositis, dermatomyositis, polyarteritis nodosa, psoriatic arthritis, scleroderma, rheumatoid arthritis and lupus,
    - viii. Congenital or developmental cervical spine abnormality,
    - ix. Congenital spinal deformity,
    - x. Diastrophic dysplasia,
    - xi. Enchondromatosis,
    - xii. Femoral anteversion and tibial torsion,
    - xiii. Fibrous dysplasia,
    - xiv. Hip dysplasia,

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- xv. Hypochondroplasia,
  - xvi. Joint infection that continues 90 days or more after the initial diagnosis,
  - xvii. Juvenile rheumatoid arthritis,
  - xviii. Kyphosis (Scheurmann's Kyphosis) 50 degrees or over,
  - xix. Larsen syndrome,
  - xx. Leg length discrepancy of two centimeters or more,
  - xxi. Legg-Calve-Perthes disease,
  - xxii. Limb amputation or limb malformation,
  - xxiii. Metaphyseal and epiphyseal dysplasia,
  - xxiv. Metatarsus adductus,
  - xxv. Muscular dystrophy,
  - xxvi. Orthopedic complications of hemophilia,
  - xxvii. Osgood Schlatter's disease that requires surgical intervention,
  - xxviii. Osteogenesis imperfecta,
  - xxix. Rickets,
  - xxx. Scoliosis when 25 degrees or greater, or when there is a need for bracing or surgery,
  - xxxi. Seronegative spondyloarthropathy such as Reiter's, psoriatic arthritis, and ankylosing spondylitis,
  - xxxii. Slipped capital femoral epiphysis,
  - xxxiii. Spinal muscle atrophy,
  - xxxiv. Spondyloepiphyseal dysplasia, and
  - xxxv. Syndactyly.
- b. Condition(s) not medically eligible for CRS:
    - i. Back pain with no structural abnormality,
    - ii. Benign bone tumor,
    - iii. Bunion,
    - iv. Carpal tunnel syndrome,
    - v. Deformity and dysfunction secondary to trauma or injury,
    - vi. Ehlers Danlos,
    - vii. Flat foot,
    - viii. Fracture,
    - ix. Ganglion cyst,
    - x. Ingrown toenail,
    - xi. Kyphosis under 50 degrees,
    - xii. Leg length discrepancy of less than two centimeters at skeletal maturity,
    - xiii. Polydactyly without bone involvement,
    - xiv. Popliteal cyst,
    - xv. Trigger finger, and
    - xvi. Varus and valgus deformities.
- 6. Gastrointestinal system medical condition(s):
    - a. CRS condition(s) that qualify for CRS medical eligibility:
      - i. Anorectal atresia,
      - ii. Biliary atresia,
      - iii. Cleft lip,
      - iv. Cleft palate,
      - v. Congenital atresia, stenosis, fistula, or rotational abnormalities of the gastrointestinal tract,
      - vi. Deformity and dysfunction of the gastrointestinal system secondary to trauma, 90 days or more after the trauma occurred,
      - vii. Diaphragmatic hernia,
      - viii. Gastroschisis,
      - ix. Hirschsprung's disease,
      - x. Omphalocele, and
      - xi. Tracheoesophageal fistula.
    - b. Condition(s) not medically eligible for CRS:
      - i. Celiac disease,
      - ii. Crohn's disease,
      - iii. Hernia other than a diaphragmatic hernia,
      - iv. Intestinal polyp,
      - v. Malabsorption syndrome, also known as short bowel syndrome,
      - vi. Pyloric stenosis,
      - vii. Ulcer disease, and
      - viii. Ulcerative colitis.
- 7. Nervous system medical condition(s):
    - a. CRS condition(s) that qualify for CRS medical eligibility:
      - i. Benign intracranial tumor,
      - ii. Benign intraspinal tumor,
      - iii. Central nervous system degenerative disease,
      - iv. Central nervous system malformation or structural abnormality,
      - v. Cerebral palsy,
      - vi. Craniosynostosis requiring surgery,
      - vii. Deformity and dysfunction secondary to trauma in an individual that continues 90 days or more after the incident,
      - viii. Hydrocephalus,
      - ix. Muscular dystrophy or other myopathy,
      - x. Myelomeningocele, also known as spina bifida,
      - xi. Myoneural disorder, including but not limited to, amyotrophic Lateral Sclerosis or ALS, myasthenia gravis, Eaton-Lambert syndrome, muscular dystrophy, troyer sclerosis, polymyositis, dermatomyositis, progressive bulbar palsy, polio,
      - xii. Neurofibromatosis,
      - xiii. Neuropathy/polyneuropathy, hereditary or idiopathic,
      - xiv. Residual dysfunction that continues 90 days or more after a vascular accident, inflammatory condition, or infection of the central nervous system,
      - xv. Residual dysfunction that continues 90 days or more after near drowning,
      - xvi. Residual dysfunction that continues 90 days or more after the spinal cord injury, and
      - xvii. Uncontrolled seizure disorder, in which there have been more than two seizures with documented compliance of one or more medications.
    - b. Condition(s) not medically eligible for CRS:
      - i. Central apnea secondary to prematurity,
      - ii. Febrile seizures,
      - iii. Headaches,
      - iv. Near sudden infant death syndrome,
      - v. Plagiocephaly, and
      - vi. Spina bifida occulta.
- 8. Ophthalmology:
    - a. CRS condition(s) that qualify for CRS medical eligibility:
      - i. Cataracts,
      - ii. Disorder of the iris, ciliary bodies, retina, lens, or cornea,
      - iii. Disorder of the optic nerve,
      - iv. Glaucoma,
      - v. Non-malignant enucleation and post-enucleation reconstruction, and
      - vi. Retinopathy of prematurity.
    - b. Condition(s) not medically eligible for CRS:
      - i. Astigmatism,

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- ii. Ptosis,
  - iii. Simple refraction error, and
  - iv. Strabismus.
9. Respiratory system medical condition(s):
- a. CRS condition(s) that qualify for CRS medical eligibility:
    - i. Anomaly of the larynx, trachea, or bronchi that requires surgery, and
    - ii. Nonmalignant obstructive lesion of the larynx, trachea, or bronchi.
  - b. Condition(s) not medically eligible for CRS:
    - i. Allergies,
    - ii. Asthma,
    - iii. Bronchopulmonary dysplasia,
    - iv. Chronic obstructive pulmonary disease,
    - v. Emphysema, and
    - vi. Respiratory distress syndrome.
10. Dermatological system medical condition(s):
- a. CRS condition(s) that qualify for CRS medical eligibility:
    - i. A burn scar that is functionally limiting,
    - ii. A hemangioma that is functionally limiting that requires laser or surgery,
    - iii. Complicated nevi requiring multiple procedures,
    - iv. Cystic hygroma such as lymphangioma, and
    - v. Malocclusion that is functionally limiting.
  - b. Condition(s) not medically eligible for CRS:
    - i. A deformity that is not functionally limiting,
    - ii. Ectodermal dysplasia,
    - iii. Isolated malocclusion that is not functionally limiting,
    - iv. Pilonidal cyst,
    - v. Port wine stain,
    - vi. Sebaceous cyst,
    - vii. Simple nevi, and
    - viii. Skin tag.
11. Metabolic CRS condition(s) that qualify for CRS medical eligibility:
- i. Amino acid or organic acidopathy,
  - ii. Biotinidase deficiency,
  - iii. Homocystinuria,
  - iv. Inborn error of metabolism,
  - v. Maple syrup urine disease,
  - vi. Phenylketonuria, and
  - vii. Storage disease.
12. Hemoglobinopathies CRS condition(s) that qualify for CRS medical eligibility:
- a. Sickle cell anemia, and
  - b. Thalassemia.
13. Additional medical/behavioral condition(s) which are not medically eligible for CRS:
- a. Allergies,
  - b. Anorexia nervosa or obesity,
  - c. Attention deficit disorder,
  - d. Autism,
  - e. Cancer,
  - f. Depression or other mental illness,
  - g. Developmental delay,
  - h. Dyslexia or other learning disabilities,
  - i. Failure to thrive,
  - j. Hyperactivity, and
  - k. Immunodeficiency, such as AIDS and HIV.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).  
Amended by final rulemaking at 6 A.A.R. 3317, effective

August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 2022, effective October 1, 2015 (Supp. 15-3).

**R9-22-1304. Referral and Disposition of CRS Medical Eligibility Determination**

- A.** To refer an individual for a CRS medical eligibility determination a person shall submit to the Administration the following information:
1. CRS application;
  2. Documentation from a specialist who diagnosed the individual, stating the individual's diagnosis;
  3. Diagnostic test results that support the individual's diagnosis; and
  4. Documentation of the individual's need for specialized treatment of the CRS condition through medical, surgical, or therapy modalities.
- B.** The Administration shall notify the CRS applicant, member or authorized representative of the outcome of the determination within 60 days of receipt of information required under subsection (A). The member may appeal the determination under Chapter 34.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 2022, effective October 1, 2015 (Supp. 15-3).

**R9-22-1305. CRS Redetermination**

- A.** Continued eligibility for the CRS program shall be redetermined by verifying active treatment status of the CRS qualifying medical condition(s) as follows:
1. The CRS Contractor is responsible for notifying the AHCCCS Administration of the date when a CRS member is no longer in active treatment for the CRS qualifying condition(s).
  2. The Administration may request, at any time, that the CRS contractor submit the medical documentation requested in the CRS medical redetermination form within the specified time-frames in contract.
  3. The Administration shall notify the CRS member or authorized representative of the redetermination process.
- B.** If the Administration determines that a CRS member is no longer medically eligible for CRS, the Administration shall provide the CRS member or authorized representative a written notice that informs the CRS member that the Administration is transitioning the CRS member's enrollment according to R9-22-1306. The member may appeal the redetermination under Chapter 34.
- C.** Upon reaching his or her 21st birthday, the CRS member will be enrolled with a non-CRS contractor unless the member requests to continue enrollment with the CRS contractor.

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**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3).

**R9-22-1306. Transition or Termination**

- A. The Administration shall transition a CRS member from the CRS contractor when the Administration determines the CRS member does not meet the medical eligibility requirements under this Article.
- B. The Administration shall terminate a CRS member from the CRS contractor and the AHCCCS program when the Administration determines the CRS member does not meet the AHCCCS eligibility requirements. The member may appeal the termination under Chapter 34.
- C. If the Administration transitions a CRS member from the CRS contractor, the Administration shall provide the CRS member, or authorized representative a written notice of transition. The member may appeal the transition under Chapter 34.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3).

**R9-22-1307. Covered Services**

The Administration will cover medically necessary services as described within Article 2 unless otherwise specified in contract.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3).

**R9-22-1308. Repealed****Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

**R9-22-1309. Repealed****Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

**ARTICLE 14. AHCCCS MEDICAL COVERAGE FOR HOUSEHOLDS****R9-22-1401. General Information**

- A. Scope. This Article contains eligibility criteria to determine whether a household or individual is eligible for AHCCCS medical coverage. Eligibility criteria described under Article 3 applies to this Article.
- B. Definitions. In addition to definitions contained in R9-22-101 and A.R.S. § 36-2901, the words and phrases in this Article, Article 3 and Article 15 have the following meanings unless the context explicitly requires another meaning:
  - “Burial plot” means a space reserved in a cemetery, crypt, vault, or mausoleum for the remains of a deceased person.

Caretaker relative” means:

A parent of a dependent child with whom the child is living;

When the dependent child does not live with a parent or the parent in the home is incapacitated, another relative of the child by blood, adoption, or marriage in the home who assumes primary responsibility for the child’s care; or

A woman in her third trimester of pregnancy with no other dependent children.

“Cash assistance” means a program administered by the Department that provides assistance to needy families with dependent children under 42 U.S.C. 601 et seq.

“Dependent child” means a child under the age of 18, or if age 18 is a full-time student in secondary school or equivalent vocational or technical training, if reasonably expected to complete such school or training before turning age 19.

“MAGI – based income” means Modified Adjusted Gross Income as defined under 42 CFR 435.603(e).

“Medical expense deduction” or “MED” means the cost of the following expenses if incurred in the United States:

A medical service or supply that would be covered if provided to an AHCCCS member of any age under Articles 2 and 12 of this Chapter;

A medical service or supply that would be covered if provided to an Arizona Long-term Care System member under 9 A.A.C. 28, Articles 2 and 11;

Other necessary medical services provided by a licensed practitioner or physician;

Assistance with daily living if the assistance is documented in an individual plan of care by a nurse, social service worker, registered therapist, or dietician under the supervision of a physician except when provided by the spouse of an applicant or the parent of a minor child;

Medical services provided in a licensed nursing home or in an alternative HCBS setting under R9-28-101;

Purchasing and maintaining an animal guide or service animal for the assistance of a member of the MED family unit under R9-22-1436; and

Health insurance premiums, deductibles, and coinsurance, if the insured is a member of the MED family unit.

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.

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

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

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

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

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

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

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

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

E. For a member defined as eligible pursuant to section 36-2901, paragraph 6, subdivision (a), item (v) the director shall enroll the member with an available contractor located in the geographic area of the member's residence. The member may select a primary care physician or primary care practitioner from among the

primary care physicians or primary care practitioners participating in the contract in which the member is enrolled. The system shall only provide reimbursement for health or medical services or costs of related services provided by or under referral from a primary care physician or primary care practitioner participating in the contract in which the member is enrolled. The director shall establish requirements as to the minimum time period that a member is assigned to specific contractors in the system.

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

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

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

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

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

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

(a) The time limits for any negotiation between the contractor and the hospital.

(b) The ability of the director to review and approve or disapprove the reimbursement levels and terms agreed on by the contractor and the hospital.

(c) That if a contractor and a hospital do not agree on reimbursement levels and terms as required by this subsection, the reimbursement levels established pursuant to section 36-2903.01 apply.

(d) That, except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of subdivision (f) on initial receipt of the legible, error-free claim form by the contractor if the claim includes the following error-free documentation in legible form:

(i) An admission face sheet.

(ii) An itemized statement.

(iii) An admission history and physical.

(iv) A discharge summary or an interim summary if the claim is split.

(v) An emergency record, if admission was through the emergency room.

(vi) Operative reports, if applicable.

(vii) A labor and delivery room report, if applicable.

(e) That payment received by a hospital from a contractor is considered payment by the contractor of the contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third party payors or in situations covered by title 33, chapter 7, article 3.

(f) That a contractor shall pay for services rendered on and after October 1, 1997 under any reimbursement level according to paragraph 1 of this subsection subject to the following:

(i) If the hospital's bill is paid within thirty days of the date the bill was received, the contractor shall pay ninety-nine per cent of the rate.

(ii) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the contractor shall pay one hundred per cent of the rate.

(iii) If the hospital's bill is paid any time after sixty days of the date the bill was received, the contractor shall pay one hundred per cent of the rate plus a fee of one per cent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

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

J. If there is an insufficient number of, or an inadequate member capacity in, contracts awarded to contractors, the director, in order to deliver covered services to members enrolled or expected to be enrolled in the system within a county, may negotiate and award, without bid, a contract with a health care services organization holding a certificate of authority pursuant to title 20, chapter 4, article 9. The director shall require a health care services organization contracting under this subsection to comply with section 36-2906.01. The term of the contract shall not extend beyond the next bid and contract award process as provided in section 36-2906 and shall be no greater than capitation rates paid to contractors in the same county or counties pursuant to section 36-2906. Contracts awarded pursuant to this subsection are exempt from the requirements of title 41, chapter 23.

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

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

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

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

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

36-261. Children who have a chronic illness or physical disability; program

Subject to the availability of monies, the department shall establish and administer a program for children who have a chronic illness or physical disability or who are suffering from a condition that leads to a chronic illness or physical disability. The program shall provide for:

1. The development, extension and improvement of services for locating these children.
2. The evaluation of needs.
3. The gathering of statistical information.
4. A statewide information and referral service for children who have a chronic illness or physical disability to link those children and their families with local service providers.

**ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F19-1207)**

Title 9, Chapter 28, Article 11, Behavioral Health Services



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** January 14, 2020

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

**FROM:** Council Staff

**DATE:** November 29, 2019

**SUBJECT:** ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F19-1207)  
Title 9, Chapter 28, Article 11, Behavioral Health Services

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### **Summary**

This Five-Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS) relates to Title 9, Chapter 28, Article 11 regarding behavioral health services. This 5YRR was originally due in September 2014. However, AHCCCS received an extension of the deadline to January 2015. AHCCCS later received approval from the Council to reschedule this report pursuant to A.R.S. § 41-1056(H). The report is now before the Council.

The last 5YRR for these rules was approved by the Council in November 2009. In that 5YRR, AHCCCS proposed amending the following rules: R9-28-1101, R9-28-1102, R9-28-1104, and R9-28-1106. AHCCCS proposed to submit a rulemaking to address these amendments to the Council by September 2012. While a rulemaking package was not submitted to the Council by September 2012, it appears the applicable amendments were implemented in a later rulemaking which became effective January 4, 2015.

### **Proposed Action**

AHCCCS proposes to take no action on these rules.

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

Yes. AHCCCS cites to both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

AHCCCS provides health care services for qualifying Arizonans, including tribal members. Since the last 5YRR, there have not been any noted changes to the economic impact of the rules.

The stakeholders include: AHCCCS, AHCCCS members, AHCCCS tribal members, healthcare providers who contract with AHCCCS, the State, and the general public.

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 has reviewed the current rules and has determined they do not impose any additional burdens or costs to stakeholders. AHCCCS does not intend to make any additional changes to the rules.

4. **Has the agency received any written criticisms of the rules over the last five years?**

AHCCCS indicates it has not received any written criticism of the rules in the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

AHCCCS indicates the rules are clear, concise, understandable, consistent and effective.

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

AHCCCS indicate the rules are currently enforced as written.

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

AHCCCS indicates that the rules are not more stringent than 31 U.S.C. 3729-3733.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

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

**9. Conclusion**

AHCCCS indicates the rules are clear, concise, understandable, consistent, and effective. AHCCCS proposes to take not action regarding these rules. Council staff recommends approval of this report.

September 27, 2019

**VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)**

Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 28, Article 11, Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five Year Review Report of AHCCCS for Title 9, Chapter 28, Article 11 which is due on September 28, 2019.

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](mailto:nicole.fries@azahcccs.gov).

Sincerely,



Matthew Devlin  
Assistant Director

Attachments



No changes are proposed.

12. **Are the rules more stringent than corresponding federal laws?** Yes  No

The rules are not more stringent than 31 U.S.C. 3729-3733.

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**

No changes are proposed.

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

E. AHCCCS shall exempt the following income, resources, and property of Native Americans (NA) and Alaska Natives (AN) from estate recovery:

1. Income and resources from tribal land and other resources currently held in trust and judgment funds from the Indian Claims Commission or U.S. Claims Court;
2. Ownership interest in trust or non-trust property;
3. Ownership interests left as a remainder in an estate in rents, leases, royalties, or usage rights related to natural resources;
4. Any other ownership interests or rights in a property that has unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional life style according to applicable Tribal law or custom; and
5. Income left as a remainder in an estate derived from any property listed in subsection (E)(1) through (4), that was either collected by a NA, or by a Tribe or Tribal organization and distributed to a NA.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-912. Partial Recovery**

AHCCCS shall use the following factors in determining whether to seek a partial recovery of funds when an heir or devisee does not meet the requirements of R9-28-911 and requests a partial recovery:

1. Financial and medical hardship to the heir or devisee;
2. Income of the heir or devisee and whether the heir or devisee's household gross annual income is less than 100 percent of the FPL;
3. Resources of the heir or devisee;
4. Value and type of assets;
5. Amount of AHCCCS' claim against the estate; and
6. Whether other creditors have filed claims against the estate or have foreclosed on the property.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

**R9-28-913. Repealed****Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-914. Repealed****Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-915. Repealed****Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-916. Repealed****Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-917. Repealed****Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-918. Repealed****Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-919. Repealed****Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**ARTICLE 10. CIVIL MONETARY PENALTIES AND ASSESSMENTS****R9-28-1001. Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims**

AHCCCS shall use the provisions in 9 A.A.C. 22, Article 11 for the determination and collection of penalties, assessments, and penalties and assessments.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective June 9, 1998 (Supp. 98-2). Amended by final rulemaking at 10 A.A.R. 3065, effective September 11, 2004 (Supp. 04-3).

**R9-28-1002. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Repealed effective June 9, 1998 (Supp. 98-2).

**R9-28-1003. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Repealed effective June 9, 1998 (Supp. 98-2).

**R9-28-1004. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Repealed effective June 9, 1998 (Supp. 98-2).

**ARTICLE 11. BEHAVIORAL HEALTH SERVICES****R9-28-1101. General Requirements**

General requirements. The following general requirements apply to behavioral health services provided under this Article, and Chapter 22 subject to all exclusions and limitations.

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

1. Definitions. The definitions in A.A.C. R9-22-1201 and R9-22-101 apply to this Article, in addition to the following definitions:
  - “Case manager” means an individual responsible for coordinating the physical health services or behavioral health services provided to a patient at the health care institution.
  - “Contractor” means an ALTCS contractor or as previously known as program contractor.
  - “Cost avoid” means the same as in A.A.C. R9-22-1201.
  - “Intergovernmental agreement” or “IGA” means an agreement for services or joint or cooperative action between the Administration and a tribal contractor.
  - “Qualified behavioral health service provider” means a behavioral health service provider that meets the requirements of R9-28-1106.
  - “Tribal contractor” means a tribal organization (The Tribe) or urban Indian organization defined in 25 U.S.C. 1603 and recognized by CMS as meeting the requirements of 42 U.S.C. 1396d(b), that provides or is accountable for providing the services or delivering the items described in the intergovernmental agreement.
2. Case management. A tribal contractor shall provide case management services to FFS American Indian members living on or off-reservation as delineated in the IGA.
3. Reimbursement. For FFS American Indians, the Administration is exclusively responsible for providing reimbursement for covered behavioral health services that are authorized by a tribal contractor or the Administration under the intergovernmental agreement as specified in this Article. A contractor is exclusively responsible for providing reimbursement for covered behavioral health services that are authorized by a contractor as specified in this Article.
- C. A program or tribal contractor shall cooperate when a transition of care occurs and ensure that medical records are transferred in accordance with A.R.S. §§ 36-2932, 36-509, and R9-28-514 when a member transitions from:
  1. A behavioral health provider to another behavioral health provider,
  2. A RBHA or TRBHA to a contractor,
  3. A contractor or tribal contractor to a RBHA or TRBHA, or
  4. A contractor to a tribal contractor or vice versa.
- D. The Administration, a tribal contractor, or a contractor, as appropriate, shall authorize medical necessary behavioral health services for American Indian members.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Office of the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3122, effective January 4, 2015 (Supp. 14-4).

**R9-28-1103. Eligibility for Covered Services**

- A. Eligibility for covered services. A member determined eligible under A.R.S. § 36-2934 shall receive medically necessary covered services specified under Chapter 22, Article 2 and 12.
- B. Behavioral health services are covered as specified in Chapter 22, Article 2 and 12.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Office of the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3122, effective January 4, 2015 (Supp. 14-4).

**R9-28-1102. ALTCS Contractor or Tribal Contractor Responsibilities**

- A. ALTCS contractor. A contractor shall arrange for behavioral health services to all enrolled members, including American Indian members who are not enrolled with a tribal contractor.
- B. Tribal contractor. A tribal contractor shall provide behavioral health services to an American Indian member who is enrolled with a tribal contractor as prescribed in R9-28-1101. When a tribal contractor determines that an EPD American Indian member residing on a reservation needs behavioral health services under R9-28-415, the member shall receive services as authorized by the Administration or a tribal contractor under A.A.C. R9-22-1205 from any AHCCCS-registered provider.

**R9-28-1104. General Service Requirements**

- A. Services. Behavioral health services include both mental health and substance abuse services and are subject to the provisions under Chapter 22, Article 2 and 12.
- B. Enrollment of American Indian member. The Administration shall enroll an EPD American Indian member with a tribal contractor on a FFS basis if:
  1. The member lives on-reservation of an American Indian tribal organization that is an ALTCS tribal contractor, or

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

2. The member lived on-reservation of an American Indian tribal organization that is an ALTCS tribal contractor immediately before placement in an off-reservation Nursing Facility or an alternative HCBS setting.
- C. Services. A tribal contractor or the Administration may authorize behavioral health services for FFS American Indian members enrolled with a tribal contractor as delineated in the intergovernmental agreement.
- D. Enrollment of American Indian members off-reservation. Except as provided in R9-28-1104(B)(2), an EPD American Indian who resides off-reservation shall be enrolled with an ALTCS contractor to receive behavioral health services, including case management, under R9-28-415.
- E. Enrollment of developmentally disabled American Indian member. A developmentally disabled American Indian member who resides on or off-reservation shall be enrolled with the Department of Economic Security's Division of Developmental Disabilities under R9-28-414 and shall receive behavioral health services from the Department of Economic Security's Division of Developmental Disabilities.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993; amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 204, § 11, effective January 1, 1996; filed with the Office of the Secretary of State December 22, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3122, effective January 4, 2015 (Supp. 14-4).

**R9-28-1105. Scope of Behavioral Health Services**

Scope of Services. The provisions of A.A.C. R9-22-1205 are the scope of behavioral health services for a member under this Article.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Office of the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by exempt rulemaking at 8 A.A.R. 933, effective February 12, 2002 (Supp. 02-1). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Amended by

final rulemaking at 20 A.A.R. 3122, effective January 4, 2015 (Supp. 14-4).

**R9-28-1106. Standards for Service Providers**

- A. Applicability. The provisions of A.A.C. R9-22-1206 are the general provisions and standards for service providers. References in A.A.C. R9-22-1206 to ADHS/DBHS or to a RBHA apply to a contractor.
- B. The Administration or a contractor shall cost avoid any behavioral health service claims if the Administration or the contractor establishes the probable existence of first-party liability or third-party liability.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993 (Supp. 93-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3122, effective January 4, 2015 (Supp. 14-4).

**R9-28-1107. Repealed****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Repealed by final rulemaking at 20 A.A.R. 3122, effective January 4, 2015 (Supp. 14-4).

**R9-28-1108. Repealed****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1).

**ARTICLE 12. REPEALED**

*Article 12, consisting of Section R9-28-1201, repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004. The subject matter of Article 12 is now in 9 A.A.C. 34 (Supp. 04-1).*

**R9-28-1201. Repealed****Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1).

**ARTICLE 13. FREEDOM TO WORK**

*Article 13, consisting of Sections R9-28-1301 through R9-28-1324, made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4).*

**R9-28-1301. General Freedom to Work Requirements**

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.

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

A. The Arizona long-term care system is established. The system includes the management and delivery of hospitalization, medical care, institutional services and home and community based services to members through the administration, the program contractors and providers pursuant to this article together with federal participation under title XIX of the social security act. The director in the performance of all duties shall consider the use of existing programs, rules and procedures in the counties and department where appropriate in meeting federal requirements.

B. The administration has full operational responsibility for the system, which shall include the following:

1. Contracting with and certification of program contractors in compliance with all applicable federal laws.
2. Approving the program contractors' comprehensive service delivery plans pursuant to section 36-2940.
3. Providing by rule for the ability of the director to review and approve or disapprove program contractors' requests for proposals for providers and provider subcontracts.
4. Providing technical assistance to the program contractors.
5. Developing a uniform accounting system to be implemented by program contractors and providers of institutional services and home and community based services.
6. Conducting quality control on eligibility determinations and preadmission screenings.
7. Establishing and managing a comprehensive system for assuring the quality of care delivered by the system as required by federal law.
8. Establishing an enrollment system.
9. Establishing a member case management tracking system.
10. Establishing and managing a method to prevent fraud by applicants, members, eligible persons, program contractors, providers and noncontracting providers as required by federal law.
11. Coordinating benefits as provided in section 36-2946.
12. Establishing standards for the coordination of services.
13. Establishing financial and performance audit requirements for program contractors, providers and noncontracting providers.
14. Prescribing remedies as required pursuant to 42 United States Code section 1396r. These remedies may include the appointment of temporary management by the director, acting in collaboration with the director of the department of health services, in order to continue operation of a nursing care institution providing services pursuant to this article.
15. Establishing a system to implement medical child support requirements, as required by federal law. The administration may enter into an intergovernmental agreement with the department of economic security to implement this paragraph.
16. Establishing requirements and guidelines for the review of trusts for the purposes of establishing eligibility for the system pursuant to section 36-2934.01 and posteligibility treatment of income pursuant to subsection L of this section.

17. Accepting the delegation of authority from the department of health services to enforce rules that prescribe minimum certification standards for adult foster care providers pursuant to section 36-410, subsection B. The administration may contract with another entity to perform the certification functions.

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

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

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

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

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

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

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

I. The director shall:

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

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

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

J. The director may apply for federal monies available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state monies appropriated for

the administration of the system may be used as matching monies to secure federal monies pursuant to this subsection.

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

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

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

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

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

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

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

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

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

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



36-2907. Covered health and medical services; modifications; related delivery of service requirements; definition

A. Subject to the limitations and exclusions specified in this section, contractors shall provide the following medically necessary health and medical services:

1. Inpatient hospital services that are ordinarily furnished by a hospital for the care and treatment of inpatients and that are provided under the direction of a physician or a primary care practitioner. For the purposes of this section, inpatient hospital services exclude services in an institution for tuberculosis or mental diseases unless authorized under an approved section 1115 waiver.
2. Outpatient health services that are ordinarily provided in hospitals, clinics, offices and other health care facilities by licensed health care providers. Outpatient health services include services provided by or under the direction of a physician or a primary care practitioner, including occupational therapy.
3. Other laboratory and X-ray services ordered by a physician or a primary care practitioner.
4. Medications that are ordered on prescription by a physician or a dentist licensed pursuant to title 32, chapter 11. Persons who are dually eligible for title XVIII and title XIX services must obtain available medications through a medicare licensed or certified medicare advantage prescription drug plan, a medicare prescription drug plan or any other entity authorized by medicare to provide a medicare part D prescription drug benefit.
5. Medical supplies, durable medical equipment, insulin pumps and prosthetic devices ordered by a physician or a primary care practitioner. Suppliers of durable medical equipment shall provide the administration with complete information about the identity of each person who has an ownership or controlling interest in their business and shall comply with federal bonding requirements in a manner prescribed by the administration.
6. For persons who are at least twenty-one years of age, treatment of medical conditions of the eye, excluding eye examinations for prescriptive lenses and the provision of prescriptive lenses.
7. Early and periodic health screening and diagnostic services as required by section 1905(r) of title XIX of the social security act for members who are under twenty-one years of age.
8. Family planning services that do not include abortion or abortion counseling. If a contractor elects not to provide family planning services, this election does not disqualify the contractor from delivering all other covered health and medical services under this chapter. In that event, the administration may contract directly with another contractor, including an outpatient surgical center or a noncontracting provider, to deliver family planning services to a member who is enrolled with the contractor that elects not to provide family planning services.
9. Podiatry services that are performed by a podiatrist who is licensed pursuant to title 32, chapter 7 and ordered by a primary care physician or primary care practitioner.
10. Nonexperimental transplants approved for title XIX reimbursement.
11. For persons who are at least twenty-one years of age, emergency dental care and extractions in an annual amount of not more than one thousand dollars per member.
12. Ambulance and nonambulance transportation, except as provided in subsection G of this section.
13. Hospice care.
14. Orthotics, if all of the following apply:

(a) The use of the orthotic is medically necessary as the preferred treatment option consistent with medicare guidelines.

(b) The orthotic is less expensive than all other treatment options or surgical procedures to treat the same diagnosed condition.

(c) The orthotic is ordered by a physician or primary care practitioner.

B. The limitations and exclusions for health and medical services provided under this section are as follows:

1. Circumcision of newborn males is not a covered health and medical service.

2. For eligible persons who are at least twenty-one years of age:

(a) Outpatient health services do not include speech therapy.

(b) Prosthetic devices do not include hearing aids, dentures, bone-anchored hearing aids or cochlear implants. Prosthetic devices, except prosthetic implants, may be limited to twelve thousand five hundred dollars per contract year.

(c) Percussive vests are not covered health and medical services.

(d) Durable medical equipment is limited to items covered by medicare.

(e) Nonexperimental transplants do not include pancreas-only transplants.

(f) Bariatric surgery procedures, including laparoscopic and open gastric bypass and restrictive procedures, are not covered health and medical services.

C. The system shall pay noncontracting providers only for health and medical services as prescribed in subsection A of this section and as prescribed by rule.

D. The director shall adopt rules necessary to limit, to the extent possible, the scope, duration and amount of services, including maximum limitations for inpatient services that are consistent with federal regulations under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)). To the extent possible and practicable, these rules shall provide for the prior approval of medically necessary services provided pursuant to this chapter.

E. The director shall make available home health services in lieu of hospitalization pursuant to contracts awarded under this article. For the purposes of this subsection, "home health services" means the provision of nursing services, home health aide services or medical supplies, equipment and appliances that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on the orders of a physician or a primary care practitioner. Home health agencies shall comply with the federal bonding requirements in a manner prescribed by the administration.

F. The director shall adopt rules for the coverage of behavioral health services for persons who are eligible under section 36-2901, paragraph 6, subdivision (a). The administration acting through the regional behavioral health authorities shall establish a diagnostic and evaluation program to which other state agencies shall refer children who are not already enrolled pursuant to this chapter and who may be in need of behavioral health services. In addition to an evaluation, the administration acting through regional behavioral health authorities shall also identify children who may be eligible under section 36-2901, paragraph 6, subdivision (a) or section 36-2931, paragraph 5 and shall refer the children to the appropriate agency responsible for making the final eligibility determination.

G. The director shall adopt rules for the provision of transportation services and rules providing for copayment by members for transportation for other than emergency purposes. Subject to approval by the centers for

medicare and medicaid services, nonemergency medical transportation shall not be provided except for stretcher vans and ambulance transportation. Prior authorization is required for transportation by stretcher van and for medically necessary ambulance transportation initiated pursuant to a physician's direction. Prior authorization is not required for medically necessary ambulance transportation services rendered to members or eligible persons initiated by dialing telephone number 911 or other designated emergency response systems.

H. The director may adopt rules to allow the administration, at the director's discretion, to use a second opinion procedure under which surgery may not be eligible for coverage pursuant to this chapter without documentation as to need by at least two physicians or primary care practitioners.

I. If the director does not receive bids within the amounts budgeted or if at any time the amount remaining in the Arizona health care cost containment system fund is insufficient to pay for full contract services for the remainder of the contract term, the administration, on notification to system contractors at least thirty days in advance, may modify the list of services required under subsection A of this section for persons defined as eligible other than those persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). The director may also suspend services or may limit categories of expense for services defined as optional pursuant to title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) for persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). Such reductions or suspensions do not apply to the continuity of care for persons already receiving these services.

J. Additional, reduced or modified hospitalization and medical care benefits may be provided under the system to enrolled members who are eligible pursuant to section 36-2901, paragraph 6, subdivision (b), (c), (d) or (e).

K. All health and medical services provided under this article shall be provided in the geographic service area of the member, except:

1. Emergency services and specialty services provided pursuant to section 36-2908.

2. That the director may permit the delivery of health and medical services in other than the geographic service area in this state or in an adjoining state if the director determines that medical practice patterns justify the delivery of services or a net reduction in transportation costs can reasonably be expected. Notwithstanding the definition of physician as prescribed in section 36-2901, if services are procured from a physician or primary care practitioner in an adjoining state, the physician or primary care practitioner shall be licensed to practice in that state pursuant to licensing statutes in that state similar to title 32, chapter 13, 15, 17 or 25 and shall complete a provider agreement for this state.

L. Covered outpatient services shall be subcontracted by a primary care physician or primary care practitioner to other licensed health care providers to the extent practicable for purposes including, but not limited to, making health care services available to underserved areas, reducing costs of providing medical care and reducing transportation costs.

M. The director shall adopt rules that prescribe the coordination of medical care for persons who are eligible for system services. The rules shall include provisions for the transfer of patients, the transfer of medical records and the initiation of medical care.

N. For the purposes of this section, "ambulance" has the same meaning prescribed in section 36-2201.

**ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F19-1208)**

Title 9, Chapter 31, Article 12, Behavioral Health Services



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** January 14, 2020

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

**FROM:** Council Staff

**DATE:** November 29, 2019

**SUBJECT:** ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F19-1208)  
Title 9, Chapter 31, Article 12, Behavioral Health Services

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### Summary

This Five-Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS) relates to Title 9, Chapter 31, Article 12 regarding behavioral health services. This 5YRR was originally due in September 2014. However, AHCCCS received an extension of the deadline to January 2015. AHCCCS later received approval from the Council to reschedule this report pursuant to A.R.S. § 41-1056(H). The report is now before the Council.

The last 5YRR for these rules was approved by the Council in November 2009. In that 5YRR, AHCCCS proposed amending the following rules: R9-31-1201, R9-31-1202, R9-31-1204, and R9-31-1207. AHCCCS proposed to submit a rulemaking to address these amendments to the Council by September 2012. However, AHCCCS indicates that in the intervening years, the Division of Behavioral Health came under the jurisdiction of AHCCCS and a follow-up rulemaking to that transition repealed all rules in Article 12 except R9-31-1201, effective January 4, 2015.

### Proposed Action

AHCCCS proposes to take no action on these rules.

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

Yes. AHCCCS cites to both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

AHCCCS reports that no changes were proposed. As such, there is no economic impact comparison to report.

Stakeholders include AHCCCS, AHCCCS members, healthcare providers contracted with AHCCCS, the State, and the general public.

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 reports that no changes were proposed. As such, there is no analysis of the probable benefits and costs to those who are regulated to report.

4. **Has the agency received any written criticisms of the rules over the last five years?**

AHCCCS indicates it has not received any written criticism of the rules in the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

AHCCCS indicates the rules are clear, concise, understandable, consistent and effective.

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

AHCCCS indicate the rules are currently enforced as written.

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

The rules are not more stringent than the corresponding federal law, 42 C.F.R. 438.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

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

**9. Conclusion**

AHCCCS indicates the rules are clear, concise, understandable, consistent, and effective. AHCCCS proposes to take not action regarding these rules. Council staff recommends approval of this report.

September 27, 2019

**VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)**

Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 31, Article 12, Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five Year Review Report of AHCCCS for Title 9, Chapter 31, Article 12 which is due on September 28, 2019.

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](mailto:nicole.fries@azahcccs.gov).

Sincerely,



Matthew Devlin  
Assistant Director

Attachments



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:

No changes are proposed.

12. Are the rules more stringent than corresponding federal laws? Yes  No

The rules are not more stringent than 42 C.F.R. 438.

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

No changes are proposed.

repealed by final rulemaking at 10 A.A.R. 822, effective April 3, 2004 (Supp. 04-1).

#### **ARTICLE 9. REPEALED**

##### **R9-31-901. Repealed**

###### **Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed by final rulemaking at 12 A.A.R. 4494, effective January 6, 2007 (Supp. 06-4).

#### **ARTICLE 10. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES**

##### **R9-31-1001. Definitions**

The definitions in A.R.S. § 36-2981, A.A.C. R9-22-1001, and A.A.C. R9-31-101 apply to this Article.

###### **Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Amended by exempt rulemaking at 5 A.A.R. 3670, effective September 10, 1999 (Supp. 99-3). Section repealed; new Section made by final rulemaking at 10 A.A.R. 1152, effective May 1, 2004 (Supp. 04-1).

##### **R9-31-1002. General Provisions**

AHCCCS is the payor of last resort unless specifically prohibited by applicable state or federal law.

###### **Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed; new Section made by final rulemaking at 10 A.A.R. 1152, effective May 1, 2004 (Supp. 04-1).

##### **R9-31-1003. Cost Avoidance**

The provisions in A.A.C. R9-22-1003 apply to this Section except:

1. Replace the reference to “Article 2,” with 9 A.A.C. 31, Article 2; and
2. This Section applies to Title XXI covered services.

###### **Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1152, effective May 1, 2004 (Supp. 04-1).

##### **R9-31-1004. Member Participation**

The provisions in A.A.C. R9-22-1004 apply to this Section.

###### **Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1152, effective May 1, 2004 (Supp. 04-1).

##### **R9-31-1005. Collections**

The provisions in A.A.C. R9-22-1005 apply to this Section except:

1. Replace the reference to “Article 2,” with 9 A.A.C. 31, Article 2;
2. This Section applies to Title XXI fee-for-service and reinsurance payments.

###### **Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1152, effective May 1, 2004 (Supp. 04-1).

##### **R9-31-1006. AHCCCS Monitoring Responsibilities**

With the exception of long-term care insurance, the provisions in A.A.C. R9-22-1006 apply to this Section.

###### **Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1152, effective May 1, 2004 (Supp. 04-1).

##### **R9-31-1007. Notification for Perfection, Recording, and Assignment of Title XXI liens**

The provisions in A.A.C. R9-22-1007 apply to this Section.

###### **Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1152, effective May 1, 2004 (Supp. 04-1).

##### **R9-31-1008. Notification Information for Liens**

The provisions in A.A.C. R9-22-1008 apply to this Section.

###### **Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1152, effective May 1, 2004 (Supp. 04-1).

##### **R9-31-1009. Notification of Health Insurance Information**

The provisions in A.A.C. R9-22-1009 apply to this Section.

###### **Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1152, effective May 1, 2004 (Supp. 04-1).

#### **ARTICLE 11. CIVIL MONETARY PENALTIES AND ASSESSMENTS**

##### **R9-31-1101. Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims**

AHCCCS shall use the provisions in 9 A.A.C. 22, Article 11 for the determination and collection of penalties, assessments, and penalties and assessments.

###### **Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 3067, effective September 11, 2004 (Supp. 04-3).

##### **R9-31-1102. Repealed**

###### **Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed by final rulemaking at 10 A.A.R. 3067, effective September 11, 2004 (Supp. 04-3).

##### **R9-31-1103. Repealed**

###### **Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed by final rulemaking at 10 A.A.R. 3067, effective September 11, 2004 (Supp. 04-3).

##### **R9-31-1104. Repealed**

###### **Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed by final rulemaking at 10 A.A.R. 3067, effective September 11, 2004 (Supp. 04-3).

#### **ARTICLE 12. BEHAVIORAL HEALTH SERVICES**

##### **R9-31-1201. Requirements**

The requirements, services and definitions under Chapter 22, Article 2 and Article 12 apply to behavioral health services provided under this Article.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed; new Section adopted by exempt rulemaking at 6 A.A.R. 282, effective December 16, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4740, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1103, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3128, effective January 4, 2015 (Supp. 14-4).

**R9-31-1202. Repealed****Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed; new Section adopted by exempt rulemaking at 6 A.A.R. 282, effective December 16, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4740, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1103, effective May 5, 2007 (Supp. 07-1). Section repealed by final rulemaking at 20 A.A.R. 3128, effective January 4, 2015 (Supp. 14-4).

**R9-31-1203. Repealed****Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed; new Section adopted by exempt rulemaking at 6 A.A.R. 282, effective December 16, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4740, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1103, effective May 5, 2007 (Supp. 07-1). Section repealed by final rulemaking at 20 A.A.R. 3128, effective January 4, 2015 (Supp. 14-4).

**R9-31-1204. Repealed****Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed; new Section adopted by exempt rulemaking at 6 A.A.R. 282, effective December 16, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4740, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1103, effective May 5, 2007 (Supp. 07-1). Section repealed by final rulemaking at 20 A.A.R. 3128, effective January 4, 2015 (Supp. 14-4).

**R9-31-1205. Repealed****Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed; new Section adopted by exempt rulemaking at 6 A.A.R. 282, effective December 16, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4740, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 5846, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 13 A.A.R. 1103, effective May 5, 2007 (Supp. 07-1). Section repealed by final rulemaking at 20 A.A.R. 3128, effective January 4, 2015 (Supp. 14-4).

**R9-31-1206. Repealed****Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed; new Section adopted by exempt rulemaking at 6 A.A.R. 282, effective December 16, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4740, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1103, effective May 5, 2007 (Supp. 07-1). Section repealed by final rulemaking at 20 A.A.R. 3128, effective January 4, 2015 (Supp. 14-4).

**R9-31-1207. Repealed****Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed; new Section adopted by exempt rulemaking at 6 A.A.R. 282, effective December 16, 1999 (Supp. 99-4). Amended by final rulemaking at 7 A.A.R. 5846, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 13 A.A.R. 1103, effective May 5, 2007 (Supp. 07-1). Section repealed by final rulemaking at 20 A.A.R. 3128, effective January 4, 2015 (Supp. 14-4).

**R9-31-1208. Repealed****Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 282, effective December 16, 1999 (Supp. 99-4). Amended by exempt rulemaking at 6 A.A.R. 3205, effective August 4, 2000 (Supp. 00-3). Section repealed by final rulemaking at 13 A.A.R. 1103, effective May 5, 2007 (Supp. 07-1).

**ARTICLE 13. REPEALED**

*Article 13, consisting of Sections R9-31-1301 through R9-31-1309, repealed by final rulemaking at 10 A.A.R. 822, effective April 3, 2004. The subject matter of Article 13 is now in 9 A.A.C. 34 (Supp. 04-1).*

**R9-31-1301. Repealed****Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Amended by exempt rulemaking at 6 A.A.R. 3205, effective August 4, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 822, effective April 3, 2004 (Supp. 04-1).

**R9-31-1302. Repealed****Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Amended by exempt rulemaking at 6 A.A.R. 3205, effective August 4, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 822, effective April 3, 2004 (Supp. 04-1).

**R9-31-1303. Repealed****Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Amended by exempt rulemaking at 6 A.A.R. 3205, effective August

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

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

B. The director shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and

medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.

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

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

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

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

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

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

ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

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

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

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

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

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

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

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

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall

include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

or I. The director may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

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

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

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

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

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

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.

2. A copayment of five dollars for each physician office visit.
3. A copayment of ten dollars for each urgent care visit.
4. A copayment of thirty dollars for each emergency department visit.

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

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

36-2907. Covered health and medical services; modifications; related delivery of service requirements; definition

A. Subject to the limitations and exclusions specified in this section, contractors shall provide the following medically necessary health and medical services:

1. Inpatient hospital services that are ordinarily furnished by a hospital for the care and treatment of inpatients and that are provided under the direction of a physician or a primary care practitioner. For the purposes of this section, inpatient hospital services exclude services in an institution for tuberculosis or mental diseases unless authorized under an approved section 1115 waiver.
2. Outpatient health services that are ordinarily provided in hospitals, clinics, offices and other health care facilities by licensed health care providers. Outpatient health services include services provided by or under the direction of a physician or a primary care practitioner, including occupational therapy.
3. Other laboratory and X-ray services ordered by a physician or a primary care practitioner.
4. Medications that are ordered on prescription by a physician or a dentist licensed pursuant to title 32, chapter 11. Persons who are dually eligible for title XVIII and title XIX services must obtain available medications through a medicare licensed or certified medicare advantage prescription drug plan, a medicare prescription drug plan or any other entity authorized by medicare to provide a medicare part D prescription drug benefit.
5. Medical supplies, durable medical equipment, insulin pumps and prosthetic devices ordered by a physician or a primary care practitioner. Suppliers of durable medical equipment shall provide the administration with complete information about the identity of each person who has an ownership or controlling interest in their business and shall comply with federal bonding requirements in a manner prescribed by the administration.
6. For persons who are at least twenty-one years of age, treatment of medical conditions of the eye, excluding eye examinations for prescriptive lenses and the provision of prescriptive lenses.
7. Early and periodic health screening and diagnostic services as required by section 1905(r) of title XIX of the social security act for members who are under twenty-one years of age.
8. Family planning services that do not include abortion or abortion counseling. If a contractor elects not to provide family planning services, this election does not disqualify the contractor from delivering all other covered health and medical services under this chapter. In that event, the administration may contract directly with another contractor, including an outpatient surgical center or a noncontracting provider, to deliver family planning services to a member who is enrolled with the contractor that elects not to provide family planning services.
9. Podiatry services that are performed by a podiatrist who is licensed pursuant to title 32, chapter 7 and ordered by a primary care physician or primary care practitioner.
10. Nonexperimental transplants approved for title XIX reimbursement.
11. For persons who are at least twenty-one years of age, emergency dental care and extractions in an annual amount of not more than one thousand dollars per member.
12. Ambulance and nonambulance transportation, except as provided in subsection G of this section.
13. Hospice care.
14. Orthotics, if all of the following apply:

(a) The use of the orthotic is medically necessary as the preferred treatment option consistent with medicare guidelines.

(b) The orthotic is less expensive than all other treatment options or surgical procedures to treat the same diagnosed condition.

(c) The orthotic is ordered by a physician or primary care practitioner.

B. The limitations and exclusions for health and medical services provided under this section are as follows:

1. Circumcision of newborn males is not a covered health and medical service.

2. For eligible persons who are at least twenty-one years of age:

(a) Outpatient health services do not include speech therapy.

(b) Prosthetic devices do not include hearing aids, dentures, bone-anchored hearing aids or cochlear implants. Prosthetic devices, except prosthetic implants, may be limited to twelve thousand five hundred dollars per contract year.

(c) Percussive vests are not covered health and medical services.

(d) Durable medical equipment is limited to items covered by medicare.

(e) Nonexperimental transplants do not include pancreas-only transplants.

(f) Bariatric surgery procedures, including laparoscopic and open gastric bypass and restrictive procedures, are not covered health and medical services.

C. The system shall pay noncontracting providers only for health and medical services as prescribed in subsection A of this section and as prescribed by rule.

D. The director shall adopt rules necessary to limit, to the extent possible, the scope, duration and amount of services, including maximum limitations for inpatient services that are consistent with federal regulations under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)). To the extent possible and practicable, these rules shall provide for the prior approval of medically necessary services provided pursuant to this chapter.

E. The director shall make available home health services in lieu of hospitalization pursuant to contracts awarded under this article. For the purposes of this subsection, "home health services" means the provision of nursing services, home health aide services or medical supplies, equipment and appliances that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on the orders of a physician or a primary care practitioner. Home health agencies shall comply with the federal bonding requirements in a manner prescribed by the administration.

F. The director shall adopt rules for the coverage of behavioral health services for persons who are eligible under section 36-2901, paragraph 6, subdivision (a). The administration acting through the regional behavioral health authorities shall establish a diagnostic and evaluation program to which other state agencies shall refer children who are not already enrolled pursuant to this chapter and who may be in need of behavioral health services. In addition to an evaluation, the administration acting through regional behavioral health authorities shall also identify children who may be eligible under section 36-2901, paragraph 6, subdivision (a) or section 36-2931, paragraph 5 and shall refer the children to the appropriate agency responsible for making the final eligibility determination.

G. The director shall adopt rules for the provision of transportation services and rules providing for copayment by members for transportation for other than emergency purposes. Subject to approval by the centers for

medicare and medicaid services, nonemergency medical transportation shall not be provided except for stretcher vans and ambulance transportation. Prior authorization is required for transportation by stretcher van and for medically necessary ambulance transportation initiated pursuant to a physician's direction. Prior authorization is not required for medically necessary ambulance transportation services rendered to members or eligible persons initiated by dialing telephone number 911 or other designated emergency response systems.

H. The director may adopt rules to allow the administration, at the director's discretion, to use a second opinion procedure under which surgery may not be eligible for coverage pursuant to this chapter without documentation as to need by at least two physicians or primary care practitioners.

I. If the director does not receive bids within the amounts budgeted or if at any time the amount remaining in the Arizona health care cost containment system fund is insufficient to pay for full contract services for the remainder of the contract term, the administration, on notification to system contractors at least thirty days in advance, may modify the list of services required under subsection A of this section for persons defined as eligible other than those persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). The director may also suspend services or may limit categories of expense for services defined as optional pursuant to title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) for persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). Such reductions or suspensions do not apply to the continuity of care for persons already receiving these services.

J. Additional, reduced or modified hospitalization and medical care benefits may be provided under the system to enrolled members who are eligible pursuant to section 36-2901, paragraph 6, subdivision (b), (c), (d) or (e).

K. All health and medical services provided under this article shall be provided in the geographic service area of the member, except:

1. Emergency services and specialty services provided pursuant to section 36-2908.

2. That the director may permit the delivery of health and medical services in other than the geographic service area in this state or in an adjoining state if the director determines that medical practice patterns justify the delivery of services or a net reduction in transportation costs can reasonably be expected. Notwithstanding the definition of physician as prescribed in section 36-2901, if services are procured from a physician or primary care practitioner in an adjoining state, the physician or primary care practitioner shall be licensed to practice in that state pursuant to licensing statutes in that state similar to title 32, chapter 13, 15, 17 or 25 and shall complete a provider agreement for this state.

L. Covered outpatient services shall be subcontracted by a primary care physician or primary care practitioner to other licensed health care providers to the extent practicable for purposes including, but not limited to, making health care services available to underserved areas, reducing costs of providing medical care and reducing transportation costs.

M. The director shall adopt rules that prescribe the coordination of medical care for persons who are eligible for system services. The rules shall include provisions for the transfer of patients, the transfer of medical records and the initiation of medical care.

N. For the purposes of this section, "ambulance" has the same meaning prescribed in section 36-2201.

**BOARD OF MASSAGE THERAPY (F19-1004)**

Title 4, Chapter 15, Articles 1 through 4



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** October 1, 2019

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

**FROM:** Council Staff

**DATE:** September 9, 2019

**SUBJECT: BOARD OF MASSAGE THERAPY (F19-1004)**  
Title 4, Chapter 15, Articles 1 through 4.

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This Five Year Review Report (5YRR) from the Board of Massage Therapy relates to rules in Title 4, Professions and Occupations, Chapter 15, Board of Massage Therapy. The rules cover the following:

- **Article 1** - General Provisions
- **Article 2** - Licensing
- **Article 3** - Continuing Education
- **Article 4** - Regulatory Provisions

In the previous 5YRR for these rules, the Board indicated it would amend R4-15-102 and R4-15-203. The Board submitted a rulemaking to amend both rules, which was approved by the Council on January 5, 2010.

### **Proposed Action**

The Board is proposing to amend its rules to improve their clarity, conciseness, understandability and effectiveness. The Board is proposing to complete a rulemaking that addresses the issues identified in the report by the end of 2020.

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

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

For all the rules in Articles 1 through 3, the economic, small business, and consumer impact statement (EIS) from the most recent rulemaking in 2014 was not available for review. For the one rule in Article 4, the economic, small business, and consumer impact statement (EIS) from the most recent rulemaking in 2006 was also not available for Review.

The Board currently licenses 10,327 individuals. During FY2019, the Board received new applications from 1,124 individuals and received 78 complaints. The Board office employs five FTE individuals. During FY2019, the office collected \$535,142 in fees and was appropriated \$460,900.

The stakeholders include the Board, licensees, massage service related businesses, and the public.

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 has determined that the rules under review provide the least intrusive and least costly method of achieving this regulatory objective. The Board believes that applicants have determined for themselves that the cost and burden of licensure are outweighed by the benefit of being able to be employed as a massage therapist in this state.

4. **Has the agency received any written criticisms of the rules over the last five years?**

Yes. The Board indicates it received two comments.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. For the reasons specified in the report, the Department indicates that the following rules could be amended to improve their clarity, conciseness, understandability, effectiveness, and consistency with other rules and statutes:

- **R4-15-201** - Qualifications; Application for a Regular License
- **R4-15-303** - Documentation of Completion of Continuing Education
- **R4-15-203** - Application for a License by Reciprocity

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

Yes. For the reasons specified in the report, the Board indicates the following rules are not enforced as written:

- R4-15-102(1)
- R4-15-201(B)(1)
- R4-15-203 (1)(c)
- R4-15-201(B)

**7. 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. There is no corresponding federal law.

**8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

These rules require the issuance of licenses. Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a license, the agency shall use a general permit. However, an agency may use an alternative type of license if specifically authorized by state statute. *See* A.R.S. § 41-1037(A)(2).

The Board indicates that the licenses issued are individualized licenses rather than general permits, but are specifically authorized by A.R.S. § 32-4221 and 32-4255. Therefore, the Board is in compliance with A.R.S. § 41-1037.

**9. Conclusion**

The Board is proposing to complete a rulemaking by the end of 2020 to address the issues addressed in the report. Council staff recommends approval of this report.



Douglas A. Ducey,  
Governor

# Arizona State Board of Massage Therapy

“Protecting the Public’s Health”

Tom Augherton  
Executive Director  
1740 W. Adams, Suite 3401  
Phoenix, Arizona 85007  
(602) 542-8604  
E: [info@massageboard.az.gov](mailto:info@massageboard.az.gov)  
W: [www.massageboard.az.gov](http://www.massageboard.az.gov)

August 1, 2019

## **Board Members**

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### **Vice Chair**

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**Intake Specialist**

April M. Romero

**Licensing/Program  
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Andrew White

**Senior Board  
Investigator**

Tony Wilcox

**Licensing/Operations  
Specialist**

VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)  
Nicole Sornsin, Chair  
Governor’s Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

RE: Board of Massage Therapy  
4 A.A.C. 15, Articles 1 through 4  
Five-year-review Report

Dear Ms Sornsin:

The Five-year-review Report of the Arizona Board of Massage Therapy for 4 A.A.C. 15, Articles 1 through 4, due at the end of June 2019, is enclosed. This report updates and replaces the report previously submitted by the Board.

The Board of Massage Therapy certifies it is in compliance with A.R.S. § 41-1091.

For questions about this report, please contact Tom Augherton at 602-542-8217 or [tom.augherton@massageboard.az.gov](mailto:tom.augherton@massageboard.az.gov).

Sincerely,

Tom Augherton  
Executive Director

# Five-year-review Report

## A.A.C. Title 4. Professions and Occupations

### Chapter 15. Board of Massage Therapy

#### Articles 1-4

#### Submitted for September 2019

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

General Statutory Authority: A.R.S. § 32-4203(A)(7)

Specific Statutory Authority:

R4-15-101. Definitions: A.R.S. § 32-4203(A)(7)

R4-15-102. Fees: A.R.S. §§ 32-4222(A)(6) and 32-4227

R4-15-103. Ethical Standards: A.R.S. § 32-4203(A)(6)

R4-15-201. Qualifications; Application for a Regular License: A.R.S. §§ 32-4203(A) and (B) and 32-4222

R4-15-203. Application for a License by Reciprocity: A.R.S. § 32-4223

R4-15-204. Board-recognized School: A.R.S. §§ 32-4201(2), 32-4203(A)(5), 32-4228

R4-15-205. Application for Renewal of License: A.R.S. § 32-4225

R4-15-207. Licensing Time-frames: A.R.S. §§ 41-1072 through 41-1077

Table 1. Licensing Time-frames (in Days): A.R.S. §§ 41-1072 through 41-1077

R4-15-301. Required Continuing Education Hours: A.R.S. §§ 32-4203(A)(5) and 32-4225

R4-15-302. Approval of Continuing Education: A.R.S. § 32-4225

R4-15-303. Documentation of Completion of Continuing Education: A.R.S. § 32-4225

R4-15-401. Rehearing or Review of Board's Decision: A.R.S. § 41-1092.09

**2. The objective of each rule:**

Rule	Objective
R4-15-101. 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.
R4-15-102. Fees	The objective of the rule is to specify the fees the Board charges for its licensing activities.
R4-15-103. Ethical Standards	The objective of the rule is to protect the public by establishing ethical standards with which a licensee must conform.
R4-15-201. Qualifications;	The objective of the rule is to specify the content of an application for a license

Application for a Regular License	including information required to be submitted directly to the Board by third parties.
R4-15-203. Application for a License by Reciprocity	The objective of the rule is to specify the requirements for obtaining a license by reciprocity.
R4-15-204. Board-recognized School	The objective of the rule is to identify schools the Board recognizes and specify procedures for other schools to obtain recognition.
R4-15-205. Application for Renewal of License	The objective of this rule is to specify the requirements for renewal of a license.
R4-15-207. Licensing Time-frames	The objective of the rule is to specify the time frames within which the Board will act on a license application.
Table 1.Licensing Time-frames (in Days)	The objective of the rule is to specify in table form the time frames within which the Board will act on a license application.
R4-15-301. Required Continuing Education Hours	The objective of the rule is to specify the number of hours of continuing education required for license renewal and the manner in which the hours must be obtained.
R4-15-302. Approval of Continuing Education	The objective of the rule is to specify continuing education activities that are approved by the Board.
R4-15-303. Documentation of Completion of Continuing Education	The objective of the rule is to provide notice to licensees that the Board will audit compliance with the continuing education requirement.
R4-15-401. Rehearing or Review of Board's Decision	The objective of the rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision. This enables a licensee to know how to exhaust the licensee's administrative remedies before making application for judicial review under A.R.S. § 12-901.

**3. Are the rules effective in achieving their objectives?**

**Mostly yes**

Rule	Explanation
R4-15-201(C)	The passing scores on the English proficiency examinations are unnecessarily high. This encourages many applicants to avoid the examination by falsely indicating their first language is English. The Board has no way of knowing this is a false answer and no enforcement recourse.

R4-15-302(1)	As soon as the FSMTB (Federation of State Massage Therapy Boards) begins to offer or approve continuing education, the Board needs to add it as an accepted provider of continuing education.
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4. **Are the rules consistent with other rules and statutes?** **Mostly yes**

Rule	Explanation
R4-15-201(B)(1)(p) and R4-15-203(1)(c)	These subsections require the signature on an application to be notarized. However, A.R.S., § 32-4224(A) requires the application to be filed under oath or affirmation, which is different from notarization.
R4-15-203	This Section, which deals with reciprocity, appears to be inconsistent with the recently enacted A.R.S. § 32-4302 regarding reciprocity for spouses of active duty members of the armed forces accompanying the member to this state. The Board will assess the inconsistency further after receiving legal guidance.

5. **Are the rules enforced as written?** **Mostly yes**

Rule	Explanation
R4-15-102(1)	The subsection is inconsistent with information on the Board’s website. The rule does not include the \$22 charged at the time of application for processing fingerprints for a criminal background check. It would be more accurate to list the fingerprint processing fee separate from the application fee.
R4-15-201(B)(1)(p) and R4-15-203(1)(c)	These subsections require the signature on an application to be notarized. This is inconsistent with Board practice. The Board has not required notarization since May 2018.
R4-12-201(B)	The application form is not consistent with rule. For example, the Board does not ask an applicant for information regarding the applicant’s weight, height, eye color, or race.

6. **Are the rules clear, concise, and understandable?** **Mostly yes**

Rule	Explanation
R4-15-201(A)(1)	The time restriction in this subsection is no longer applicable.
R4-15-303	The heading of this Section does not accurately describe its content.

7. **Has the agency received written criticisms of the rules within the last five years?** **Yes**

Rule	Explanation
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R4-15-201(A)(2)	The commenter complained the 700 classroom and clinical hours of supervised instruction are not in statute. The Board respectfully disagrees. A.R.S. § 32-4222(C) authorizes the Board to increase the minimum number of classroom hours of supervised instruction at a Board-recognized school that an applicant must complete successfully.
R4-15-301(B)	The comment suggests a licensee should be able to obtain all rather than only half the required continuing education from distance learning. The Board respectfully disagrees because massage therapy is, by definition, a hands-on skill requiring in-person interaction.

**8. Economic, small business, and consumer impact comparison:**

All the rules in Articles 1 through 3 were amended or made in a rulemaking that went into effect on August 5, 2014 (20 A.A.R. 2246). The economic, small business, and consumer impact statement prepared at that time was not available for review. The one rule in Article 4, Rehearing or Review of Board’s Decision, was made in 2006. The economic, small business, and consumer impact statement prepared at that time was not available for review.

The 2014 rulemaking was done to make the rules consistent with recently enacted legislation and Board statutes and practice. The most significant changes included adding ethical standards with which a licensee must comply, removing a five-year restriction on actions that may subject a licensee to disciplinary action, adding a second licensing examination from which applicants may choose, establishing English communication proficiency standards, and expanding the kinds of courses approved for CE credit. The changes regarding the five-year restriction and English proficiency have potential costs for applicants. It is possible that both changes could prevent an individual from qualifying for licensure but the Board determined both changes were necessary to protect the health and safety of consumers of massage therapy services. The changes regarding CE and examinations may produce cost savings for licensees and applicants.

The Board currently licenses 10,327 individuals. During FY2019, the Board received new applications from 1,124 individuals, of whom 42 were applicants by reciprocity. The Board received 78 complaints during FY2019. More than half of these were cease and desist actions against individuals engaging in massage therapy without a license. A quarter of the complaints involved allegations of sexual assault. The Board conducted 49 disciplinary hearings and disciplined 41 individuals. The Board revoked 17 licenses and placed 18 licensees on probation. Two of the cases submitted a motion of rehearing or review.

The Board office employs five FTE individuals. During FY2019, the office collected \$535,142 in fees and was appropriated \$460,900.

**9. Has the agency received any business competitiveness analyses of the rules? No**

**10. Has the agency completed the course of action indicated in the agency’s previous 5YRR? Yes**

In a 5YRR approved by Council on January 5, 2010, the Board indicated it intended to amend R4-15-102 and R4-15-203. The Board amended both rules as part of a rulemaking that amended all rules in Articles 1 through 3 in 2014 (See 20 A.A.R. 2246). This rulemaking enabled the Board to have a 2014 5YRR of the amended rules rescheduled. The Board was not able to reschedule the 5YRR of R4-15-401. That rule was reviewed in a report approved by Council on February 3, 2015. In that report, the Board concluded no action was needed regarding R4-15-401.

**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:**

Those who have obtained or apply for licensure by the Board have determined for themselves that the cost and burden of licensure are outweighed by the benefit of being able to be employed as a massage therapist in this state. Most of the costs and burdens of licensure result from statute rather than rule. It is statute that requires an individual to be licensed to practice massage therapy (A.R.S. §§ 32-4221(A) and 32-4255(A)); to submit an application to the Board (A.R.S. §§ 32-4223 and 32-4224); to renew a license biennially (A.R.S. § 32-4225); pay fees for a license (A.R.S. § 32-4227); and participate in continuing education (A.R.S. § 32-4225). Statute requires massage therapy schools to obtain recognition from the Board (A.R.S. § 32-4228).

The rules establish the exact fees charged by the Board, the content of applications, and standards for recognizing massage therapy schools and accepting continuing education.

**12. Are the rules more stringent than corresponding federal laws? No**

There is no federal law uniquely applicable to the reviewed rules.

**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 Board's statutes (See A.R.S. §§ 32-4221 and 32-4255), require individualized licenses be issued so a general permit is not applicable.

**14. Proposed course of action:**

The Board intends to complete a rulemaking that addresses the issues identified in this report. It intends to complete the rulemaking by the end of 2020.

**Title 4, Ch. 15**

Board of Massage Therapy

**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 15. BOARD OF MASSAGE THERAPY**

*Editor's Note: 4 A.A.C. 15 made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). This Chapter formerly contained the rules for the Department of Liquor Licenses and Control before being recodified to 19 A.A.C. 1 in 1995 (Supp. 04-2).*

**ARTICLE 1. GENERAL PROVISIONS**

*Article 1, consisting of R4-15-101 and R4-15-102, made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2).*

Section	
R4-15-101.	Definitions
R4-15-102.	Fees
R4-15-103.	Ethical Standards

**ARTICLE 2. LICENSING**

*Article 2, consisting of R4-15-201 through R4-15-207, made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2).*

Section	
R4-15-201.	Qualifications; Application for a Regular License
R4-15-202.	Expired
R4-15-203.	Application for a License by Reciprocity
R4-15-204.	Board-recognized School
R4-15-205.	Application for Renewal of a License
R4-15-206.	Reserved
R4-15-207.	Licensing Time-frames
Table 1.	Time-frames (in Days)

**ARTICLE 3. CONTINUING EDUCATION**

*Article 3, consisting of R4-15-301 through R4-15-303, made by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3).*

Section	
R4-15-301.	Required Continuing Education Hours
R4-15-302.	Approval of Continuing Education
R4-15-303.	Documentation of Completion of Continuing Education

**ARTICLE 4. REGULATORY PROVISIONS**

*Article 4, consisting of R4-15-401, made by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3).*

Section	
R4-15-401.	Rehearing or Review of Board's Decision

**ARTICLE 1. GENERAL PROVISIONS**

*Article 1, consisting of R4-15-101 and R4-15-102, made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2).*

**R4-15-101. Definitions**

In addition to the definitions in A.R.S. § 32-4201, in this Chapter:

1. "Accredited" means approved by the:
  - a. New England Association of Schools and Colleges,
  - b. Middle States Association of Colleges and Secondary Schools,
  - c. North Central Association of Colleges and Schools,
  - d. Northwest Association of Schools and Colleges,
  - e. Southern Association of Colleges and Schools,
  - f. Western Association of Schools and Colleges,
  - g. National Commission for Certifying Agencies, or
  - h. Commission on Massage Therapy Accreditation.
2. "Applicant" means an individual requesting a regular, renewal, or reciprocity license from the Board or recognition as an out-of-state school as required by A.R.S. § 32-4228.
3. "Application packet" means the documents, forms, fees, and additional information required by the Board of an applicant.
4. "Classroom instruction" means the physical or distance learning format environment in which massage therapy didactic teaching or lecturing takes place.
5. "Client" means an individual receiving massage therapy.
6. "Clinical instruction" means the hands-on application of massage therapy.
7. "Continuing education" means a workshop, seminar, lecture, conference, class, or instruction related to massage therapy.
8. "Day" means calendar day.
9. "Distance learning" means the instructor of a continuing education and the individual receiving the continuing education are not located in the same room in which the continuing education is being provided.
10. "FSMTB" means Federation of State Massage Therapy Boards, the body that administers a massage and bodywork licensing examination.
11. "Health care practitioner" means "practitioner" defined in A.R.S. § 32-3101.
12. "Hour" or "classroom hour" means 50 to 60 minutes of participation.
13. "High school equivalency diploma" means:

- a. A document issued by the Arizona Department of Education under A.R.S. § 15-702 to an individual who passes a high school equivalency test or meets the requirements of A.R.S. § 15-702(B),
  - b. A document issued by a state other than this state to an individual who passes a high school equivalency test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B), or
  - c. A document issued by a country other than the United States to an individual who has completed that country's equivalent of a 12th grade education as determined by the Board based upon information obtained from American or foreign consulates or embassies or other governmental entities.
14. "Good moral character" means an applicant:
- a. Has not been convicted of a felony or an offense involving moral turpitude or prostitution, solicitation, or other related offense;
  - b. Has not been convicted of an act involving dishonesty, fraud, misrepresentation, or gross negligence;
  - c. Is not currently incarcerated in a local, state, or federal penal institution or is not on community supervision;
  - d. Has not had a professional license revoked or suspended by this state, a political subdivision of this state, or a regulatory board in another jurisdiction in the United States, or voluntarily surrendered a professional license in lieu of disciplinary action; or
  - e. Has not had a massage therapy certification revoked or suspended by a national massage therapy certifying agency.
11. "License" means written authorization issued by the Board to engage in the practice of massage therapy in Arizona.
16. "Massage therapy student" means an individual receiving instruction in massage therapy or bodywork therapy at a Board-recognized school.
17. "NCBTMB" means National Certification Board for Therapeutic Massage and Bodywork, the body that is accredited by the National Commission for Certifying Agencies and provides examinations of and certifies individuals in massage therapy and bodywork.
18. "Regular license" means an approval issued by the Board to an applicant who meets the requirements in A.R.S. § 32-4222(A) and (B), and this Chapter.
19. "Practice of massage therapy" means the same as "massage therapy" as defined in A.R.S. § 32-4201.
20. "Supervised instruction" means a licensee responsible for a massage therapy student at a Board-recognized school:
- a. For clinical instruction:
    - i. Is present at the location where the massage therapy student is performing massage therapy as part of the massage therapy student's education,
    - ii. Is immediately available for consultation, and
    - iii. Evaluates the performance of the massage therapy student.
  - b. For classroom instruction:
    - i. Is immediately available for consultation, and
    - ii. Evaluates the performance of the massage therapy student.
21. "TOEFL" means Test of English as a Foreign Language.
22. "TOEIC" means Test of English for International Communications.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

**R4-15-102. Fees**

- A.** The Board shall charge the following fees that are nonrefundable, unless A.R.S. § 41-1077 applies:
- 1. Application for a license, \$195;
  - 2. Reinstatement of a license, \$125;
  - 3. Duplicate license, \$25;
  - 4. License renewal, \$95; and
  - 5. Delinquent renewal of a license, \$40
- B.** The Board shall charge 25 cents per page for copying records, documents, letters, minutes, applications, and files.
- C.** If an applicant submits a paper application, the applicant shall pay any of the fees listed in subsection (A) by cashier's check or money order. If an applicant submits an electronic application, the applicant shall pay by credit card.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 15 A.A.R. 1562, effective September 1, 2009 (Supp. 09-3). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

**R4-15-103. Ethical Standards**

Pursuant to A.R.S. § 32-4203(A)(6), the Board is adopting the following ethical standards, which a licensee is required to meet:

- 1. When a licensee agrees to provide massage therapy to a client, the licensee shall:
  - a. Inform the client and other health care practitioners, if applicable, of the licensee's qualifications, education, and experience;
  - b. Provide only those massage therapies that are within the licensee's qualifications, education, and experience;
  - c. Provide massage therapy only when the licensee believes that it will be advantageous to the client;
  - d. Refer the client to other health care practitioners after evaluating the client for any contraindications and the referral is within the best interests of the client;
  - e. Provide draping that ensures the safety, comfort, and privacy of the client;
  - f. Respect the client's right to refuse, modify, or terminate treatment;
  - g. Safeguard the confidentiality of all client information unless disclosure is requested by the client in writing, medically necessary, required by law, or necessary for the protection of the public; and
  - h. Refrain from engaging in sexual activity with the client even if the client attempts to sexualize the relationship.
- 2. A licensee shall not advertise that the licensee offers sensual or erotic massage that constitutes sexual activity as stated in A.R.S. § 32-4253 or for the purposes of sexual gratification.
- 3. A licensee shall not discriminate against a client on the basis of race, sex, age, religion, disability, or national origin.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

**ARTICLE 2. LICENSING**

**R4-15-201. Qualifications; Application for a Regular License**

- A.** To meet the requirements in A.R.S. § 32-4222(B), an applicant who submits an application:
1. Before January 1, 2008 shall complete 500 classroom and clinical hours of supervised instruction at a Board-recognized school, and
  2. On and after January 1, 2008 shall complete 700 classroom and clinical hours of supervised instruction at a Board-recognized school.
- B.** An applicant for a regular license shall meet the requirements in A.R.S. § 32-4222(A) and (B) before submitting an application packet that contains:
1. An application form that includes:
    - a. The applicant's name, date of birth, place of birth, social security number, email address, residence and business addresses, residence and business telephone numbers, and mailing address, if applicable;
    - b. The applicant's race, gender, height, weight, and eye color;
    - c. Each name or alias previously or currently being used by the applicant;
    - d. The applicant's name as it will appear on the license;
    - e. To satisfy the requirements in A.R.S. § 32-4222(A)(5):
      - i. If the applicant graduated from a high school, the date of graduation and name of the high school;
      - ii. If the applicant received a high school equivalency diploma, the date the high school equivalency diploma was awarded; or
      - iii. If the applicant passed an ability to benefit examination recognized by the United States Department of Education, written documentation of passage;
    - f. One passport quality photograph of the applicant's head and shoulders no larger than 2 1/2 by 3 inches taken no more than 60 days before the date of the application;
    - g. The name and address of each Board-recognized school attended by the applicant, dates of attendance, and date of completion of the course of study;
    - h. The number of hours of classroom and clinical instruction completed by the applicant at a Board-recognized school;
    - i. Whether the applicant has passed the examination administered by the NCBTMB or FSTMB and if so, the name of the entity and date the examination was taken;
    - j. Whether the applicant has been convicted of a felony or an offense involving moral turpitude or prostitution, solicitation, or a related offense or entered into a plea of no contest and, if so:
      - i. Charged felony or offense;
      - ii. Date of conviction;
      - iii. Court having jurisdiction over the felony or offense;
      - iv. Probation officer's name, address, and telephone number, if applicable;
      - v. A copy of the notice of expungement, if applicable; and
      - vi. A copy of the notice of restoration of civil rights, if applicable;
    - k. Whether the applicant currently holds or has held a massage therapy license issued by another state and if so, the name of each state;
    - l. Whether the applicant has ever voluntarily surrendered a license under A.R.S. § 32-4254 or had a license to practice massage therapy or another related license revoked by a political subdivision of this state or a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that would be subject to discipline pursuant to this Chapter;
    - m. Whether the applicant is currently under investigation, suspension, or restriction by a political subdivision of this state or a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that would be subject to discipline pursuant to this Chapter;
    - n. Whether the applicant has committed any of the actions or been subject to any of the actions listed in the definition of good moral character in R4-15-101;
    - o. Whether English is the applicant's native language and, if not:
      - i. What the applicant's native language is, and
      - ii. Whether the applicant has met the requirements in subsection (C); and
    - p. A notarized statement, signed by the applicant, stating: the information on the application form is true and correct;
  2. Documentation of citizenship or alien status that meets the requirements in A.R.S. § 41-1080;
  3. A completed and legible fingerprint card; and
  4. The fee required in R4-15-102.
- C.** If English is not the native language of the applicant, to meet the requirements in A.R.S. § 32-4222(E), the applicant shall take and pass, no more than twenty four months before the date of the application, either of the following examinations:
1. The internet-based TOEFL with the following minimum scores:
    - a. For the writing section, 25;
    - b. For the speaking section, 25;
    - c. For the reading section, 25; and
    - d. For the listening section, 25; or
  2. The TOEIC with the following minimum scores:
    - a. For the speaking section, 150;
    - b. For the writing section, 150;
    - c. For the listening section, 300;
    - d. For the reading section, 350.
- D.** In addition to the requirements in subsections (A), (B), and (C), an applicant shall arrange to have directly submitted to the Board from the issuing entity:
1. Written verification of a passing score on the NCBTMB or FSTMB examination;
  2. To show proof of completion of the classroom hours of supervised instruction at a Board-recognized school required in subsection (A), academic transcripts from the Board-recognized school from which the applicant graduated; and
  3. The score earned on the examination in subsection (C).

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 1941, effective October 31, 2009 (Supp. 09-4).

#### R4-15-203. Application for a License by Reciprocity

An applicant for a license by reciprocity shall meet the requirements in A.R.S. § 32-4223 and:

1. Submit an application packet that contains the information in R4-15-201 (B)(1)(a), (b), (c), (d), (e), (i), (j), (k), (m), (n), (B)(2), and photograph required by R4-15-201(B)(1)(f) and:
  - a. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S. § 32-4223(A)(1), the name of the state where the applicant was licensed continuously for five years immediately before the date of the application;
  - b. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S. § 32-4223(A)(2), whether the applicant holds a current certification from the NCBTMB or another agency that meets the standards of the National Commission for Certifying Agencies; and
  - c. A notarized statement, signed by the applicant, stating that the information on the application form is true and correct;
2. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S. § 32-4223(A)(1), arrange to have verification of the license or certificate in the jurisdiction in the other state sent directly to the Board from the jurisdiction including:
  - a. The license or certificate number issued to the applicant by the jurisdiction,
  - b. Whether the jurisdiction has instituted disciplinary proceedings against the applicant or has unresolved complaints pending against the applicant, and
  - c. Whether the license or certificate is in good standing.
3. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S. § 32-4223(A)(2), arrange to have:
  - a. A verification of certification as a massage therapist sent directly to the Board from the NCBTMB or other agency that meets the standards of the National Commission for Certifying Agencies; and
  - b. Academic transcripts from the Board-recognized school from which the applicant completed the course of study;
4. Submit a completed and legible fingerprint card; and
5. Submit the fee required in R4-15-102.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

#### R4-15-204. Board-recognized School

- A. A massage therapy school or bodywork therapy school in this state that is offered by a community college or approved by the Arizona State Board for Private Postsecondary Education is a Board-recognized school.
- B. A massage therapy school or bodywork therapy school in another state that is approved by an agency similar to the Board for Private Postsecondary Education and that wishes to be a Board-recognized school shall:
  1. Have a program that meets requirements that are substantially equivalent to those imposed by the Board for Private Postsecondary Education in A.R.S. Title 32, Chapter 30 and 4 A.A.C. 39; and
  2. Submit an application packet to the Board that includes:
    - a. The name, address, and telephone number of the massage therapy school or bodywork therapy school;
    - b. The same information required by the Board for Private Postsecondary Education in R4-39-103(B); and
    - c. Documentation from the agency similar to the Board for Private Postsecondary Education that states the applicant meets the requirements of the agency.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

#### R4-15-205. Application for Renewal of a License

An applicant for a renewal license shall submit:

1. An application form that contains the licensee's:
  - a. Name;
  - b. Massage therapy license number;
  - c. Massage therapy license expiration date;
  - d. Birthdate;
  - e. Residence and practice addresses;
  - f. Residence and practice telephone numbers;
  - g. Mailing address;
  - h. E-mail address;
  - i. Alien status declaration if the licensee is not a citizen or national of the United States;
  - j. Declaration of whether the licensee has been charged with or convicted of a felony or an offense involving moral turpitude or prostitution, solicitation, or a related offense or entered into a plea of no contest during the two-year period immediately preceding the renewal application date and, if so, the licensee shall provide the following information:
    - i. The charged felony or offense;
    - ii. The date of conviction;
    - iii. The court having jurisdiction over the felony or offense;
    - iv. The probation officer's name, address, and telephone number, if applicable;
    - v. A copy of the notice of expungement, if applicable; and
    - vi. A copy of the restoration of civil rights, if applicable;
  - k. Declaration that the licensee has completed the continuing education required by A.R.S. § 32-4225(E) during the two-year period immediately preceding the renewal application date or if audited, the documentation required in R4-15-303(B); and
- l. Signature and date of submission; and
2. The fee required in R4-15-102(A).

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

#### R4-15-206. Reserved

**R4-15-207. Licensing Time-frames**

- A. The overall time-frame described in A.R.S. § 41-1072(2) for each type of approval granted by the Board is listed in Table 1. The applicant and the Executive Director of the Board may agree in writing to extend the overall time-frame. The substantive review time-frame shall not be extended by more than 25 percent of the overall time-frame.
- B. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of approval granted by the Board is set forth in Table 1 and begins when the Board receives an application.
  - 1. If the application packet is not complete, the Board shall send to the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the postmark date of the notice until the date the Board receives a complete application packet from the applicant.
  - 2. If an application is complete, the Board shall send a written notice of administrative completeness to the applicant.
  - 3. If the Board grants the license during the time provided to assess administrative completeness, the Board shall not issue a separate written notice of administrative completeness.
- C. The substantive review time-frame described in A.R.S. § 41-1072(3) is set forth in Table 1 and begins on the postmark date of the notice of administrative completeness.
  - 1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information or documentation. The time-frame for the Board to complete the substantive review is suspended from the postmark date of the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation.
  - 2. The Board shall send a written notice of approval to an applicant who meets the qualifications and requirements in A.R.S. Title 32, Chapter 42 and this Chapter.
  - 3. The Board shall send a written notice of denial to an applicant who fails to meet the qualifications and requirements in A.R.S. Title 32, Chapter 42 and this Chapter.
- D. The Board shall consider an application withdrawn if within 365 days from the application submission date the applicant fails to supply the missing information under subsection (B)(1) or (C)(1).
- E. An applicant who does not wish an application withdrawn may request a denial in writing within 365 days from the application submission date.
- F. If a time-frame's last day falls on a Saturday, Sunday, or an official state holiday, the Board considers the next business day the time-frame's last day.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

**Table 1. Time-frames (in Days)**

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Regular license R4-15-201	A.R.S. § 32-4222	120	60	60
License by Reciprocity R4-15-203	A.R.S. § 32-4223	120	60	60
Board-recognized school R4-15-204	A.R.S. § 32-4228	120	60	60
Renewal License	A.R.S. § 32-4225	60	30	30

**Historical Note**

New Table 1 made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

**ARTICLE 3. CONTINUING EDUCATION**

**R4-15-301. Required Continuing Education Hours**

- A. During the two-year period immediately preceding license expiration, a licensee applying for a renewal license shall complete 24 hours or more of continuing education.
- B. A licensee may complete a maximum of 12 continuing education hours from a distance learning format to satisfy the requirement in subsection (A).
- C. A licensee shall not carry over hours from one renewal period to another renewal period.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

**R4-15-302. Approval of Continuing Education**

The following continuing education is approved by the Board:

- 1. Continuing education that is taught by an association, corporation, or organization:
  - a. Accredited by the National Commission for Certifying Agencies, or
  - b. Approved by the NCBTMB.
- 2. Continuing education sponsored by a massage therapy school or bodywork therapy school that is:
  - a. Affiliated with a community college located in this state, or
  - b. Approved by the Arizona State Board for Private Postsecondary Education;
- 3. Continuing education offered by a regionally or nationally accredited post-secondary institution in a state other than Arizona;

4. Continuing education offered by an institution approved by a post-secondary educational entity as a massage therapy or bodywork therapy school in a state other than Arizona.
5. For each renewal period no more than four hours of CPR or four hours of First Aid for a combination of no more than eight hours that is taught by an instructor who has been certified in CPR or First Aid instruction by the American Red Cross, American Heart Association, American Safety and Health Institute, or National Safety Council and has a current card issued by the American Red Cross, American Heart Association, or American Safety and Health Institute, or National Safety Council that contains:
  - a. The instructor's name,
  - b. A statement by the certifying entity that authorizes the instructor to teach CPR or first aid, and
  - c. A certification expiration date;
6. For each renewal period no more than three hours for attendance at a Board meeting, if the licensee obtains a document that states the licensee attended a minimum of three hours at a Board meeting, the date of the Board meeting, and the signature of the Board's chair or executive director. The licensee may claim only the actual number of hours attended by the licensee for a maximum of three hours; or
7. For each renewal period one hour for each eight hours serving as an instructor of a massage therapy class at a Board-recognized school for a maximum of 10 hours and the licensee documents:
  - a. The name of the Board-recognized school,
  - b. The title of the massage therapy class,
  - c. The subject matter of the massage therapy class,
  - d. The dates of the instruction,
  - e. The location of the massage therapy class, and
  - f. A confirmation of number of hours that is on official school letterhead and signed by the owner of the Board-recognized school or designee.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

**R4-15-303. Documentation of Completion of Continuing Education**

- A. When renewing a license, a licensee shall submit on a renewal application an affirmation of completion of 24 hours of continuing education.
- B. The Board may annually and randomly select a minimum of 10% of active licenses for an audit of continuing education and require the following information:
  1. The name of the licensee,
  2. The title of the continuing education,
  3. The subject matter of the continuing education,
  4. The date of the continuing education,
  5. The hours completed,
  6. The location where the continuing education took place, and
  7. The name of the instructor providing the continuing education.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

**ARTICLE 4. REGULATORY PROVISIONS**

**R4-15-401. Rehearing or Review of Board's Decision**

- A. Except as provided in subsection (F), a party who is aggrieved by a decision issued by the Board may file with the Board, not later than 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the grounds for rehearing or review. For purposes of this Section and except as provided in A.R.S. § 41-1092.09(C), a decision is considered served when personally delivered to the party's last known address or mailed by certified mail to the party at the party's last known address or the party's attorney.
- B. A party filing a motion for rehearing or review under this Section may amend the motion at any time before it is ruled upon by the Board. Other parties may file a response within 15 days after the date the motion for rehearing or review is filed. The Board may require that the parties file supplemental memoranda explaining the issues raised in the motion and may permit oral argument.
- C. The Board may grant a rehearing or review of the decision for any of the following causes materially affecting the party's rights:
  1. Irregularity in the proceedings of the Board, administrative law judge, or any abuse of discretion that deprived the party of a fair hearing;
  2. Misconduct of the Board or administrative law judge;
  3. Accident or surprise that could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
  5. Excessive or insufficient penalties;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing; or
  7. That the findings of fact or decision are not supported by the evidence or are contrary to law.
- D. The Board may affirm or modify its decision or grant a rehearing or review to all or any of the parties on all or part of the issues for the reasons specified in subsection (C). An order modifying a decision or granting a rehearing or review shall specify the grounds for the rehearing or review and the rehearing or review shall cover only those matters specified.
- E. No later than 30 days after a decision is issued by the Board, the Board may, on its own initiative, grant a rehearing or review of its decision for any reasons in subsection (C). An order granting a rehearing or review shall specify the grounds for the rehearing or review.
- F. If the Board makes specific findings that the immediate effectiveness of the decision is necessary for the preservation of the public health and safety and determines that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue the decision as a final decision without an opportunity for a rehearing or review. If the Board issues the decision as a final decision without an opportunity for a rehearing or review, the aggrieved party may make an application for judicial review within the time limits permitted for an application for judicial review of the Board's final decision under A.R.S. § 12-904.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3).



As of July 3, 2019

32-4201. Definitions

In this chapter, unless the context otherwise requires:

1. "Board" means the board of massage therapy.
2. "Board recognized school" means a school that is any of the following:
  - (a) Accredited to offer massage therapy education by an agency recognized by the secretary of the United States department of education.
  - (b) If located in this state, offered by a community college or approved by the state board for private postsecondary education.
  - (c) If located in another state or a Canadian province, approved by an agency similar to the state board for private postsecondary education.
  - (d) A career technical education district program that is offered by a career technical education district as defined in section 15-391.
3. "Bodywork therapy" means massage therapy.
4. "Massage therapist" means a person who is licensed under this chapter to engage in the practice of massage therapy.
5. "Massage therapy" means the following that are undertaken to increase wellness, relaxation, stress reduction, pain relief and postural improvement or provide general or specific therapeutic benefits:
  - (a) The manual application of compression, stretch, vibration or mobilization of the organs and tissues beneath the dermis, including the components of the musculoskeletal system, peripheral vessels of the circulatory system and fascia, when applied primarily to parts of the body other than the hands, feet and head.
  - (b) The manual application of compression, stretch, vibration or mobilization using the forearms, elbows, knees or feet or handheld mechanical or electrical devices.
  - (c) Any combination of range of motion, directed, assisted or passive movements of the joints.

(d) Hydrotherapy, including the therapeutic applications of water, heat, cold, wraps, essential oils, skin brushing, salt glows and similar applications of products to the skin.

6. "Practice of massage therapy" means the application of massage therapy to any person for a fee or other consideration. Practice of massage therapy does not include the diagnosis of illness or disease, medical procedures, naturopathic manipulative medicine, osteopathic manipulative medicine, chiropractic adjustive procedures, homeopathic neuromuscular integration, electrical stimulation, ultrasound, prescription of medicines or the use of modalities for which a license to practice medicine, chiropractic, nursing, occupational therapy, athletic training, physical therapy, acupuncture or podiatry is required by law.

32-4202. [Board; membership; terms; immunity](#)

A. The board of massage therapy is established consisting of the following members appointed by the governor:

1. Three massage therapists who are residents of this state, who possess an unrestricted license to practice massage therapy in this state and who have been practicing in this state for at least five years immediately preceding their appointment. The governor may make these appointments from a list of names submitted by a statewide massage or bodywork therapy association, or both, or any other group or person. The initial three appointees are not required to be licensed pursuant to this chapter at the time of selection but must meet all of the qualifications for licensure as prescribed by this chapter.

2. Two public members who are residents of this state and who are not affiliated with and do not have any financial interest in any health care profession but who have an interest in consumer rights or have a background in compliance or law enforcement issues.

B. Board members serve staggered five-year terms that begin and end on the third Monday in January. Board members shall not serve for more than two successive five-year terms or for more than ten consecutive years, except that the term of office for a member of the board appointed to fill a vacancy that occurs before the expiration of a full term is for the unexpired portion of that term, and the governor may reappoint that member to not more than two additional full terms.

C. If requested by the board, the governor may remove a board member for misconduct, incompetence or neglect of duty.

D. Board members are eligible to receive compensation in the amount of one hundred dollars per day for each day of actual service in the business of the board and for reimbursement of expenses pursuant to title 38, chapter 4, article 2 to cover necessary expenses for attending each board meeting or for representing the board in an official board approved activity.

E. A board member who acts within the scope of board duties, without malice and in the reasonable belief that the member's action is warranted by law is not subject to civil liability.

### 32-4203. Board; powers and duties

A. The board shall:

1. Evaluate the qualifications of applicants for licensure.
2. Designate at least one national examination that it requires applicants to pass. The examination must be available to a graduating massage therapy or bodywork therapy student within ninety days before the student's expected graduation date. The board shall require that an examination be processed and the results returned to the board within thirty days after the examination is administered. If, within six months of the effective date of this amendment of this section, the testing agency administering the examination fails or is unable to comply with the requirements of this paragraph, the board shall designate another examination for applicants to pass.
3. Issue licenses to persons who meet the requirements of this chapter.
4. Regulate the practice of massage therapy by interpreting and enforcing this chapter.
5. Establish requirements for the education of licensees and applicants, including the identification of board recognized schools, continuing education programs and assessing the continuing competence of licensees.
6. Adopt rules for ethical and professional conduct to govern the practice of massage therapy in this state.
7. Adopt rules to enforce this chapter.
8. Meet at least once each quarter in compliance with the open meeting requirements of title 38, chapter 3, article 3.1 and keep an official record of these meetings.

9. At its first regular meeting after the start of each calendar year, elect officers from among its members as necessary to accomplish board business.

10. Provide for the timely orientation and training of new professional and public appointees to the board regarding board licensing and disciplinary procedures, this chapter, board rules and board procedures.

11. Maintain a current list of all licensees. This list shall include the licensee's name, current business address and telephone number and license number and shall be regularly accessible in electronic format to public officials and agencies to verify the license status of licensees in this state.

12. Enter into contracts for services necessary to enforce this chapter.

13. Publish, at least annually, or make available for copying or reproduction in any format, final disciplinary actions taken against a licensee.

B. The board may:

1. 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.

2. Administer oaths and affirmations, subpoena witnesses, take evidence and require the production of documents, records or information, either kept in original form or electronically stored or recorded, or other items relevant to a matter within the jurisdiction of the board.

3. Require a criminal background check, including the fingerprinting of every applicant for licensure, to assist the board in determining whether grounds exist to deny a license.

#### 32-4204. Executive director; personnel; duties; compensation; immunity

A. Subject to title 41, chapter 4, article 4, the board shall appoint an executive director of the board who serves at the pleasure of the board. The executive director may not be a board member and may not have any financial interests in the practice of massage therapy or the training of massage therapists. The board may authorize the executive director to represent the board and to vote on behalf of the board at meetings of national organizations of which the board is a dues paying member.

B. The executive director and other board staff are eligible to receive compensation as determined pursuant to section 38-611.

C. The executive director or the executive director's designee shall:

1. Keep a record of the proceedings of the board.
2. Collect all monies due and payable to the board.
3. Deposit monies received by the board as prescribed by section 32-4205.
4. Prepare bills for authorized expenditures of the board and obtain warrants from the director of the department of administration for payment of bills.
5. Administer oaths.
6. Act as custodian of the seal, books, minutes, records and proceedings of the board.
7. At the request of the board, do and perform any other duty not prescribed for the executive director elsewhere in this chapter.

D. Subject to title 41, chapter 4, article 4, the board may employ other personnel as it deems necessary to carry out the purposes of this chapter.

E. The executive director and a person acting pursuant to the executive director's direction are personally immune from civil liability for all actions taken in good faith pursuant to this chapter.

#### 32-4205. Board of massage therapy fund

A. The board of massage therapy fund is established. The board shall administer the fund. The board shall deposit, pursuant to sections 35-146 and 35-147, ten per cent of all monies collected pursuant to this chapter in the state general fund and deposit the remaining ninety per cent of the monies in the board of massage therapy fund.

B. Monies deposited in the board of massage therapy fund are subject to section 35-143.01.

#### 32-4221. Licensure; persons and activities not required to be licensed

A. Beginning July 1, 2005, a person who wishes to engage in the practice of massage therapy must be licensed pursuant to this chapter and may submit an application for licensure pursuant to this chapter not sooner than the date prescribed by the board.

B. This chapter does not apply to:

1. A health care professional who is licensed pursuant to this title and who practices within the scope of that person's license if that person does not claim to be a massage therapist or a bodywork therapist.

2. A person who is pursuing a course of study leading to a degree as a massage therapist in a professional education program that is approved by the board if all of the following apply:

(a) The person is satisfying supervised clinical education requirements related to the person's massage therapy education while under the direct supervision of a licensed massage therapist.

(b) The person is practicing in an education setting in this state that has been approved by the state board for private postsecondary education.

(c) The person is practicing in an establishment, location or setting that complies with applicable municipal and county ordinances.

(d) All persons who are present in the room during the delivery of massage services, other than a student and the customer, are licensed pursuant to this chapter or are health professionals as defined in section 32-3201.

3. A massage therapist who resides and is employed in another jurisdiction and who possesses the qualifications for licensure in this state if that person is performing massage therapy in this state in connection with teaching or is participating in an educational seminar.

4. The practice of massage therapy by a person who is employed by the government of the United States while the person is engaged in the performance of duties prescribed by the laws and regulations of the United States.

5. When the customer is fully clothed, the practice of movement educators, such as dance therapists or teachers, yoga teachers, personal trainers, martial arts instructors and movement repatterning practitioners.

6. When the customer is fully clothed, the practice of techniques that are specifically intended to affect the human energy field.

C. A health care professional who is licensed pursuant to this title and who practices within the scope of that person's license is not required to be licensed pursuant to this chapter.

D. This chapter does not require a person acting under the supervision of a person licensed pursuant to this title and permitted by this title to perform functions under the direction or supervision of that licensee to hold a license pursuant to this chapter.

### 32-4222. Qualifications for licensure

A. An applicant for a license as a massage therapist shall:

1. Be at least eighteen years of age.
2. Be a citizen or legal resident of the United States.
3. Satisfy the requirements of section 32-4224.
4. Be of good moral character.
5. Receive either a high school diploma or general equivalency diploma or a similar document or certificate or submit proof that the applicant has passed an ability to benefit examination recognized by the United States department of education.
6. Pay the fees established pursuant to section 32-4227.
7. Within five years preceding the date of the application, not have been convicted of:
  - (a) A class 1, 2 or 3 felony.
  - (b) A class 4, 5 or 6 felony offense involving moral turpitude that has a reasonable relationship to the practice of massage therapy.
  - (c) A misdemeanor involving prostitution or solicitation or other similar offense involving moral turpitude that has a reasonable relationship to the practice of massage therapy.
8. Within the past five years, not have voluntarily surrendered a license under section 32-4254 or not have had a license to practice massage therapy or another similar license revoked by a political subdivision of this state or a regulatory agency in another jurisdiction in the United States for an act that occurred in that jurisdiction and that would be subject to discipline pursuant to this chapter.

9. Not be currently under investigation, suspension or restriction by a political subdivision of this state or a regulatory agency in another jurisdiction in the United States for an act that occurred in that jurisdiction and that would be subject to discipline pursuant to this chapter. If the applicant is under investigation by a regulatory agency 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.

10. 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. The board may charge the cost of each criminal background check to the applicant.

B. In addition to the requirements of subsection A of this section, an applicant for licensure as a massage therapist shall either:

1. Have successfully completed a course of study of massage therapy or bodywork therapy consisting of a minimum of five hundred classroom and clinical hours of supervised instruction at a board recognized school in this state that is accredited by an agency recognized by the secretary of the United States department of education.

2. Have done both of the following:

(a) Successfully completed a course of study in massage therapy or bodywork therapy consisting of a minimum of five hundred classroom and clinical hours of supervised instruction at a school in this state that is licensed by the state board for private postsecondary education or at a school outside of this state that is recognized by the board pursuant to section 32-4228.

(b) Successfully passed an examination administered by a national board accredited by the certifying agency that has been approved by the national commission on competency assurance and that is in good standing with that agency or have successfully passed an examination that is administered or approved by the board.

C. The board may adopt rules to allow it to consider the education and experience of an applicant who came from a foreign country. The board by rule may increase the minimum number of classroom hours of supervised instruction at a board recognized school that an applicant for licensure must successfully have completed.

D. If the board is satisfied that an applicant meets the requirements of this section, the board shall issue a license to the applicant.

E. The board, by rule, shall establish communication proficiency requirements related to an applicant's ability to protect health and safety in connection with the practice of massage therapy.

F. Subject to the board's approval, the executive director may issue licenses to applicants who meet the requirements of this chapter.

G. The board may deny an application for a license if the applicant committed an act that would subject a person licensed under this chapter to disciplinary action.

### 32-4223. Reciprocity

A. An applicant is eligible for reciprocal licensure if either of the following applies:

1. The applicant has been licensed in another state that has comprehensive standards for licensure for massage therapists for at least two of the last five years preceding the filing of the application with the board.

2. The applicant holds a current certification from the national certification board for therapeutic massage and bodywork or another agency that meets the standards of the national organization on competency assurance and received education and training substantially equivalent to that required by this chapter.

B. When an applicant submits an application for reciprocity, the applicant shall also submit a letter or other document acceptable to the board showing whether any jurisdiction that has previously certified or licensed the applicant has instituted disciplinary proceedings or has unresolved complaints pending against the applicant. If a disciplinary proceeding or an unresolved complaint is pending, the applicant shall not be licensed until the proceeding or the complaint has been resolved in the applicant's favor.

### 32-4224. Application; temporary licensure

A. An applicant for licensure shall file a completed application under oath or affirmation containing the information required by the board. The applicant shall include the application fee as prescribed in section 32-4227.

B. The executive director may issue a temporary license to an applicant who files a completed application, who meets the applicable qualifications prescribed in section 32-4222, subsection A, who has satisfactorily completed a course in massage therapy or bodywork therapy at an institution that is recognized by the board pursuant to section 32-4228 and who pays the prescribed application fee. A temporary license is

not effective for more than one hundred eighty days and expires on the occurrence of any one of the following:

1. Issuance of a license by the board.
2. Denial of the application by the board.
3. Expiration of the term for which the temporary license was issued.

**32-4225. License renewal; changes in personal information; notification; continuing education**

- A. Except as provided in section 32-4301, a license issued pursuant to this chapter is subject to renewal every other year on the licensee's birthday and expires unless renewed.
- B. The executive director shall notify each licensee at least sixty days before expiration of the license and may renew the license on receipt of a completed renewal application.
- C. Each licensee is responsible for reporting to the board a name change and changes in business and home addresses and phone numbers within ten days after any change.
- D. Each licensee shall notify the board in writing within ten days after the issuance of a final order, judgment or conviction of a felony or other offense involving moral turpitude or prostitution, solicitation or any other similar offense.
- E. When a licensee renews a license, the licensee must provide the board with an affirmation of the successful completion of at least twenty-four hours of continuing education in the practice of massage therapy, as approved by the board, during the immediately preceding two years.

**32-4226. Renewal of an expired license; reinstatement of a lapsed license**

- A. Except as provided in section 32-4301, the board may renew an expired license on payment of a renewal fee and a delinquency fee and on proof that the applicant continues to meet all requirements for continuing competency and continuing education established by the board.
- B. The board may reinstate a lapsed license on payment of a renewal fee and a reinstatement fee and on proof that the applicant continues to meet all requirements for continuing competency and continuing education established by the board.

C. If a person's license has lapsed for more than three consecutive years, that person shall reapply for a license and pay all applicable fees. The person shall also demonstrate to the board's satisfaction competency in the practice of massage therapy or shall serve an internship under a restricted license or take remedial courses as determined by the board, or both, at the board's discretion. The board may also require the applicant to take an examination.

### 32-4227. Fees

A. The board shall establish and collect nonrefundable fees that do not exceed the following:

1. To apply for an original license, two hundred fifty dollars.
2. To renew a license, two hundred fifty dollars.
3. To reinstate a lapsed license, two hundred fifty dollars.
4. To renew a license after the expiration date of the license, a delinquency fee of one hundred twenty-five dollars.
5. For each duplicate license, fifty dollars.
6. For copying records, documents, letters, minutes, applications and files, twenty-five cents per page.

B. The board shall charge additional fees for services not required to be provided by this chapter but that the board determines are necessary and appropriate to carry out this chapter. The fees shall not exceed the actual cost of providing these services.

### 32-4228. Massage therapy schools; recognition

A. The board shall recognize a school of massage therapy located in this state if it is approved by the state board for private postsecondary education, is accredited to offer massage therapy education by an agency recognized by the secretary of the United States department of education or is a career technical education district program that is offered by a career technical education district as defined in section 15-391.

B. The board shall recognize a school of massage therapy located in another state or a Canadian province if it is accredited or approved by an agency similar to the state board for private postsecondary education or it is accredited to offer massage therapy

education by an agency recognized by the secretary of the United States department of education.

C. Each school of massage therapy that is located in this state and that receives approval from the state board for private postsecondary education shall report to the board of massage therapy:

1. The physical address of the school and each instructional facility maintained or operated by the school.
2. All faculty and instructional staff, and all additions to or deletions from the faculty and staff.

D. The board shall maintain a list of recognized schools.

#### 32-4251. Lawful practice

A. A massage therapist shall refer a person requiring a treatment for a condition outside the scope of practice of a massage therapist to one or more appropriate health care practitioners if the massage therapist has reasonable cause to believe symptoms or conditions are present that require services beyond the scope of practice of massage therapy or if massage therapy is contraindicated.

B. A massage therapist shall adhere to the recognized standards and ethics of the massage therapy profession and as further established by rule.

C. This chapter does not authorize a massage therapist to practice any other profession regulated under this title and does not expand the scope of practice of any health care provider who is not licensed pursuant to this chapter but who is licensed pursuant to this title.

#### 32-4252. Use of title; restrictions; violation; classification

A. No person may claim to be a massage therapist or use any terms or references in any advertisement, statement or publication to suggest to the public that the person is a massage therapist unless that person is a massage therapist licensed pursuant to this chapter.

B. The board may adopt rules to implement this section including the identification of references that may be used only by persons licensed under this chapter or exempt from licensure under this chapter.

C. A person who is not licensed pursuant to this chapter shall not use any of these titles or abbreviations or any other abbreviation or other words, letters, signs or figures to indicate that the person using the title is licensed pursuant to this chapter.

D. An establishment or business that employs or contracts with persons who are licensed under this chapter shall not advertise on behalf of those persons unless the services are provided by or under the direct supervision of a person licensed pursuant to this chapter.

E. A person or entity that violates this section is guilty of a class 1 misdemeanor.

32-4253. Disciplinary action; grounds; definitions

A. The following are grounds for disciplinary action:

1. Failing to meet or maintain the requirements for an original license under section 32-4222, subsection A.
2. Using fraud, deceit or misrepresentation in obtaining or attempting to obtain a license or the renewal or reinstatement of a license.
3. Using drugs or intoxicating liquors to an extent that affects professional competency.
4. Being convicted of a felony or other offense involving moral turpitude or any conviction for prostitution, solicitation or another similar offense. A conviction by a court of competent jurisdiction is conclusive evidence of the commission of the crime.
5. Being found mentally incompetent by a court of competent jurisdiction until proof of recovery from the condition can be established.
6. Engaging in any act or practice in violation of this chapter or any board rule or aiding, abetting or assisting any other person in the violation of these provisions or rules.
7. Having a license or certificate revoked or suspended or any other disciplinary action taken or an application for licensure or certification refused, revoked or suspended by the proper authorities of another state, territory or country.
8. Committing an act of malpractice, gross negligence or incompetency.
9. Practicing as a licensee under this chapter without an active license.

10. Engaging in conduct that could result in harm or injury to the public.
11. Using fraud, deceit or misrepresentation when communicating with the general public, health care professionals or other business professionals.
12. Falsely holding out oneself as licensed or certified in any discipline of massage therapy without successfully completing training approved by the board in that specialty.
13. Practicing or offering to practice beyond the scope of the practice of massage therapy.
14. Engaging in the performance of substandard care by a massage therapist due to a deliberate or negligent act or failure to act, regardless of whether actual injury to the person cared for is established.
15. Engaging in sexual activity with a client.
16. Failing to adhere to the recognized standards and ethics of the massage therapy profession.
17. Charging unreasonable or fraudulent fees for services performed or not performed.
18. Aiding or abetting a person who is not licensed in this state and who directly or indirectly performs activities requiring a license.
19. Failing to report to the board any act or omission of a licensee or applicant or any other person who violates this chapter.
20. Interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts or by the use of threats or harassment against any person to prevent that person from providing evidence in a disciplinary proceeding or any legal action.
21. Promoting an unnecessary device, treatment or service for the financial gain of the massage therapist or of a third party.
22. Providing massage therapy services that are in any way linked to the financial gain of a referral source.
23. Violating this chapter, board rules or a written order of the board.

B. For the purposes of this section:

1. "Breast" means any portion of the female breast below a point immediately above the top of the areola.

2. "Sexual activity" means any of the following:

(a) Sexual conduct.

(b) Offering to engage in sexual conduct.

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

(d) Intentionally viewing a completely or partially disrobed massage therapy client in the course of treatment if the viewing is not related to treatment under current practice standards and is intended to appeal to the prurient interest of the massage therapy client or the massage therapist.

(e) Massaging, touching or applying any instrument or device by a licensee in the course of practicing or engaging in massage therapy to the breasts of a female client unless the client requests breast massage and signs a written consent form. If the client is a minor, the consent form must include the signature of the client's parent or legal guardian authorizing the procedure and outlining the reason for the procedure before the procedure is performed.

(f) Asking or directing a massage therapy client or prospective client to touch the client's own anus or genitals or to touch the anus, genitals or female breasts of any other person.

(g) Asking or directing a massage therapy client or prospective client to expose the client's own anus or genitals to the massage therapist or any other person with the intention of appealing to the prurient interest of the massage therapy client or the massage therapist.

(h) Exposing the massage therapist's anus or genitals to a client.

(i) Exposing her breasts to a client.

3. "Sexual conduct" means any direct or indirect touching, fondling or manipulating of any part of the genitals or anus by any part of the body or by any object or causing a person to engage in that conduct.

32-4254. Investigative powers; emergency action; disciplinary proceedings; formal interview; hearing; civil penalty

A. The board on its own motion may investigate any evidence that appears to show that a licensee is or may be incompetent or is or may be subject to discipline under this chapter. On written request of a complainant, the board shall review a complaint and take any action it deems appropriate. The board or the executive director shall notify the licensee as to the content of the complaint as soon as reasonable. A licensee shall, and any other person may, report to the board any information the person may have that appears to show grounds for disciplinary action against a licensee. 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 licensee to fail to report as required by this section.

B. If the board finds, based on the information it receives under subsection A of this section, that the public health, safety or welfare requires emergency action and incorporates a finding to that effect in its order, the board may restrict, limit or order a summary suspension of a license pending proceedings for revocation or other action. If the board takes action pursuant to this subsection, it shall also serve the licensee with a written notice that states the charges and that the licensee is entitled to a formal hearing before the board or an administrative law judge within sixty days.

C. 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 licensee, the board or a board committee may take any of the following nondisciplinary actions:

1. Dismiss if, in the opinion of the board, the information 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. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

D. If the board finds that it can take rehabilitative or disciplinary action without the presence of the licensee at a formal interview, it may enter into a consent agreement with the licensee to limit or restrict the licensee's practice or to rehabilitate the

licensee, protect the public and ensure the licensee's ability to safely engage in the practice of massage therapy. The board may also require the licensee to successfully complete a board approved rehabilitative, retraining, continuing education or assessment program.

E. If, after completing its investigation, the board believes that the information is or may be true, it may request a formal interview with the licensee. If the licensee refuses the invitation for a formal interview or accepts and the results indicate that grounds may exist for revocation or suspension of the licensee'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.

F. 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 one or more of the following actions:

1. Dismiss if, in the opinion of the board, the complaint 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. File a letter of reprimand.
4. Issue a decree of censure. A decree of censure is an official action against the licensee's license.
5. Fix a period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee concerned. Probation may include temporary suspension not to exceed twelve months or restriction of the licensee's license to practice massage therapy. 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 on any other acts or conduct alleged to be in violation of this chapter or rules adopted pursuant to this chapter, including noncompliance with the terms of probation, a consent agreement or a stipulated agreement.

6. Enter into an agreement with the licensee to restrict or limit the licensee's practice in order to rehabilitate, retrain or assess the licensee, protect the public and ensure the licensee's ability to safely engage in the practice of massage therapy.

7. Order the payment of restitution, including an order to repay fees paid by a massage therapy client and for the cost of the investigation.

8. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

G. If the board finds that the information provided in subsection A or E of this section warrants suspension or revocation of a license issued pursuant to this chapter, it shall initiate formal proceedings pursuant to title 41, chapter 6, article 10. If after a formal proceeding the board finds that a licensee has been convicted of prostitution, solicitation or another similar offense, the board shall revoke the license.

H. A licensee shall respond in writing to the board within thirty days after notice of the hearing is served. The board may consider a licensee's failure to respond within this time as an admission by default to the allegations stated in the complaint. The board may then take any disciplinary action allowed pursuant to this chapter without conducting a hearing.

I. In a formal interview pursuant to subsection E of this section or in a hearing pursuant to subsection G of this section, the board in addition to any other action may impose a civil penalty of not more than ten thousand dollars for each violation of this chapter or a rule adopted pursuant to this chapter.

J. An advisory letter is a public document.

K. A licensee who after a formal hearing is found by the board to be subject to discipline pursuant to this chapter is subject to censure, probation or restitution as provided in this section, suspension or revocation of license or any combination of these, including a stay of action, for a period of time or permanently and under conditions 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 a licensee whom it finds to be in violation of this chapter.

L. If the board, during the course of any investigation, determines that a criminal violation involving the practice of massage therapy may have occurred, it shall make

the evidence of a violation available to the appropriate criminal justice agency for its consideration.

M. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it collects from civil penalties paid pursuant to this section in the state general fund.

N. Notice of a complaint and hearing is effective by a true copy of it being sent by certified mail to the licensee'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 after that date.

O. The board may accept the surrender of a license from a person who admits in writing to any of the following:

1. Being unable to safely engage in the practice of massage therapy.
2. Having committed an act subject to discipline pursuant to this chapter.
3. Having violated this chapter or a board rule.

P. In determining the appropriate disciplinary action under this section, the board shall consider all previous nondisciplinary and disciplinary actions against a licensee.

**32-4255. Unlawful practice; classification; civil penalties; injunctive relief**

A. It is unlawful for any person to practice or in any manner to claim to practice massage therapy or to advertise massage therapy services unless that person is licensed pursuant to this chapter. A person who engages in an activity requiring a license pursuant to this chapter or who uses any word, title or representation in violation of section 32-4252 that implies that the person is licensed to engage in the practice of massage therapy, or who advertises massage therapy services without being licensed pursuant to this chapter is guilty of a class 1 misdemeanor.

B. The board may investigate any person to the extent necessary to determine if the person is engaged in the unlawful practice of massage therapy. If an investigation indicates that a person may be practicing massage therapy unlawfully, the board shall inform the person of the alleged violation. The board may refer the matter for prosecution regardless of whether the person ceases the unlawful practice of massage therapy.

C. The board, through the appropriate county attorney or city 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 chapter. Injunctive proceedings are in addition to all penalties and other remedies prescribed in this chapter.

D. A person who aids or requires another person to directly or indirectly violate this chapter or board rules, who permits a license to be used by another person or who acts with the intent to violate this chapter or board rules is subject to a civil penalty of not more than one thousand dollars for each violation and not more than five thousand dollars for each subsequent violation. The board shall hold a hearing before it imposes this penalty.

E. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it collects from civil penalties pursuant to this section in the state general fund.

#### 32-4256. Reporting violations; immunity

A. A person, licensee, corporation, educational institution, health care professional or health care facility and state or local governmental agencies must report to the board any conviction, determination or finding that a licensee has committed an act that constitutes grounds for disciplinary action pursuant to section 32-4253.

B. A person is immune from civil liability, whether direct or derivative, for providing information in good faith to the board pursuant to subsection A of this section.

C. The board shall not disclose the identity of a person who provides information unless this information is essential to proceedings conducted pursuant to sections 32-4254 and 32-4255 or unless required by a court.

#### 32-4257. Third party reimbursement

This chapter does not require direct third party reimbursement to any person licensed pursuant to this chapter.

#### 32-4258. Regulation by county or municipality

A. This chapter does not prohibit a county or municipality from adopting and enforcing regulations affecting the establishments, locations or settings in which individuals, entities or businesses engage in the practice of massage therapy.

B. A county or municipality shall not impose regulations that are inconsistent with this chapter.

32-4259. Access to information; confidential information; display of license

A. Any person has access to the following information:

1. A list of licensees that includes the licensee's place of practice, license number, date of license expiration and status of license.

2. A list of official actions taken by the board.

B. Unless they are the only address and telephone number available, the home address and home telephone number of a massage therapist are not public records and the board shall keep this information confidential.

C. Except in the course of a board investigation, information pertaining to the relationship between the massage therapist and a person treated by the massage therapist is confidential and may not be communicated to a third party who is not involved in that person's care without that person's prior written consent. If the person is a minor, the person's parent or guardian must also give written consent to these communications.

D. The massage therapist must divulge to the board information it requires in connection with any investigation, public hearing or proceeding, including information that is otherwise confidential pursuant to this section.

E. The privilege established by this section does not extend to cases in which the massage therapist has a duty to report information as required by law.

F. The board shall provide access to the application, license, investigation and discipline files maintained by the board to law enforcement agencies and other regulatory agencies of this state.

G. Each licensee shall display a copy of the licensee's license or current renewal verification in an establishment, location or setting that is accessible to public view at each location at which the licensee practices massage therapy.

32-4260. Advertising requirements; civil penalty; definitions

A. A massage therapist or massage therapy business shall not advertise massage therapy services unless the advertisement includes either:

1. The massage therapy license number of the massage therapist if the advertisement is for the services of a specific massage therapist.

2. The business license number of at least one business license held by the massage therapy business if the advertisement does not offer the services of a specific massage therapist.

B. A massage therapist or massage therapy business shall retain on file, for at least one year, proof of the age of any massage therapist whose services are offered in any advertisement of massage therapy services.

C. A massage therapist or massage therapy business that violates this section is subject to a civil penalty of:

1. Five hundred dollars for a first violation.
2. One thousand five hundred dollars for a second violation.
3. Five thousand dollars for a third or subsequent violation.

D. The attorney general, county attorney or city or town attorney may bring an action to enforce this section.

E. The court shall deposit any civil penalties collected pursuant to subsection C of this section into the human trafficking victims assistance fund established by section 41-114.

F. It is an affirmative defense in a civil action for a violation of subsection A of this section that the massage therapist or massage therapy business possessed a valid license at the time the advertisement was published.

G. It is an affirmative defense in a civil action for a violation of subsection B of this section that the massage therapist whose services were offered in an advertisement for massage therapy services was eighteen years of age or older at the time the advertisement was published.

H. For the purposes of this section:

1. "Advertisement" means any message in any medium that offers or solicits any person to retain the services of the massage therapist or massage therapy business depicted in the advertisement.
2. "Massage therapy business" means a person or business association that furnishes, offers to furnish or advertises the furnishing of massage therapists as one of its primary business purposes for any fee, tip or other consideration.





# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** November 5, 2019

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

**FROM:** Council Staff

**DATE:** October 22, 2019

**SUBJECT: BOARD OF MASSAGE THERAPY (F19-1004)**  
Title 4, Chapter 15, Articles 1-4, Board of Massage Therapy

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This Five-Year Review Report (5YRR) from the Board of Massage Therapy relates to rules in Title 4, Professions and Occupations, Chapter 15, Board of Massage Therapy. The rules cover the following:

- **Article 1** - General Provisions
- **Article 2** - Licensing
- **Article 3** - Continuing Education
- **Article 4** - Regulatory Provisions

In the previous 5YRR for these rules, approved by the Council on January 5, 2010, the Board indicated it would amend R4-15-102 and R4-15-203. The Board amended both rules as part of a rulemaking that amended all rules in Articles 1 through 3 in 2014. As a result, pursuant to A.R.S. § 41-1056(H), the Board rescheduled the 5YRR for Articles 1 through 3, originally due in 2014. Article 4 was not eligible for rescheduling and was reviewed in a 5YRR approved by the Council on February 3, 2015. In that report, the Board concluded no action was necessary regarding R4-15-401.

The current report was originally on the agenda for discussion at the September 24, 2019 Study Session and October 1, 2019 Council Meeting. After initial review of the report, the Council raised several questions/concerns regarding the rules under review, including:

1. Was an analysis done regarding whether the burden on the ability of Arizona citizens to work as massage therapists is the least intrusive and costly method of achieving the purpose of licensure in order to protect the health, safety, and welfare of massage therapy clients? *See* A.R.S. § 41-1059(A)(9).
2. What is the justification for waiting until the end of 2020 to conduct a rulemaking, as stated in the original proposed course of action for the Board's 5YRR, when some of the rules are currently not being enforced as written?
3. Why are the prior economic impact statements not available for review and what efforts have been made to analyze the economic impact of the rules in the last 15 years?
4. The Board indicated about a quarter of all complaints were for allegations of sexual assault and half of the complaints were for unlicensed conduct. Are the rules narrowly tailored to address conduct giving rise to the majority of the complaints or do they unnecessarily restrict the ability of someone to work while not addressing the real threat to public health, safety, and welfare?
5. The Board indicated that "[m]ost of the costs and burdens of licensure result from statute rather than rule" because it "is statute that requires an individual to be licensed to practice massage therapy (A.R.S. §§ 32-4221(A) and 32-4255(A)); to submit an application to the Board (A.R.S. §§ 32-4223 and 32-4224); to renew a license biennially (A.R.S. § 32-4225); pay fees for a license (A.R.S. § 32-4227); and participate in continuing education (A.R.S. § 32-4225)." These are minimum requirements. What analysis and justification does the massage board have for the rule requirements above the minimum statutory requirements, such as rules regarding the exact fees charged by the Board, the content of applications, and standards for recognizing massage therapy schools and accepting continuing education? What is the analysis behind the required number of classroom hours, or the English proficiency test, for example?

In response to inquiries by the Council at the October 1, 2019 Council Meeting, the Board assembled a ten-member task force to assist Board members and staff with additional review of the rules and statutes to adequately respond to the issues raised by the Council. As a result of that additional review, the Board submitted the present revised 5YRR.

### **Proposed Action**

In its prior submission, the Board proposed to complete a rulemaking that addresses the issues identified in the report by the end of 2020. In response to the Council's inquiries at the October 1, 2019 Council Meeting, the Board now intends to request an exemption from the rulemaking moratorium no later than January 2020 in order to proceed with a rulemaking to address the issues identified in this report. It will initiate a rulemaking as soon as it receives approval to do so.

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

Yes. The Board cites to both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Board currently licenses 10,327 individuals. During FY2019, the Board received new applications from 1,124 individuals and received 78 complaints. The Board office employs five FTE individuals. During FY2019, the office collected \$535,142 in fees and was appropriated \$460,900

Subsequent to the October 1, 2019 Council Meeting, the Board was able to identify and review two prior economic impact statements (EIS) related to the last rulemaking activity for Articles 1-4.

The Board indicates that the economic impact of the rules in Articles 1-3 has not varied from the impact anticipated in the 2014 EIS prepared in connection with the 2014 rulemaking related to those Articles.

The Board indicates that the costs that resulted from the 2006 amendments to Article 4 are consistent with the costs projected in the EIS associated with that rulemaking. In the EIS associated with that rulemaking the Board estimated the costs to the Board or a licensee to be minimal and less than \$1,000. Since the promulgation of the rule, the Board indicates costs have been minimal. For more detailed analysis of the EIS comparisons, please see Section 8 of the Board's 5YRR.

The stakeholders include the Board, licensees, massage service related businesses, and the public.

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?**

In response to the Council's questions at the October 1, 2019 Council Meeting, the Board indicates that the benefits of these rules are that they protect the health and welfare of the public. The Board states massage therapists are increasingly part of the organized delivery of health care in hospitals, doctor's offices, addiction treatment, and pain management centers. As such, the Board states these rules are beneficial in that they ensure that massage therapists have the necessary training, knowledge, and experience to practice massage therapy without injury to their clients. The Board states these rules also provide for necessary background checks of massage therapists to ensure that the Board does not license individuals that could pose a threat to clients, particularly when clients may be in vulnerable situations

The Board indicates that a quarter of complaints received involved allegations of sexual assault. The Board reviews all of the complaints received, opens cases for further investigation at a rate of approximately 25 each year, and takes disciplinary action pursuant to A.R.S. § 32-4253. The Board indicates the rules provide for background checks to prevent individuals with a significant history of sexual crimes from obtaining a

massage therapy license. However, the Board does not specify what constitutes “significant history or sexual crimes” and what threshold is in place for withholding a license on those grounds. Pursuant to A.R.S. § 32-4222(A)(7), within five years preceding the date of application, an applicant shall not have been convicted of a class 1, 2, or 3 felony; a class 4, 5 or 6 felony offense involving moral turpitude that has a reasonable relationship to the practice of massage therapy; or “misdemeanor involving prostitution or solicitation or other similar offense involving moral turpitude that has a reasonable relationship to the practice of massage therapy.”

The Board states the rules also allow the Board to investigate such allegations of a licensee and take necessary steps to either discipline licensees or revoke licenses. Since 2014, the Board indicates it has conducted 49 disciplinary hearings and disciplined 41 licensees. The Board indicates it has also revoked 17 licenses and placed 18 licensees on probation and only 2 individuals submitted a motion for rehearing or review. The Board states the rules are narrowly tailored to address conduct giving rise to the majority of the complaints and have been effective in addressing those complaints. However, the Board does not indicate how other costs and burdens imposed by the licensing process, such as continuing education requirements and required classroom hours are relevant and tailored to addressing allegations of sexual assault or other unlicensed conduct, which appear to give rise to the majority of complaints related to public health, safety, and welfare.

The Board indicates that it reviewed information regarding fees in the various rules for other boards to compare to the Board’s own fees in an effort to analyze the costs the rules impose on massage therapists. However, determining whether the fees charged by other boards are comparable does not determine that the Board’s fees impose the least burden and costs to those who are regulated while still achieving their regulatory objectives. Council staff recommends the Council follow up on its prior inquiry as to whether the exact fees charged by the Board impose the least burden and costs on licensees necessary to achieve the underlying regulatory objective.

The Board also indicates that A.R.S. § 32-4222(C) authorizes the Board to increase the minimum number of classroom hours of supervised instruction at a Board-recognized school that an applicant must complete successfully in order to ensure that massage therapists have the necessary knowledge and experience to practice massage therapy safely. The Board indicates national and state associations such as the American Massage Therapy Association and the Arizona Council of Massage Therapy Educators recommended the Board increase the classroom and supervised clinical hours. Upon further analysis, the Board increased the classroom and supervised clinical hours to 700 which they indicate follows the nationwide trend of increasing to at least this number or more to ensure massage therapists have the necessary training to practice safely. However, the Board did not indicate what “further analysis” was performed to determine 700 hours of supervised instruction is the least burdensome requirement that still ensures massage therapists have the necessary training to practice safely, when statute only requires 500 hours. Other than recommendations of national and state associations, the

Board has not indicated what benefits are gained from an additional 200 hours of supervised instruction or how those benefits would outweigh the costs to licensees.

Furthermore, with regards to the English proficiency requirement, the Board states A.R.S. § 32-4222(E) requires the Board to establish rules that provide communication proficiency requirements in order to ensure the safety of massage therapy clients and massage therapists. The Board indicates the proficiency scores listed in this rule need to apply to every applicant and can be lowered to reduce the burden on regulated persons. The Board states it believes that scores of 18 for all sections of the TOEFL and 125 for all sections of the TOEIC would ensure that every applicant has a basic understanding of English such that the applicant would be able to effectively communicate with clients for the purpose of providing massage therapy services safely.

Council staff would also recommend the Council inquire with the Board regarding the continuing education requirements. Specifically, what analysis was done by the Board to determine that 24 hours of continuing education is necessary for license renewal pursuant to R4-15-301? Has the Board analyzed whether 24 hours of continuing education during the two-year period immediately preceding license expiration imposes the least burden and costs on licensees necessary to achieve the underlying regulatory objectives?

Ultimately, the Board determined in their report that the rules under review provide the least intrusive and least costly method of achieving their regulatory objectives. However, Council staff notes that the Board has not provided evidence that it analyzed any alternative methods of achieving regulatory objectives or a determination that other methods were more costly or burdensome. Council staff recommends the Council seek clarification from the Board regarding the various issues outlined above in order to more fully flesh out the analysis required pursuant to A.R.S. § 41-1056(A)(9).

**4. Has the agency received any written criticisms of the rules over the last five years?**

The Board indicates that it did not receive any written criticisms of the rules in the last five years.

**5. Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. For the reasons specified in the report, the Department indicates that the following rules could be amended to improve their clarity, conciseness, understandability, effectiveness, and consistency with other rules and statutes:

- R4-15-102(1) (Fees);
- R4-15-201(A)(1) (Qualifications; Application for a Regular License);
- R4-15-201(C);
- R4-15-302(1) (Approval of Continuing Education);
- R4-15-201(B)(1)(p);

- R4-15-203(1)(c) (Application for a License by Reciprocity);
- R4-15-203; and
- R4-15-204 (Board-recognized School).

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

Yes. For the reasons specified in the report, the Board indicates the following rules are not enforced as written:

- R4-15-102(1) (Fees);
- R4-15-201(B)(1)(p) (Qualifications; Application for a Regular License);
- R4-15-203 (1)(c) (Application for a License by Reciprocity); and
- R4-15-201(B)(1)(b).

7. **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. There is no corresponding federal law.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

These rules require the issuance of licenses. Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a license, the agency shall use a general permit. However, an agency may use an alternative type of license if specifically authorized by state statute. *See* A.R.S. § 41-1037(A)(2).

The Board indicates that the licenses issued are individualized licenses rather than general permits, but are specifically authorized by A.R.S. § 32-4221 and 32-4255. Therefore, the Board is in compliance with A.R.S. § 41-1037.

9. **Conclusion**

The Board is proposing to amend its rules to improve their clarity, conciseness, understandability and effectiveness. The Board intends to seek an exemption from the rulemaking moratorium no later than January 2020 in order to conduct a rulemaking to address the issues identified in this report. It will initiate a rulemaking as soon as it receives approval to do so. Council finds that this is an acceptable timeline for a proposed course of action.

Based on the Board's responses to the Council's inquiries and Council staff's concerns outlined in Section 3, Council staff recommends the Council engage in additional discussion regarding the Boards analysis pursuant to A.R.S. 41-1056(A)(9) at the upcoming Study Session.



Simon Larscheidt &lt;simon.larscheidt@azdoa.gov&gt;

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**Arizona Massage Board Five-Year Regulatory Review Revised Submittal  
(w/attachments)**

1 message

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**Thomas Augherton** <tom.augherton@massageboard.az.gov>

Mon, Oct 21, 2019 at 4:11 PM

To: Simon Larscheidt &lt;simon.larscheidt@azdoa.gov&gt;

Cc: Victoria Bowmann &lt;vbowmann@cox.net&gt;, Mlee Clark &lt;backn2balance1@gmail.com&gt;, John Ortega &lt;JohnOrtega56@yahoo.com&gt;, Kevin Ramsey &lt;kevin.ramsey.lmt@gmail.com&gt;

Dear Simon,

Attached, please find a copy of the *updated* Arizona Massage Board Five-Year Regulatory Review Report. (I have provided copies to the members of the Arizona Massage Board, and our task force members as well).

Thank you for the opportunity to update and recalibrate the submission.

Following the Board's last appearance before the Council on October 1, we assembled a ten-member task force to assist Board members and staff with additional review of Board rules and statutes and the creation of an updated Economic Impact Statement comparison.

Working with two outside Arizona rules consultants, a former Executive Director of the Massage Board, the current Board chair, and the original (and current) industry legal counsel involved with drafting the Board's authorizing statutes, a review was undertaken to determine more details of Board rules promulgation.

The result, we believe, is this updated report which better reflects the process just undertaken here to prepare a more detailed Five-Year Review Report and cross-check Board rules with state statutory construct, as well as respond to the five questions the Board received from GRRRC staff on September 25, 2019.

Based on the questions the Board received from GRRRC staff, this updated report includes more analysis of item 11, an updated proposed course of action, a comparison to the previous Economic Impact Statements for the rules, and further explanation of how the Board's rules effectively address complaints. This updated report also provides further explanation on how the rules are consistent with statute and do not exceed statutory authority, but rather adhere to the maximums and minimums that the legislature has required the Board to follow.

As additional background, the Board was able to locate some of the licensing fees of other boards. Although the Board cannot speak as to how the other 50+ boards in Arizona implement their fees, the Board found the following information in the various rules for some of the other boards as examples: the Barber Board charges \$175 for a license by reciprocity, the Chiropractic Board charges \$250 for a renewal license, the Acupuncture Board charges \$150 for an application and \$275 for an initial license.

Upon GRRRC staff review of the updated report, please let me know if you have any additional questions or concerns about the Board's rules and whether the Council might have any additional questions or concerns for the Board based on the updated information the Board has provided. It's been a pleasure working with you and I look forward to speaking with you about this updated report.

Best regards.

***To ensure compliance with the Open Meeting Law, recipients of this message should not forward it to other board members. Board members may reply to this message, but they should not send a copy of the reply to other board members, which would include a reply to all.***



Sincerely,

Tom Aughterton, Executive Director  
Arizona State Board of Massage Therapy  
[1740 W. Adams Street](#) S. 3401  
Phoenix, Arizona 85007

Email: [tom.aughterton@massageboard.az.gov](mailto:tom.aughterton@massageboard.az.gov)

Web: [massagetherapy.az.gov](http://massagetherapy.az.gov)

Office: 602.542.8604

Direct: 602.542.8217

Fax: 602.542.8804

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**2 attachments**

 **2019 5YRR (1)-JART edits (3).docx**  
31K

 **Arizona Massage Board Task Force.docx**  
15K

**Five-year-review Report**

**A.A.C. Title 4. Professions and Occupations**

**Chapter 15. Board of Massage Therapy**

**Articles 1-4**

**Submitted for September 2019**

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

General Statutory Authority: A.R.S. § 32-4203(A)(7)

Specific Statutory Authority:

R4-15-101. Definitions: A.R.S. § 32-4203(A)(7)

R4-15-102. Fees: A.R.S. §§ 32-4222(A)(6) and 32-4227

R4-15-103. Ethical Standards: A.R.S. § 32-4203(A)(6)

R4-15-201. Qualifications; Application for a Regular License: A.R.S. §§ 32-4203(A) and (B) and 32-4222

R4-15-203. Application for a License by Reciprocity: A.R.S. § 32-4223

R4-15-204. Board-recognized School: A.R.S. §§ 32-4201(2), 32-4203(A)(5), 32-4228

R4-15-205. Application for Renewal of License: A.R.S. § 32-4225

R4-15-207. Licensing Time-frames: A.R.S. §§ 41-1072 through 41-1077

Table 1. Licensing Time-frames (in Days): A.R.S. §§ 41-1072 through 41-1077

R4-15-301. Required Continuing Education Hours: A.R.S. §§ 32-4203(A)(5) and 32-4225

R4-15-302. Approval of Continuing Education: A.R.S. § 32-4225

R4-15-303. Documentation of Completion of Continuing Education: A.R.S. § 32-4225

R4-15-401. Rehearing or Review of Board's Decision: A.R.S. § 41-1092.09

**2. The objective of each rule:**

Rule	Objective
R4-15-101. 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.
R4-15-102. Fees	The objective of the rule is to specify the fees the Board charges for its licensing activities.
R4-15-103. Ethical	The objective of the rule is to protect the public by establishing ethical

Standards	standards with which a licensee must conform.
R4-15-201. Qualifications; Application for a Regular License	The objective of the rule is to specify the content of an application for a license including information required to be submitted directly to the Board by third parties.
R4-15-203. Application for a License by Reciprocity	The objective of the rule is to specify the requirements for obtaining a license by reciprocity.
R4-15-204. Board-recognized School	The objective of the rule is to identify schools the Board recognizes and specify procedures for other schools to obtain recognition.
R4-15-205. Application for Renewal of License	The objective of this rule is to specify the requirements for renewal of a license.
R4-15-207. Licensing Time-frames	The objective of the rule is to specify the time frames within which the Board will act on a license application.
Table 1. Licensing Time-frames (in Days)	The objective of the rule is to specify in table form the time frames within which the Board will act on a license application.
R4-15-301. Required Continuing Education Hours	The objective of the rule is to specify the number of hours of continuing education required for license renewal and the manner in which the hours must be obtained.
R4-15-302. Approval of Continuing Education	The objective of the rule is to specify continuing education activities that are approved by the Board.
R4-15-303. Documentation of Completion of Continuing Education	The objective of the rule is to provide notice to licensees that the Board will audit compliance with the continuing education requirement.
R4-15-401. Rehearing or Review of Board's Decision	The objective of the rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision. This enables a licensee to know how to exhaust the licensee's administrative remedies before making application for judicial review under A.R.S. § 12-901.

3. **Are the rules effective in achieving their objectives?**

**Mostly yes**

Rule	Explanation
R4-15-201(C)	A.R.S. § 32-4222(E) requires the Board to establish rules that provide communication proficiency requirements in order to ensure the safety of massage therapy clients and massage therapists. The proficiency scores listed in this rule need to apply to every applicant and can be lowered to reduce the burden on regulated persons. The Board believes that scores of 18 for all sections of the TOEFL and 125 for all sections of the TOEIC would ensure that every applicant has a basic understanding of English such that the applicant would be able to effectively communicate with clients for the purpose of providing massage therapy services safely.
R4-15-302(1)	As soon as the FSMTB (Federation of State Massage Therapy Boards) begins to offer or approve continuing education, the Board intends to add it as an accepted provider of continuing education.

**4. Are the rules consistent with other rules and statutes? **Mostly yes****

Rule	Explanation
R4-15-201(B)(1)(p) and R4-15-203(1)(c)	These subsections require the signature on an application to be notarized. However, A.R.S. § 32-4224(A) requires the application to be filed under oath or affirmation, which is different from notarization. These subsections need to be amended in order to remove the notarization requirements and provide that the application shall be submitted to the Board under oath or affirmation.
R4-15-203	This Section refers to A.R.S. § 32-4223 for reciprocity requirements. However, that statute does not take into account the recently enacted A.R.S. § 32-4302 regarding reciprocity for spouses of active duty members of the armed forces accompanying the member to this state. The Board needs to amend this rule in order to ensure that reciprocity requirements for spouses of active duty members of the armed forces accompanying the member to this state are consistent with A.R.S. § 32-4302.
R4-15-204	This rule is consistent with A.R.S. § 32-4228 which indicates which massage therapy schools the Board must recognize. However, this rule does not provide for schools located in a Canadian province or schools that are accredited to offer massage therapy education by an agency that is recognized by the secretary of the U.S. Department of Education. The Board needs to amend this rule in order to

	recognize such schools. Specifically, the Board needs to amend subsections (B)(1) and (B)(2) to clarify that the applicant or school must show that the school is approved by an agency similar to the Board for Private Postsecondary Education or accredited by an agency approved by the U.S. Department of Education.
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**5. Are the rules enforced as written?**

**Mostly yes**

Rule	Explanation
R4-15-201(B)(1)(p) and R4-15-203(1)(c)	As mentioned above, these subsections require the signature on an application to be notarized. This is inconsistent with Board practice. The Board has not required notarization since May 2018 and needs to amend this rule to be more consistent with statute.
R4-12-201(B)(1)(b)	A.R.S. § 32-4224 allows the Board to establish rules requiring information on a license application. However, as of 2014, the Board requires a passport style photo of every applicant, so this subsection is no longer necessary or enforced. The Board does not ask an applicant for information regarding the applicant’s weight, height, eye color, or race. The Board needs to amend this rule to remove these requirements.

**6. Are the rules clear, concise, and understandable?**

**Mostly yes**

Rule	Explanation
R4-15-102(1)	A.R.S. § 32-4227 identifies maximum fees that the Board may charge for various licenses and the Board has not exceeded these maximum fees because this subsection indicates that the Board only charges \$195 for a license application and the license application fee includes issuance of the initial license if the application is approved. Moreover, the Board waives application fees for applicants who show they qualify for a waiver pursuant to A.R.S. § 41-1080.01. Nevertheless, this subsection does not clarify that the Board also collects the fee that is required by the Department of Public Safety (DPS) pursuant to R13-1-401 to process fingerprints for federal background checks pursuant to R4-15-201 and R4-15-203 and authorized under A.R.S. § 32-4222(A)(10). The Board needs to amend this

	rule to clarify that it collects the fee for DPS to process fingerprint cards.
R4-15-201(A)(1)	This subsection requires applicants who submit an application before January 1, 2008 to complete 500 hours of education and supervised clinical instruction. However, this section is no longer necessary and the Board needs to remove this subsection in order to make the rule clearer and more concise.

7. **Has the agency received written criticisms of the rules within the last five years?** **No**

Rule	Explanation
R4-15-201(A)(2)	The Board has received verbal comments from potential applicants indicating that the 700 classroom and clinical hours of supervised instruction are not in statute. The Board responds that A.R.S. § 32-4222(C) authorizes the Board to increase the minimum number of classroom hours of supervised instruction at a Board-recognized school that an applicant must complete successfully in order to ensure that massage therapists have the necessary knowledge and experience to practice massage therapy safely. National and state associations such as the American Massage Therapy Association and the Arizona Council of Massage Therapy Educators recommended the Board increase the classroom and supervised clinical hours. Upon further analysis, the Board increased the classroom and supervised clinical hours to 700 which follows the nationwide trend of increasing to at least this number or more to ensure massage therapists have the necessary training to practice safely.
R4-15-301(B)	The Board has received verbal comments from licensees suggesting a licensee should be able to obtain all rather than only half the required continuing education from distance learning. The Board responds that A.R.S. § 32-4225(E) specifies that the licensee must complete at least 24 hours of continuing education in the practice of massage therapy as approved by the Board. In light of an increasingly mobile workforce and advances in technology, the Board allows an applicant to complete 12 hours of continuing education from a long-distance format. However, due to the hands-on nature of massage therapy, the Board believes it is important to require at least 12 hours of continuing education through physical, in-person interaction in order to ensure that massage therapists maintain the necessary hands-on skills and knowledge to practice massage therapy safely.

**8. Economic, small business, and consumer impact comparison:**

Currently, the Board licenses approximately 10,327 individuals. During FY2019, the Board received new applications from 1,124 individuals, of whom, 42 were applicants by reciprocity, resulting in \$535,142 collected in fees. All the rules in Articles 1 through 3 were amended or made in a rulemaking that went into effect on August 5, 2014 (20 A.A.R. 2246). The 2014 rulemaking was completed to make the rules consistent with 2013 legislation as well as Board statutes and practice. The most significant changes included adding ethical standards with which a licensee must comply, including amending the definition of “good moral character,” and establishing English communication proficiency standards. In the EIS associated with the 2014 rulemaking, the Board determined that the changes regarding “good moral character” and English proficiency could have potential costs for applicants because it is possible that both changes could prevent an individual from qualifying for licensure. However, as discussed above, state law requires the Board to establish English proficiency requirements and ethical standards (A.R.S. § 32-4203(A)(6)), so the Board determined both changes were necessary to comply with state laws to protect the health and safety of consumers of massage therapy services. The 2014 EIS also indicated that the changes regarding continuing education and examinations may produce cost savings for licensees and applicants by reducing the burden of becoming licensed and maintaining a license. Ultimately, the Board anticipated that the costs of the rulemaking would be minimal as the amendments simply made the rules consistent with legislative changes. On average, only 7 applicants per year are unable to meet the qualifications for licensure. Thus, the economic impact of these rules has not varied from the impact anticipated in the 2014 EIS.

The one rule in Article 4, Rehearing or Review of Board’s Decision, was made in 2006 and reviewed in a five-year review report approved by the Governor’s Regulatory Review Council in 2014. The rulemaking reduced the Board’s fee for a regular license (R4-15-102(A)(1)), established standards for continuing education (Article 3), added requirements for license renewal (R4-15-205), added a fee for a renewal license (R4-15-102(A)(4), and added a fee for delinquent license renewal (R4-15-102(A)(5)). The Board receives approximately 22 delinquent license renewal fees each month. The costs that resulted from this rulemaking are consistent with the costs projected in the EIS associated with that rulemaking. In the EIS associated with that rulemaking the Board estimated the costs to the Board or a licensee to be minimal and less than \$1,000. Since the promulgation of the rule, the costs have been minimal. Since 2014, the Board has received 3 motions for rehearing. A quarter of the complaints involved allegations of sexual assault. The Board reviews all of the complaints received, opens cases for

further investigation at a rate of approximately 25 each year, and takes disciplinary action pursuant to A.R.S. § 32-4253. The rules provide for background checks to prevent individuals with a significant history of sexual crimes from obtaining a massage therapy license. The rules also allow the Board to investigate such allegations of a licensee and take necessary steps to either discipline licensees or revoke licenses. Since 2014, the Board has conducted 49 disciplinary hearings and disciplined 41 licensees. The Board has also revoked 17 licenses and placed 18 licensees on probation and only 2 individuals submitted a motion for rehearing or review. Thus, the rules are narrowly tailored to address conduct giving rise to the majority of the complaints and have been effective in addressing those complaints.

9. **Has the agency received any business competitiveness analyses of the rules?** No

10. **Has the agency completed the course of action indicated in the agency's previous 5YRR?** Yes  
In a 5YRR approved by Council on January 5, 2010, the Board indicated it intended to amend R4-15-102 and R4-15-203. The Board amended both rules as part of a rulemaking that amended all rules in Articles 1 through 3 in 2014 (See 20 A.A.R. 2246). This rulemaking enabled the Board to have a 2014 5YRR of the amended rules rescheduled. The Board was not able to reschedule the 5YRR of R4-15-401. That rule was reviewed in a report approved by Council on February 3, 2015. In that report, the Board concluded no action was needed regarding R4-15-401.

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:**

These rules are necessary to protect the health and welfare of the public. Massage therapists increasingly are part of the organized delivery of health care in hospitals, doctor's offices, addiction treatment, and pain management centers. As such, these rules are necessary to ensure that massage therapists have the necessary training, knowledge, and experience to practice massage therapy without injury to their clients. These rules also provide for necessary background checks of massage therapists to ensure that the Board does not license individuals that could pose a threat to clients, particularly when clients may be in vulnerable situations. Moreover, these rules simply enforce statutory requirements that the Board has been charged with administering. It is statute that requires an individual to be licensed to practice massage therapy (A.R.S. §§ 32-4221(A) and 32-4255(A)); to submit an application to the Board (A.R.S. §§ 32-4223 and 32-4224); to renew a license biennially (A.R.S. § 32-4225); pay fees for a license (A.R.S. § 32-4227); and participate in continuing education (A.R.S. § 32-4225). Statute requires

massage therapy schools to obtain recognition from the Board (A.R.S. § 32-4228). Additionally, prior to state regulation of massage therapists, massage therapists faced a significant burden of paying multiple fees to obtain licensure in multiple municipalities with significantly varying licensing requirements. State regulation through the Board and its administrative rules simplified regulatory requirements in the massage industry, thereby reducing the burden of regulation while increasing the benefits to public health and safety. Thus, with the exception of the proposed amendments identified in this report, these rules impose the least burden on regulated persons while still achieving the underlying regulatory objective.

The rules establish the exact fees charged by the Board, the content of applications, and standards for recognizing massage therapy schools and accepting continuing education.

12. **Are the rules more stringent than corresponding federal laws?** **No**

There is no federal law uniquely applicable to the reviewed rules.

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 Board's statutes (See A.R.S. §§ 32-4221 and 32-4255), require individualized licenses be issued so a general permit is not applicable.

14. **Proposed course of action:**

The Board intends to request approval from the Governor's Office to proceed with rulemaking no later than January 2020 and intends to complete a rulemaking that addresses the issues identified in this report as soon as it receives approval to do so.

GRRC QUESTIONS, Submitted by Mr. Simon Larscheidt, Esq., Attorney III – October 30, 2019

1. Clearly outline the probable benefits of the English language proficiency requirement and the underlying regulatory objectives achieved by the English language proficiency requirement.

English proficiency is a statutory requirement pursuant to ARS § 32-4222(E), which reads, “The board, by rule, shall establish communication proficiency requirements related to an applicant's ability to protect health and safety in connection with the practice of massage therapy”.

2. Do the probable benefits of the English language proficiency requirement outweigh the probable costs and does that requirement impose the least burden and costs to the persons regulated necessary to achieve the underlying objectives?

This restatement of the last question, yields a response that is the same. The goal of English proficiency for licensed individuals providing a spectrum of massage services, was originally prioritized by the members of the 46<sup>th</sup> Arizona Legislature. It is the norm in the majority of medical fields here in Arizona and across the country for patient welfare and protection.

3. Discussions surrounding the objectives of the English language requirement at the Study Session appeared to relate to a law enforcement concern of the Board to which the rule seems ill-suited to address.

Agreed. The Board does not have any community policing authority, and therefore, the Legislature wanted to ensure that as part of the qualifications, they could ensure that the applicant was proficient in English. This allows law enforcement, as part of their duties, to cite applicable statutes for the massage profession.

4. Also, it appears that the TOEFL score of 18 and TOEIC score of 125 represent an extremely limited understanding of the English language.

In Arizona's nursing profession, licensing requires an internet-based test of English (as a foreign language), (TOEFL), with a minimum score of 84 and a minimum speaking score of 26. The Arizona Massage Board offers an option of modifying current Board-required scores to a lower number to retain the efficacy of an English language requirement.

5. Additionally, it was discussed at the Study Session that the Board had concerns about the credibility of the scores they were receiving.

Agreed.

6. Given these concerns, how is the current English language proficiency requirement necessary to achieve the underlying objectives?

It could be later amended, but currently, it is an Arizona statutory requirement.

7. It was also mentioned at the Study Session that English language proficiency is important in a healthcare institution where HIPAA compliance is necessary.

Agreed. Compliance with the full requirements of the Federal government's HIPAA requirements, nondisclosure forms, medical filing, etc. requires as much comprehensive understanding of the law as compliance.

8. What percentage of the 10,327 individuals licensed by the Board are working in a position that would require HIPAA compliance?

In 2018 research conducted by the American Massage Therapy Association, 23 Percent of LMT's work in a health care setting. (Background: Sole practitioners account for the largest work group at 74 percent). In July 2018, roughly fifty million American adults (46 percent) had discussed massage therapy with their doctors or health care providers in the previous year, consistent with past years' data. Source: [//www.amtamassage.org/infocenter/economic\\_industry-fact-sheet.html](http://www.amtamassage.org/infocenter/economic_industry-fact-sheet.html)

Of those 46 percent who discussed massage with their doctor or health care provider, 47 percent of their doctors or health care providers referred them to a therapist/strongly recommended massage therapy/encouraged them to get a massage. While physicians led the way in recommending massage (46 percent vs. 61 percent in 2017), chiropractors (51 percent) and physical therapists (46 percent) also recommended massage therapy when their patients discussed it with them. Chiropractors continue to refer their patients to massage therapists, with 11 percent of respondents reporting receiving referrals at least once per week, and another 25 percent receiving referrals several times per month. Sixty-five percent of massage therapists received at least one referral every 6 months or less from a hospital or medical office in 2017.

9. Does the Board have any information regarding how many of the complaints received were related to incidents impacting public health and safety that resulted from ineffective communication between the massage therapist and client?

The Board does *not* keep data on such complaints; the Board only keeps data on total complaints received, and how many of those complaints were alleged sexual offenses.

10. Please provide information on how other licensees in other medical fields address the HIPAA concerns outlined by the Board - do they require an English proficiency score?

Most other licensees from other professions, are required to take a national certification exam, which is generally only given in English. For MD's, a residency is required. If immigrating to the United States, an English proficiency test is required and course hours, and is not always transferable. Physical therapists and physical therapy assistants may be more relatable to the field of massage therapy.

11. For every hour of classroom education required above the 500-hour statutory minimum, what is the appreciable benefit?

Based on recent GRRC study session discussion – possibly negligible; 44 jurisdictions require less than Arizona's 700 hours. The FSMTB, who administers the MBLEx (national exam), believes that in order to successfully pass the exam an applicant should graduate from a massage program that teaches 625 hours. Saying that however, they do *not* require that an exam candidate show proof that they graduated with 625 hours.

The Entry-Level-Analysis-Project, (ELAP), is a research project initiated by the Coalition of National Massage Therapy Organizations in March 2012. The project assembled a 527-page document outlining the bare Core Competencies required for Massage Education, to ensure safety as well as appropriate preparation for entry-level practice or employment. The results of the research

project completed in 2012, has been widely-adopted by accredited massage schools across the country. The education hours indicated for Basic Core Competencies are 625. For all hours above 625, more time for detailed research is required, but at first review, the additional hours are spread over all courses giving the student more time to develop proficiency prior to graduation and more exposure to technical hands-on practice time. The full report can be provided if desired as additional research of ALL benefits of additional education time.

## **ABOUT ELAP**

### Coalition Statement Final Report Resources Meet the ELAP Work Group

The Entry-Level Analysis Project (ELAP) is a research project initiated by the Coalition of National Massage Therapy Organizations in March 2012. The project goals were to define knowledge and skill components of entry-level education and recommend the minimum number of hours schools should teach to prepare graduates for safe and competent practice in the massage profession. Completed in December of 2013, the project published two documents, which describes ELAP work group findings and recommendations. Read the Coalition Statement in response to the project and review *The Core: Entry-Level Analysis Project Report* (Final Report) and *The Core: Entry-Level Massage Education Blueprint* (the Blueprint) available to download on this website. Alternately, you can watch informational webinars about the project.

(The Core: Entry-Level Massage Education Blueprint © 2013 Coalition of National Massage Therapy Organizations: Alliance for Massage Therapy Education, American Massage Therapy Association, Associated Bodywork & Massage Professionals, Inc., Commission on Massage Therapy Accreditation, Federation of State Massage Therapy Boards, Massage Therapy Foundation, and National Certification Board for Therapeutic Massage & Bodywork, Inc. ALL RIGHTS RESERVED. The Core: Entry-Level Massage Education Blueprint was co-authored by Pat Archer, Clint Chandler, Rick Garbowski, Tom Lochhaas, Jim O'Hara, Cynthia Ribeiro, and Anne Williams. Printed and published in the United States of America. The Coalition of National Massage Therapy Organizations encourages wide readership of this report and its companion document *The Core: Entry-Level Analysis Project Report*, and hereby grants permission to use, copy, and distribute these materials for educational purposes only, provided a copyright notice is affixed in the form furnished above. December 18, 2013).

12. Is the 700-hour requirement chosen by the Board the least burdensome and costly requirement necessary to achieve the underlying regulatory objectives?

Possibly. The cost of massage education varies greatly, and is market-driven. There are programs with higher hours available that actually cost less than programs with lesser hours offered. Since our statute does not require a state test for those graduating from an accredited school, then our entry point is significantly lower in some cases. We can/could consider the national average of required hours, and the preferred industry option for taking a national (or state-administered) certification test.

13. At the Study Session, it was mentioned that individuals with 625-650 hours of classroom training had the highest first-time passage rate on the MBLEx and those with more hours did not show better results.

Yes, this is an accurate assessment, (as also answered in question 10 above).

14. As such, how has the Board determined that requiring 700 hours provides any additional benefit, either to the prospective licensee or the public?

Pursuant to ARS § 32-4222(C), "the Board by rule may increase the minimum number of classroom hours of supervised instruction at a board recognized school that an applicant for licensure must successfully have completed". In 2005, the Massage Board by way of the rule-making process through GRRC, increased its 500-hour requirement to 700 hours (AAC R4-15-201(A)(2)). This action was taken on the standards outlined by COMTA and the trends in states around the nation at that time.

15. There was also discussion at the Study Session of a graduated number of hours for licensing as seen in California.

California did away with the multi-tiered system. Further investigation would be needed to determine why they chose to simplify. It is our assumption that it was due to administrative costs associated with management of the system. Only (2 or 3) states have a choice for applicants between Registered and Licensed.

16. Why was that not considered and included in the report as an alternative that imposes less burden?

We cannot say for sure that it is less burdensome and the potential large increase in management costs to administer two sets of rules and applicants may outweigh any minimal benefit.

17. Furthermore, if 700 hours of classroom training is meant to allow for specializations, etc. beyond the minimum classroom education requirement, how is that not simply accomplished through the 24 hours of continuing education as the stated purpose of that continuing education seemed to be to get licensees to a point of specialization?

There may be confusion. The CEs were referenced as an option to allow people to begin to specialize and/ or work toward board certification options.

18. Do we need more hours than the "do no harm" minimum AND continuing education?

See answer below for partial response to this question. If the State and industry are able to concur on the number of hours that fully protects the public with initial licensing, a lowered number of continuing hours, and targeted to categories that are the most focus on effective business performance and client service, the public will be better served in the caliber of licensee performance.

19. What are the benefits of requiring 24 hours of continuing education every two years and do those benefits outweigh the costs to licensees?

It's been suggested here in Arizona within the massage industry, that 24 hours is *not* the best option, but rather changing the CE, (continuing education), requirement to 18 hours: then delineating to hours of 6 in ethics, 6 in business practices and 6 in the massage therapists' specific specialty. Please keep in mind that either total is for 24 full months.

Again, this is dictated by state statute. Please note that licensees have the option to receive 50% of their CE requirement online and that Associated Bodywork & Massage Professionals (ABMP) provides their insured free-CEU hours annually, as do many of the employers in Arizona.

Therefore, the burden is greatly reduced. In Arizona, licensees need only obtain 6 hours annually of in-person education.

20. It was discussed at the Study Session that continuing education allows massage therapists to develop in their career, qualifying for positions in healthcare institutions and specializations.

Agreed; (for those who are individually motivated to take on the challenge of additional technical education and organizational performance compliance).

21. However, are these burdens and costs necessary to achieve the underlying regulatory objective of public health and safety?

Please see answer to question 18 and 19.

22. While the Board's report states "massage therapists increasingly are part of the organized delivery of health care in hospitals, doctor's offices, addiction treatment, and pain management centers," are 24 hours of continuing education necessary to protect the public health and safety for massage therapists who do not plan to practice in any of those facilities?

Yes, because there is a clear treatment-ability distinction between higher industry-awarded certifications for specialized medical practices, and annual educational investment in new technologies, medical discoveries and skills proficiency.

Please also see answer to question 18.

23. Furthermore, while continuing education for attorneys or doctors accounts for rapidly evolving/advancing fields, is the level of continuing education for massage therapists necessary to achieve the underlying regulatory objective of public health and safety in an evolving massage therapy field?

Please see answer to question 18.

24. For example, attorneys must complete 30 hours of continuing legal education every two years and massage therapists must complete 24.

Please see answer to question 18.

25. There was some discussion at the Study Session of reducing the number of hours of continuing education required after a certain amount of time practicing.

This has been an option discussed for some time by more senior members of the industry, and perhaps lowering the number of CE hours to an "emeritus" minimum for each two-year licensing period, possibly to 6 or 8, could be targeted to provide updates with legislative, regulatory and industry changes.

26. This appears to be an alternative that imposes less burden and costs to massage therapists. Why was this alternative not outlined in the Board's report?

While there has been Board public meeting discussion on this issue and it was a recommendation from a legislative review subcommittee of the board working with stakeholder groups, it did not advance without a formal Board vote and there was no Board recommendation to propose 2020 legislation to the Governor's Office for approval.

27. Are there other alternatives that were considered for either English language proficiency, classroom education requirements, or continuing education requirements that were not included in the report?

Submit a legislative-approved requirement for all Arizona applicants take the national exam and remove the discussion on English proficiency as part of the Arizona licensing process.

28. If so, what were they, and why were they not found to be the least burdensome or costly method necessary to achieve the underlying regulatory objectives?

Please see answer to question 27.

29. It was discussed at the Study Session that Arizona does not require in-state massage therapists to take the MBLEx to be licensed, but does require it for out-of-state applicants.

The Board agrees that it should be a universal requirement, not making an additional requirement for reciprocity licensees. There is a belief that it should *not* be a bifurcated process, but until statute(s) are changed requiring **all applicants** to take the national exam, then the Board is operating within guidelines set by the Legislature.

30. How does that square with the recent occupational licensing reciprocity legislation which amended A.R.S. 32-4302?

The Arizona Massage Board is a public policy exception among state boards and commissions. Because statutory reciprocity authority pre-existed before the 2019 legislative session, HB 2569, does not. In fact, Title 32-4302 has been less stringent for Arizona license applicants because criminal offenses are tracked backwards five years instead of the new requirement of seven years.

31. What percentage of the 10,327 individuals licensed by the Board "are part of the organized delivery of health care in hospitals, doctor's offices, addiction treatment, and pain management centers"?

*Please see question and response on Question 8.* In 2018 research conducted by the American Massage Association, 23 percent of LMT's work in a health-care setting.

32. The Council would like to see a nationwide comparison of specific license requirements including classroom hours, continuing education requirements, language proficiency tests, etc. for each state.

This response is offered in an attached national survey table. *Please see attached, labeled Question 32 response data.*

33. If the English language proficiency, the 700 classroom education hours, and the 24 continuing education hours are all the least burdensome manner of achieving the board's objective, what other analysis has been done to find opportunities to reduce burden to licensees/potential licensees?

As exhibited within this discussion, a proposed decrease of initial education hours as well as continuing hours for renewal is a viable option, consistent with statutory authority and intent, for reducing the impact of the cost of licensing education. The Board also awards three hours of education for attending a monthly Board meeting, and recently began to move the meetings from

the Capitol complex to out-county areas of the State. There is the additional option for an expansion of online, webinar, and other digital training options for educational requirements.

The Massage Board has a clear critical need for increased licensing positions from the current 1.6 FTE's supporting the needs of more than 10,000 current LMT's from a full roster of over 30,000 registered licensees. Active licensees renew every 24 months and often change their last names, addresses, contact information, and occasionally a criminal conviction.

**One policy suggestion has been the conversion of Arizona state massage licensing to once a lifetime, maintaining the same license number, and only adjust for active status versus inactive status. Licensees are already statutorily tasked with providing addresses and contact information and a requirement to report committed felony convictions.**

Submitted to November 5, 2019 GRRC Work Study continuation & Hearing

These responses to additional staff-assembled questions for the Review Council are submitted by the Arizona Massage Board Task Force on the GRRC Five-Year Regulatory Review: Victoria Bowman, Board Chair and Task Force Director; (First State Massage Board Chair) Mara Concordia, Task Force Consultant; Greg Harris, Esq., and Steve Moortel, Lewis & Roca, representing AMTA; Tom Augherton, Executive Director.

(Task Force roster shown separately)

State	Liability/Insurance	Designation	Educational hours	Renewal CEU Hrs/Year	Actual per year	Exam(s) Required	Additional Requirements	Telephone
Nebraska	License (LMT)	(LMT)	1000 24/2	1000 36/3	12	MBLEX or NCBTMB	Background check	402-471-2115
New York	LMT	License	1000 634/3		12	NY state exam	CPR, health	518-474-3817
Puerto Rico	LMT	License	1000 634/3		12	MBLEX	CPR, health	518-474-3817
Connecticut	Required for licensure (LMT)	License	750 24/4		6	MBLEX or NCBTMB	860-509-7603 after 10/1/2019	background check
New Hampshire	License	License	750 24/2		6	MBLEX or NCBTMB	OR NCBTMB	first aid, exam, no contagious disease, CPR, background
North Dakota	License	License	750 none/		12	MBLEX	Background check	614-466-3934
Ohio	License	License	750 none/		0	MBLEX	Background check	
Arizona	License	License	700 24/2		12	MBLEX or NCBTMB	Background	602-542-8604
Mississippi	Prior	(LMT)	700 24/2		12	MBLEX or NCBTMB	Background, CPR State exam	601-732-6038
Alabama	Prior	(LMT)	650 16/2		8	MBLEX or NCBTMB	Background, CPR	334-269-9990
Massachusetts	(LMT)	(LMT)	650 none/1		0	MBLEX or NCBTMB	Two letters of reference	617-727-1747
New Mexico	(LMT)	(LMT)	650 16/2		8	MBLEX or NCBTMB	OR NCBTMB	Jurisdiction effective
Indiana	(CMT)	(LMT)	625 0/4		0	MBLEX or NCBTMB	Background	317-234-8800 effective
Michigan	License	(LMT)	625 18/3		6	MBLEX or NCBTMB	Background	517-335-0918
Oregon	License	(LMT)	625 25/2		12.5	MBLEX or NCBTMB	Jurisdiction exam,	CPR, background check
Illinois	License	(LMT)	600 24/2		12	MBLEX or NCBTMB	Background	217-785-0800
Iowa	License	(LMT)	600 16/2		8	MBLEX or NCBTMB	OR NCBTMB	CPR
Kentucky	License	(LMT)	600 24/2		12	MBLEX or NCBTMB	Background	502-564-3295
Maryland A	License	License	600 24/2		12	MBLEX or NCBTMB or NCCAOM	CPR, Jurisprudence exam, background	410-764-4738 PLUS 80 College credits
Pennsylvania	License	(LMT)	600 24/2		12	MBLEX or NCBTMB	Background	check, CPR
Utah	License	state	600		0	MBLEX or NCBTMB	Background	801-530-6628
Wisconsin	License	(LMT)	600 24/2		12	MBLEX or NCBTMB or NCCAOM	AED/CPR/first aid, Jurisprudence	608-266-2112
Hawaii	License	(LMT)	570 none/2		0	Hawaii	CPR	808-587-3222
Alaska	License	License	500 16/2		8	MBLEX or NCBTMB	Background	907-465-2691
Arkansas	License	License	500 18/2		9	MBLEX or NCBTMB	Background	501-683-1448
California	Prior	CMT	500		0	MBLEX or NCBTMB	Background	916-669-5396
Colorado	Prior	License	500 none/2		0	MBLEX or NCBTMB	Background	303-894-7800
Delaware A	License	License	500 24/2		12	MBLEX or NCBTMB	Background, CPR	302-744-4500
District of Columbia	License	(LMT)	500 12/2		6	MBLEX or NCBTMB	Background, medical error prevention, course,	877-572-2174
Florida	License	(LMT)	500 24/2		12	MBLEX or NCBTMB	HIV/AIDS course FL LAMS	850-245-4161
Georgia	License	(LMT)	500 24/2		12	MBLEX or NCBTMB	Background	478-207-2440
Idaho	License	(LMT)	500 6/1		6	MBLEX or NCBTMB	Background	208-334-3233
Louisiana	License	(LMT)	500 12/1		12	MBLEX or NCBTMB	Background	225-771-4090
Maine	License	(LMT)	500 none/1		0	MBLEX or NCBTMB alternative to education	CPR, background	207-624-8603
Missouri	Prior	(LMT)	500 12/2		6	MBLEX or NCBTMB or NCCAOM	Background, state exam	573-522-6277
Montana	License	(LMT)	500 12/2		6	MBLEX or NCBTMB	Background, state exam	406-444-5711
Nevada	License	(LMT)	500 24/2		12	MBLEX or NCBTMB	Background	775-688-1888
New Jersey	License	(LMT)	500 20/2		10	MBLEX or NCBTMB or NCCAOM	NCE/TMB	license or background check, CPR/First aid/AED
North Carolina	License	License	500 24/2yrs		12	MBLEX	Background	919-546-0050
Oklahoma	LMT	(LMT)	500 10/2		5	MBLEX	Background	405-521-2441
Rhode Island	LMT	(LMT)	500 6/1		6	MBLEX or NCBTMB	Background	check, CPR
South Carolina	LMT	(LMT)	500 12/2		6	MBLEX or NCBTMB	Background	803-896-4490
South Dakota	LMT	(LMT)	500 8/2		4	MBLEX or NCBTMB	(LMT)	OR NCBTMB
Tennessee	License	(LMT)	500 24/2		12	MBLEX or NCBTMB	Background	check, 500
Texas	License	(LMT)	500 12/2		6	MBLEX or NCBTMB	Background	615-532-3202
Virginia	License	(LMT)	500 24/2		12	MBLEX	Background	check, Jurisprudence
Washington	License	License	500 24/2		12	MBLEX or NCBTMB	Provisional	license available
West Virginia	LMT	License	500 24/2		12	MBLEX or NCBTMB	HIV/AIDS training, jurisprudence	360-236-4700 304-558-1060
			<b>AVERAGE HOURS 593.6458333</b>		<b>8.328571429 Average CEU req/yr</b>			
No license or certification option								
<b>Maryland B</b>	<b>Registered</b>	<b>(HMT)</b>	<b>600 24/2</b>	<b>300 24/2</b>	<b>0</b>	<b>MBLEX or NCBTMB or NCCAOM</b>	<b>CPR Jurisprudence exam, background</b>	<b>410-764-4738 302-744-4500</b>
<b>Delaware B</b>	<b>No regulation/Check</b>	<b>Certified (LMT)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>None</b>	<b>Check</b>	<b>local requirements</b>
<b>Kansas</b>	<b>No</b>	<b>(LMT)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>state</b>	<b>0 Check regulation/Check</b>	<b>local requirements</b>
<b>Minnesota</b>	<b>No</b>	<b>state reg</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>state</b>	<b>Check local req</b>	<b>local requirements</b>
<b>Wyoming</b>	<b>No</b>	<b>regulation/Check</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>state</b>	<b>Check</b>	<b>local requirements</b>

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**MEMORANDUM**

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Our File Number: 140073-00001

**TO:** Governor's Regulatory Review Council

**FROM:** Gregory Y. Harris  
Steven Moortel

**DATE:** November 5, 2019

**SUBJECT:** Arizona Board of Massage Therapy 5-Year Report  
Title 4, Chapter 15, Articles 1-4

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The Arizona Massage Therapy Association urges the Governor's Regulatory Review Council to approve the 5-Year Report prepared by the Arizona Board of Massage Therapy and its work to implement the Legislature's policy framework to provide for state-wide regulation of massage therapy practice. The AMTA believes that the Board's statutes adopted pursuant to state law are appropriate and are narrowly tailored to fulfill the Legislature's mandate and the policy of this state to meaningfully protect the public health and safety.

The Legislature's decision to enact and 10-year extension to continue statewide regulation of massage therapy should be seen and understood as an important step in the regulatory reform movement in Arizona. [Laws 2013 \(1<sup>st</sup> Reg. Sess.\), ch. 221, sec. 3](#) ("Pursuant to section 41-2955, subsection B, Arizona Revised Statutes, the legislature continues the board of massage therapy to promote the safe practice of massage therapy by qualified professionals.") Before the creation of the board, massage therapists faced a burdensome, dysfunctional and uncoordinated system that made it costly, time consuming and created barriers to entry for reasons that reflected a genuine desire to protect the public, but with goals driven by considerations other than consumer protection. Instead, the small business owners, which continue to dominate the profession, had to endure a patchwork of laws adopted by municipalities and counties throughout the state. The entrepreneurs who opened a massage therapy practice and wanted to set up a massage business – whether mobile or in multiple locations – had to endure unequal and inconsistent licensing requirements because local governments each separately regulated this profession. This included the mandate that to work in a given jurisdiction, a massage therapists had to register and pay licensing fees to any municipality which maintained licensing requirements for massage therapists. These mandates imposed costs, and could delay – and indeed prevent – a therapist licensed in Phoenix from being hired to perform massage therapy in a neighboring city.

The focus of local governments on massage stemmed from a very real public policy consideration that remains a core element of the Board's enforcement responsibility. However, the focus of regulation by local governments in reality was never about the quality of the massage provided by a massage therapist. Despite the hours of professional education and professional development of massage therapists who supported the creation of the board and support its work today, these professionals historically have

faced a skeptical audience. This led to local laws in place before the creation of the Board that were directed to whether these hardworking business owners were actually engaged in massage therapy – or something else altogether.

Every community that regulated massage therapy before the Legislature created the Board – and there were many – put their attention on vice and prostitution. Local governments regulated massage as a sexually oriented business. The regulation undertaken by local government put a premium on the prevention of prostitution and human trafficking. The work by each local government had the singular focus of preventing the sex trade from being carried out and from taking root.

In practice, this orientation meant that hard working massage therapists were both tarred with the sex trade label and regulated accordingly. This was evident from the reality that city ordinances in place before the board's creation labeled massage therapy as a sexually oriented business, alongside escort services, adult entertainment arcades and theaters and erotic entertainers.

After a great deal of hard work, local governments came to agree that a system of statewide regulation for massage therapy would be workable and more economical for local government and for practitioners. In place of the existing system of each local government having to establish, implement and carry out licensing systems that set the education, background check, fees, continuing education and practice requirements, the Board stepped undertook that responsibility. The state established a database for law enforcement to access, and massage therapist had a one-stop process to become licensed.

Professional standards were established to ensure that practicing massage therapists meet a minimum level of training and education to ensure reduce the risk of harming or injuring patients. Since the Board's creation, the public came to understand that massage therapy was a health profession, a point made clear by the sunrise application presented by the AMTA and the legislation enacted by the Legislature. This regulatory framework meant that massage therapists could rely upon the law as a tool to protect communities concerned those who claimed to be massage therapists. It allowed the public to seek a massage, knowing that the therapist to treat them was in fact a massage therapist – and not something else. Importantly from the perspective of the massage therapist, the law created a protection against “customers” who came looking for something else other than a massage.

As it later became clear to the Legislature that the massage therapy license could become a gateway for human trafficking from other countries, the Legislature authorized the Board to establish language proficiency requirements. These requirements followed by the experience by the Board that people unable to communicate with the board about core principals of massage were seeking a license in this state. The law served as an additional tool to help ensure that those who presented applications to become licensed were in fact familiar with massage therapy as practiced and regulated in this state.

From a public health and safety perspective, it is important to note that Massage therapists are well-educated professionals who provide essential therapeutic and health care services to the public. This is true in wherever massage therapists work – in the resorts, spas and other locations throughout this state. Massage is considered a vital part of complementary and integrative medicine. Licensed massage therapists practice in hospitals, medical clinics, chiropractic offices, physical therapy offices, with sports teams, provide comfort in hospice facilities, and help infants born to opiate addiction. As a result, massage therapy has a growing presence within healthcare and has been singled-out as an effective non-pharmacologic approach to pain management, as shown by a significant body of clinical research, and supported by the National Institutes of Health (NIH), the American College of Physicians, the

American Academy of Family Physicians and The Joint Commission The Mayo Clinic has joined MD Anderson Cancer Center, Duke Integrative Medicine, the Cleveland Clinic and Memorial Sloan Kettering Cancer Center, among other institutions, in integrating massage therapy into patient care for multiple conditions. These agencies and organizations require or recommend that massage therapists be state licensed.

Massage therapy is also now being utilized by the Department of Veterans Affairs (VA) to treat the spectrum of pain in veterans (establishing GS-5 through GS-9 positions for state licensed massage therapists), covered as an optional supplemental benefit for state licensed massage therapists through multiple Medicare Advantage plans and has been a focal point of testimony on the efficacy of massage therapy before the United States Senate. These individuals deserve to have comfort in knowing that the massage therapist treating them has been credentialed just like their surgeon, their nurse, their physical therapist and every other member of their healthcare team.

Consumers clearly use massage therapy as part of their healthcare regimen, and therefore, the need exists to regulate the profession in the same manner as other health care providers which includes requiring those practicing the profession to obtain current education on research, ethics, and effective and safe treatments. This is true in the resorts that attract visitors to this state and to the spas, clinics and other facilities located throughout Arizona that attract customers looking for therapeutic massage provided by a licensed massage therapist.

The AMTA welcomes the chance to speak with GRRRC members or staff to answer questions about the proper role of this regulatory board. The massage entrepreneurs whose business success is made possible by the existing statutory and rule framework which the board has been tasked by the Legislature to carry out.



**Arizona State Board of Massage Therapy**

**Arizona Massage Board Task Force**

1740 W. Adams, Suite 3401, Phoenix, Arizona 85007, 602-542-8604, <https://massagetherapy.az.gov/>

**November, 2019**

Ms. Jeanne Hann, Esq., Independent Rules Attorney, Arizona Rules, LLC  
602-524-8447

Ms. Jessica A. Thomas, Esq., Rules Writing Consultant  
480-217-5312

Mr. Gregory Harris, Esq., Mr. Steve Moortel, Lewis Roca Rothgerber Christie LLP,  
AMTA-AZ General Counsel, Legislative Lobbyist  
602-262-0218

Ms. Victoria Bowman, LMT, Chair, State Massage Board  
602-971-8392

Ms. Tee Wills, LMT, AMTA-AZ, Government Relations Committee Chair  
520-240-6338

Ms. Garnet Adair, LMT, AMTA-AZ, Government Relations Committee member  
520-603-3959

Ms. Mara Concordia, Arizona Massage Board, former Board Chair  
520-320-1953; 520-304-1843

Mr. Ryan Edmonson, Former Executive Director, State Massage Board  
602-542-4493

Investigator Andrew White, State Massage Board  
602-542-8225

Mr. Tony Wilcox, Licensing & Operations, Arizona Massage Board  
602-542-8102

Mr. Jason Richie, American Massage Therapy Association (AMTA)  
[jrichie@amtamassage.org](mailto:jrichie@amtamassage.org)

Mr. John Sweeney LMT, Program Director, Therapeutic Massage, Pima Community  
College,  
520 206-2263, 520 444-6628

Mr. Kevin Ramsey, LMT, State Massage Board Member  
[kevin.ramsey.lmt@gmail.com](mailto:kevin.ramsey.lmt@gmail.com)

Tom Aughterton, Executive Director, Arizona Massage Board  
602-542-8217



Douglas A. Ducey,  
Governor

# Arizona State Board of Massage Therapy

*Protecting the Public,  
Serving the Industry*

Tom Aughterton  
Executive Director  
1740 W. Adams, Suite 3401  
Phoenix, Arizona 85007  
(602) 542-8604  
E: [info@massageboard.az.gov](mailto:info@massageboard.az.gov)  
W: [www.massageboard.az.gov](http://www.massageboard.az.gov)

## Board Members

### **Board Chair**

Victoria Bowmann, LMT

### **Board Vice-Chair**

Mlee Clark, LMT

### **Public Board Member**

Nicholas L. McLain

### **Public Board Member**

John Ortega

### **Industry Board Member**

Kevin S. Ramsey, LMT

## Board Emeritus

Mara Concordia, LMT  
(*First Board Chair*)

## Board Staff

Andrew White  
**Senior Board  
Investigator**

Tony Wilcox  
**Licensing/Operations  
Specialist**

Kathy Rich  
**Licensing Specialist**

Charlotte Muhammad  
**Licensing Specialist**

Andrea Cisneros  
**Board Minutes  
Administrator**  
(contractor)

## MEMORANDUM

TO: Governor's Regulatory Review Council  
Member Christopher Ames  
Member Brenda Burns  
Member John Sundt  
Member Frank Thorwald  
Member Connie Wilhelm

FROM: Chair Victoria Bowmann, LMT  
Vice-Chair Mlee Clark, LMT  
Tom Aughterton, Board Staff

THRU: Chair Nicole Sornsins  
Mr. Simon Larscheidt, Esq., Staff Attorney

SUBJ: Massage Board Task Force Policy Analysis: Proposals

DATE: December 18, 2019

As per follow-up discussion with GRRC legal staff subsequent to the Arizona Massage Board's last meeting with the Governor's Regulatory Review Council on Tuesday, November 5, 2019, (F-19-1004), tabling the Board's Five-Year Regulatory Review, we reported findings of a rules review task force.

From that submission and public discussion, GRRC staff asked Board staff to codify the findings of the task force and offer them as a submittal for Council review and discussion prior to the next agenda scheduling of the Board on Tuesday, January 7, 2020.

The submission within this memorandum, reflects the summary findings and specific recommendations of the Arizona Massage Board Task Force, with specific current practices separated into either: "Can be amended by Rule," or "Can be amended by Statutory Change."

The findings of the Task Force, as a public document, have been shared with the full board membership in public session. Not all board members, upon an agenda staff briefing of the task force discussion and findings at the last Board meeting on December 16, 2019, are in agreement. Some may communicate individual

meeting on December 16 2019, are in agreement. Some may communicate individual analyses to their board colleagues and staff of the Governor's Review Council, for review by Council members as this process continues.

As a qualifying prologue, the Massage Task Force members and staff would like to begin with an offering of two categories for proposed Arizona Massage Board changes in licensing policy: either existing rules authority to make change of requesting GRRC authority to initiate rule change; or (2) would require a vehicle for proposed statutory change during regular legislative session.

To that end, here is a summary of the points discussed during previous public work sessions with the Governor's Regulatory Review Council:

**Reduce the number of hours for initial education**, (currently 500 in statute, and 700 in Board rules). *Lowering the higher number can be done in rule changes; the first number requires a statutory adjustment, up or down.*

*Task Force Response to GRRC: The hours could be lowered from 700 to 650, with the continuing goal of protecting the public with academic adequacy to qualify for student loans, reciprocity with other states and recommended standards by the industry and national accreditation.*

**Reduce the number of CE (continuing education) hours for Arizona massage licensees to maintain renewal status;** currently at 24 hours per two-year license period, 12 hours optionally online. *Changing the proposed two-year CE hours requires a statute change; would stipulate hours in ethics, hours in practice of massage, and hours of licensee choice in personal development. The hours could be changed from 24 per licensing period, (two years), to 16 or 12.*

*Task Force Response to GRRC: The required continuing hours could be lessened, more closely resembling other states' required hours, reducing licensee tuition costs, (such as in-state rural travel to courses), and enrollment time commitment.*

**Reduce the number of CE (continuing education) hours for Arizona massage licensees with 20 years of seniority or more of Arizona licensure experience.** *Changing the continuing education hours' requirement for seniority status requires new statutory language.*

*Task Force Response to GRRC: Building on the last proposal, discussion offered a permanent reduction with continuing education hours after a licensed massage therapist had a specified number of years of active practice.*

**Eliminate the requirement that Arizona massage licensees must have English communications proficiency, requiring the language verification exam.** *Requires a statutory language change to drop this requirement. GRRC staff suggested that the*

*requirement of a high school diploma or G.E.D. equivalent could be offered as proof of*

*basic English language ability for U.S. born applicants. The public policy challenge, however, is the off-shore applicant who indicates English language ability deceptively, and routinely, and is unable to participate in the initial licensing process without language translation as well as subsequent interaction with board adjudication or licensing staff. Documents submittal is handled by a third party, frequently with their handwriting matching across different applications.*

*Task Force Response to GRRC: Waiving of language proficiency for a state licensing board is sensible as long as the applicant is able to perform licensed health treatment with the consuming public, and has proven language competency by other means; i.e., the attainment of the national MBLEX industry exam.*

*A blanket waiver to license applicants without assurance of language proficiency, would appear to be creating a liability situation for the State. It also provides a direct catalyst for human traffickers, using domestic residents and foreign nationals, to shield active prostitution in Arizona by infiltrating industry standards for therapeutic massage.*

**Require all Arizona licensees to pass the MBLEX national examination for Arizona licensure.** *Requires a statutory language change to specify this requirement.*

*Task Force Response to GRRC: This would conform Arizona to the rest of the nation with this initial licensing requirement, enabling Arizona's resident licensees to offer this same credential when pursuing full reciprocity elsewhere in the nation. Arizona's failure to require the national exam is part of the lure for attracting applicants to this state as a portal for easier licensing and transferring their credential elsewhere.*

*GRRC staff explains that this change would be somewhat counter to the current Executive mandate for less barriers and costs to licensing employment within Arizona, but perhaps the state licensing fee could be substantially reduced for those investing in the MBLEX completion, to credit the cost of the national qualifying examination.*

**F**

CONSIDERATION AND DISCUSSION OF A.R.S. § 41-1033 (G) PETITION OF ARIZONA STATE  
BOARD OF COSMETOLOGY RULE R4-10-111



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - PETITION

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**MEETING DATE:** January 14, 2020

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

**FROM:** Council Staff

**DATE:** December 23, 2019

**SUBJECT:** A.R.S. 41-1033(G) Petition - Board of Cosmetology

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### Background

As described to the Council in a memorandum from Council staff dated November 13, 2019, on November 1, 2019, GRRC staff received a letter dated October 28, 2019 (petition) from Kathleen Tucker, a nail technician in Tucson, Arizona. She asks the Council to review Arizona State Board of Cosmetology ("Board") rule R4-10-111 (Display of Licenses and Signs), which requires a licensee performing mobile services to "prominently display a duplicate personal and establishment license in the area where mobile services are provided." Ms. Tucker believes this rule is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern pursuant to A.R.S. § 41-1033(G).

In her petition, she states that "[r]equiring us to purchase another license for every single location where we work would be/is a hardship that serves no safety concern, and does not seem to be a written practice of AZBOC." She asks the Council to "consider that requiring multiple purchases of the same license (as opposed to displaying a clear copy of a licensee's valid AZBOC license), is an undue burden on all AZBOC licensees that it does not serve the needs or safety of the public in the least."

At the December 3, 2019 Council Meeting, at least four (4) Council Members voted to hear this petition at the January 7, 2020 Study Session and January 14, 2020 Council Meeting. Council staff sent letters to both Ms. Tucker and the Board dated December 3, 2019 advising of

the Council's vote. In the letter to the Board, staff noted that the Board had to submit a response to the petition no later than January 2, 2020. Council staff received the Board's response via email on December 20, 2019.

In its response, the Board makes the following points:

- Under the rule, a licensee can obtain a Board-issued duplicate personal and establishment license for a fee of \$20, which is less than the statutory maximum of \$30;
- The licensee providing mobile services can use the duplicate license in multiple locations statewide and is not required to obtain a separate duplicate license for each location they provide mobile services;
- The requirement of obtaining a duplicate license for a fee of \$20 and posting the duplicate license is not an "unduly burdensome" requirement as those terms are defined in Black's Law Dictionary; and
- The rule is necessary to specifically fulfill a public health, safety, and welfare concern: the requirement protects against fraud, it assures the public that they are receiving services from a licensee who has the required training and education, and the requirement addresses the issue of unlicensed individuals holding themselves out as licensed professionals for financial gain, which was highlighted in the Governor's Executive Order 2019-01.

### **Procedure**

After considering the petition, the Board's response, and the supporting materials submitted, the Council must make a decision that includes findings of fact and conclusions of law, separately stated. The conclusions of law shall specifically address the agency's authority to act consistent with section 41-1030. *See* A.R.S. § 41-1033(K). Pursuant to A.R.S. § 41-1033(H)(1), the Council must make its decision within 90 days after receipt of the fourth council member's request, which occurred at the December 3, 2019 Council Meeting. As such, the Council has until March 2, 2020 to make a decision.

Pursuant to R1-6-402, no later than seven days after the Council makes a decision on this petition, the Chair shall send a letter to the affected agency head and the person filing the petition advising them of the reasons for, and date of, the decision.

### **Conclusion**

The petition is properly before the Council and both parties have submitted materials consistent with the requirements in the statute as indicated above. Council staff advises the Council to consider the materials both parties submitted and to question both parties as to whether the requirements of R4-10-111 violate A.R.S. 41-1033(G).

As a reminder, under A.R.S. 41-1033(G), "[a] person may petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory

licensing requirement that is not specifically authorized by statute pursuant to title 32 based on the person's belief that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern.”

In order for the Council to consider the petition, the following materials are attached:

- R4-10-111 (Display of Licenses and Signs)
- A.R.S. 41-1033 and A.R.S. 41-1030;
- Council staff memorandum dated November 13, 2019;
- Ms. Tucker’s petition; and
- the Board of Cosmetology’s response.

## Board of Cosmetology

Amended by final rulemaking at 21 A.A.R. 3441, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

**R4-10-111. Display of Licenses and Signs**

- A. The name on an establishment's exterior sign, advertising, and publications shall be the same as the name on the establishment license issued by the Board. The establishment's exterior sign shall contain lettering at least 2 1/2 inches in height.
- B. A school shall prominently post a class schedule that lists the names of instructors and classes. The school shall display the school and instructor licenses near the school entrance, visible to the public.
- C. A salon shall prominently post the salon license and ensure that the personal license of each licensee performing services in the salon is posted at the licensee's station.
- D. A licensee performing mobile services shall prominently display a duplicate personal and establishment license in the area where mobile services are provided. The licensee's original license shall be prominently displayed in the salon from which the licensee was dispatched in accordance with subsection (C).
- E. A copy of R4-10-112 shall be prominently posted in each establishment.
- F. A salon shall prominently post a notice of salon services that are not regulated by the Board and that are provided at the salon.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Former Section R4-10-111 renumbered to Section R4-10-114; new Section R4-10-111 renumbered from R4-10-108 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1).

**R4-10-112. Infection Control and Safety Standards**

- A. An establishment shall have and maintain the following minimum equipment and supplies:
  - 1. Non-leaking, waste receptacles, which shall be emptied, cleaned, and disinfected daily;
  - 2. Ventilated containers for soiled linens including towels and capes;
  - 3. Closed, clean containers to hold clean linens including towels and capes;
  - 4. A covered, wet disinfectant container made of stainless steel or a material recommended by the manufacturer of the wet disinfectant that:
    - a. Is large enough to contain sufficient disinfectant solution to allow for the total immersion of tools and instruments,
    - b. Is set up with disinfectant at all times the establishment is open, and
    - c. Is changed as determined by manufacturer's instructions or when visibly cloudy or contaminated;
  - 5. An Environmental Protection Agency (EPA)-registered bactericidal, virucidal, fungicidal, and pseudomonacidal (formulated for hospitals) disinfectant which shall be mixed and used according to manufacturer's directions on all tools, instruments, and equipment, except those that have come in contact with blood or other body fluids; and
  - 6. An EPA-registered disinfectant that is effective against HIV-1 and Human Hepatitis B Virus or Tuberculocidal which shall be mixed and used according to the manufacturer's directions on tools, instruments, and equipment that come in contact with blood or other body fluids.

- B. Procedure for disinfecting non-electrical equipment.
  - 1. Non-electrical equipment shall be disinfected by cleaning with soap or detergent and warm water, rinsing with clean water, and patting dry; and
  - 2. Totally immersing in the wet disinfectant required under subsection (A)(5) or (A)(6) following manufacturer's recommended directions.
- C. Procedure for storage of tools and instruments.
  - 1. A tool or implement that has been used on a client or soiled in any manner shall be placed in a properly labeled receptacle; and
  - 2. A disinfected implement shall be stored in a disinfected, dry, covered container and isolated from contaminants.
- D. Procedure for disinfecting electrical equipment, which shall be in good repair, before each use.
  - 1. Remove all foreign matter;
  - 2. Clean and spray or wipe with a disinfectant, compatible with electrical equipment, as required in subsection (A)(5) or (A)(6); and
  - 3. Disinfect removable parts as described in subsection (B).
- E. Tools, instruments and supplies.
  - 1. All tools, instruments, or supplies that come into direct contact with a client and cannot be disinfected (for example, cotton pads, sponges, porous emery boards, and neck strips) shall be disposed of in a waste receptacle immediately after use;
  - 2. Disinfected tools and instruments shall not be stored in a leather storage pouch;
  - 3. A sharp cosmetology tool or implement that is to be disposed of shall be sealed in a rigid, puncture-proof container and disposed of in a manner that keeps licensees and clients safe;
  - 4. An instrument or supply shall not be carried in or on a garment while practicing in the establishment;
  - 5. Clips or other tools and instruments shall not be placed in mouths, pockets, or other unsanitized holders;
  - 6. Pencil cosmetics shall be sharpened before each use;
  - 7. All supplies, equipment, tools, and instruments shall be kept clean, disinfected, free from defects, and in good repair;
  - 8. Cutting equipment shall be kept sharp; and
  - 9. A client's personal cosmetology tools and instruments that are brought into and used in the establishment shall comply with these rules.
- F. If there is a blood spill or exposure to other body fluids during a service, licensees and students shall stop the service and:
  - 1. Before returning to service, clean the wound with an anti-septic solution;
  - 2. Cover the wound with a sterile bandage;
  - 3. If the wound is on a licensee's or student's hand in an area that can be covered by a glove or finger cover, the licensee or student shall wear a clean, fluid-proof protective glove or finger cover. If the wound is on the client, the licensee or student providing service to the client shall wear gloves on both hands;
  - 4. Blood-stained tissue or cotton or other blood-contaminated material shall be placed in a sealed plastic bag and that plastic bag shall be placed into another plastic bag (double bagged), labeled with a red or orange biohazard warning, and discarded;
  - 5. All equipment, tools, and instruments that have come in contact with blood or other body fluids shall be disinfected as discussed in subsections (A)(6) and (B); and
  - 6. Electrical equipment shall be disinfected as discussed in subsection (D).

41-1033. Petition for a rule or review of an agency practice, substantive policy statement, final rule or unduly burdensome licensing requirement; notice

A. Any person may petition an agency to do either of the following:

1. Make, amend or repeal a final rule.
2. Review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule.

B. An agency shall prescribe the form of the petition and the procedures for the petition's submission, consideration and disposition. The person shall state on the petition the rulemaking to review or the agency practice or substantive policy statement to consider making into a rule.

C. Not later than sixty days after submission of the petition, the agency shall either:

1. Reject the petition and state its reasons in writing for denial to the petitioner.
2. Initiate rulemaking proceedings in accordance with this chapter.
3. If otherwise lawful, make a rule.

D. The agency's response to the petition is open to public inspection.

E. If an agency rejects a petition pursuant to subsection C of this section, the petitioner has thirty days to appeal to the council to review whether the existing agency practice or substantive policy statement constitutes a rule. The council chairperson shall place this appeal on the agenda of the council's next meeting if at least three council members make such a request of the council chairperson within two weeks after the filing of the appeal.

F. A person may petition the council to request a review of a final rule based on the person's belief that the final rule does not meet the requirements prescribed in section 41-1030.

G. A person may petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that is not specifically authorized by statute pursuant to title 32 based on the person's belief that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement applies to a profession for which the average wage in that profession in this state does not exceed two hundred percent of the federal poverty guidelines for a family of four, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section. This subsection does not apply to an individual or institution that is subject to title 36, chapter 4, article 10 or chapter 20.

H. If the council receives information that indicates an existing agency practice or substantive policy statement may constitute a rule, that a final rule does not meet the requirements prescribed in section 41-1030 or that an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement does not meet the guidelines prescribed in subsection G of this section and at least four council members request of the chairperson that the matter be heard in a public meeting:

1. Within ninety days after receipt of the fourth council member's request, the council shall determine whether the agency practice or substantive policy statement constitutes a rule, whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement meets the guidelines prescribed in subsection G of this section.

2. Within ten days after receipt of the fourth council member's request, the council shall notify the agency that the matter has been or will be placed on an agenda.

3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement to the council that addresses whether the existing agency practice, substantive policy statement constitutes a rule or whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement meets the guidelines prescribed in subsection G of this section.

I. For the purposes of subsection H of this section, the council meeting shall not be scheduled until the expiration of the agency response period prescribed in subsection H, paragraph 3 of this section.

J. An agency practice, substantive policy statement, final rule or regulatory licensing requirement considered by the council pursuant to this section shall remain in effect while under consideration of the council. If the council ultimately decides the agency practice or substantive policy statement constitutes a rule or that the final rule does not meet the requirements prescribed in section 41-1030, the practice, policy statement or rule shall be considered void. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern and meets the requirements of subsection G of this section, the council may modify, revise or declare void any such existing agency practice, substantive policy statement, final rule or regulatory licensing requirement.

K. A council decision pursuant to this section shall include findings of fact and conclusions of law, separately stated. Conclusions of law shall specifically address the agency's authority to act consistent with section 41-1030.

L. A decision by the agency pursuant to this section is not subject to judicial review, except that, in addition to the procedure prescribed in this section or in lieu of the procedure prescribed in this section, a person may seek declaratory relief pursuant to section 41-1034.

M. Each agency and the secretary of state shall post prominently on their websites notice of an individual's right to petition the council for review pursuant to this section.

41-1030. Invalidity of rules not made according to this chapter; prohibited agency action; prohibited acts by state employees; enforcement; notice

A. A rule is invalid unless it is made and approved in substantial compliance with sections 41-1021 through 41-1029 and articles 4, 4.1 and 5 of this chapter, unless otherwise provided by law.

B. An agency shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule or state tribal gaming compact. A general grant of authority in statute does not constitute a basis for imposing a licensing requirement or condition unless a rule is made pursuant to that general grant of authority that specifically authorizes the requirement or condition.

C. An agency shall not:

1. Make a rule under a specific grant of rulemaking authority that exceeds the subject matter areas listed in the specific statute authorizing the rule.

2. Make a rule under a general grant of rulemaking authority to supplement a more specific grant of rulemaking authority.

D. This section may be enforced in a private civil action and relief may be awarded against the state. The court may award reasonable attorney fees, damages and all fees associated with the license application to a party that prevails in an action against the state for a violation of this section.

E. A state employee may not intentionally or knowingly violate this section. A violation of this section is cause for disciplinary action or dismissal pursuant to the agency's adopted personnel policy.

F. This section does not abrogate the immunity provided by section 12-820.01 or 12-820.02.

G. An agency shall prominently print the provisions of subsections B, D, E and F of this section on all license applications, except license applications processed by the corporation commission.

H. The licensing application may be in either print or electronic format.



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM

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**MEETING DATE:** December 3, 2019

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

**FROM:** Council Staff

**DATE:** November 13, 2019

**SUBJECT:** A.R.S. 41-1033(G) Petition - Board of Cosmetology

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### Summary

On November 1, 2019, GRRC staff received a letter dated October 28, 2019 (petition) from Kathleen Tucker, a nail technician in Tucson, Arizona. Ms. Tucker raises several issues with the Board of Cosmetology (Board) in her petition. However, for the purposes of Council review, Ms. Tucker appears to indicate that Board rule R4-10-111 (Display of Licenses and Signs), which requires a licensee performing mobile services to "prominently display a duplicate personal and establishment license in the area where mobile services are provided" is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern pursuant to A.R.S. § 41-1033(G).

Specifically, she states: "[r]equiring us to purchase another license for every single location where we work would be/is a hardship that serves no safety concern, and does not seem to be a written practice of AZBOC."

Further, Ms. Tucker asks the Council to "consider that requiring multiple purchases of the same license (as opposed to displaying a clear copy of a licensee's valid AZBOC license), is an undue burden on all AZBOC licensees that it does not serve the needs or safety of the public in the least."

## Relevant Statutes

A.R.S. § 41-1033(G) allows a person to “petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that is not specifically authorized by statute pursuant to title 32 based on the person's belief that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement applies to a profession for which the average wage in that profession in this state does not exceed two hundred percent of the federal poverty guidelines for a family of four, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section.”

According to the federal Department of Health and Human Services (HHS), the federal poverty guideline for a family of four is \$27,750 per year.<sup>1</sup> Two hundred percent (200%) of this amount equals \$51,500. According to information obtained from Indeed.com, the average hourly wage for a nail technician in the state of Arizona is \$16.68 per hour.<sup>2</sup> This equals approximately \$33,360 per year based on a 40-hour work week working 50 weeks per year. Thus, it appears the average wage of a nail technician in Arizona does not exceed 200% of the federal poverty guidelines for a family of four, making this petition eligible for review pursuant to A.R.S. § 41-1033(G).

If the Council receives information pursuant to A.R.S. § 41-1033(G), and at least four Council members request of the Chairperson that the matter be heard in a public meeting:

1. Within ninety days after receipt of the fourth council member's request, the council shall determine whether the agency practice or substantive policy statement constitutes a rule, whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement meets the guidelines prescribed in subsection G of this Section.
2. Within ten days after receipt of the fourth council member's request, the council shall notify the agency that the matter has been or will be placed on an agenda.
3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement to the council that addresses whether the existing agency practice, substantive policy statement constitutes a rule or whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy

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<sup>1</sup> [Federal Register/Vol. 84, No. 22/Friday, February 1, 2019 ...](#)

<sup>2</sup> <https://www.indeed.com/salaries/nail-technician-Salaries.-Arizona>

statement, final rule or regulatory licensing requirement meets the guidelines prescribed in subsection G of this section.  
*See* A.R.S. § 41-1033(H)

### **Analysis and Conclusion**

A.R.S. § 41-1033 does not provide requirements or standards to guide the Council in determining whether this petition should be given a hearing. Therefore, Council members should make their own assessments as to what information is relevant in determining whether this petition may be heard.

In Council staff's view, Ms. Tucker's petition raises issues related to potential burdens imposed on stakeholders by R4-10-111 (Display of Licenses and Signs) and whether the Board adequately assessed those burdens against any benefits of the rule. Council staff recommends that Council members vote to request that the petition be given a hearing, thereby allowing Ms. Tucker and the Board an opportunity to provide more information on this matter in a public meeting.

October 28 2019

Governor Doug Ducey,  
AZ Governor's Regulatory Review Council,  
AZ Dept. of Administration,  
100 N 15<sup>th</sup> St #305  
Phoenix, AZ 85007

Dear Governor Ducey, AZ Regulatory Review Council and AZ Dept of Administration,

I am writing to Petition your assistance and to request a Review of a current AZ Agency (AZ Board of Cosmetology, the AZBOC) Practice that I believe does not meet the requirements of ARS 41-1030 because it is unduly burdensome, does not specifically fulfill a public health, safety or welfare concern, does ~~that~~ not appear to be in any written form as either a AZBOC Practice or AZBOC Rule, and is not evenly enforced or consistently enforced.

I ask you to view the attached copy of my valid AZ BOC license and read the Notice on the license prohibiting the copying of a license for "fraudulent purposes".

I would now ask you to view the attached correspondence between myself and the AZBOC Compliance Officer and note the numerous highlighted requests that I have made in the last 9 weeks,

ever since an AZBOC Inspector inspected on or about Aug 28, an Assisted Living Salon where I have a copy of my license on display,

that I be provided a copy of the AZBOC "Rule" or "Practice" that prohibits a lawful licensee owner of a AZBOC license from copying it or displaying it for NON-Fraudulent use.

I have been asking since September 3, 2019. I have made a diligent search for a AZBOC Rule or Prohibition and searched in Arizona Revised Statutes regarding such and found nothing.

I have been an AZ licensed Nail Tech and Salon Owner since 1998. I have been inspected and been "In Compliance" every single time and many times, over the years, whether the inspection was my own Salon or one where I was working at the time an AZBOC Inspector visited the site(s). I have had my mobile kit inspected by AZBOC. Always In Compliance. I've always used copies of my valid licenses on display when working away from my own salon during the last 20 yrs.

I work with seniors and others who have special needs in that they are in assisted living situations, or in homes, who have mobility, cognitive, communication impairments. I am especially experienced and trained to work with people with impairments. I take extra special care with my clients. I go the extra mile in safety and sanitation. I do not make a lot of money. This is a calling, a career, and I am a professional.

You see, many of us AZBOC licensees have to work at multiple locations to make ends meet.

Requiring us to purchase another license for every single location where we work would be/is a hardship that serves no safety concern, and does even not seem to be a written practice at AZBOC. (Unless they are now hurriedly cobbling one together).

In the past 2 decades, I have asked for duplicate license. Both times, my check was returned to me by AZBOC with a note saying purchase wasn't necessary. The first time was when I was invited to be on call for a resort here in Tucson, the 2<sup>nd</sup> time was when I took my kit off site of my own salon.

The last time my Salon was inspected was 2012, I was actually kit-packed and on my way out to the Academy Villa salon for scheduled appointments. I called the Villa due to being delayed, and then the inspector inspected my Salon and my mobile kit, noticing my application of my license inside the cover of the kit, and gave my Salon another clear Passing inspection.

When I called to question AZBOC following a late AUG 2019 inspection of the Salon at Academy Villas, where I still work part time, AZBOC could not locate my salon name in their data base! I had to pull out my license and read my Salon license number to AZBOC. A Salon license I've had over 21 yrs.

The issue with the inspection on Aug 2019, was that the inspector disapproved of the photocopied current license I have displayed in that Salon for every one of the 9.5 years I have been providing services there, and, during that time, hanging during the several AZBOC inspections that occurred during those years.

In my call to AZBOC on Sept 3, I stated that I am that licensee and that I am not using the copy for 'fraudulent purposes'. I said I carry a copy of my licenses in my mobile kit too. "WHAT MOBILE PRACTICE!?!", she asked. I responded that it is the mobile kit that I carry with me that contains all required docs and materials. The same kit that has been inspected many times by AZBOC over the years. She "has no record of any mobile work by me".

I am stunned. A licensed Salon may send a licensed nail tech (me) to any area in AZ that requests the service I am AZ licensed to provide, or if I had licensed employees, to provide. Plus, AZBOC says they have NO RECORD of inspecting my mobile kit.

Mobile work has stringent guidelines just as any Salon does: Sterilization/sanitation, cleanliness, record keeping, 1<sup>st</sup> aid, HAZMAT, MSDS material info, proper labels, wet storage of tools submersed in approved liquid, dry storage of clean files, towels, etc.). My kit is in full compliance at all times. This AZBOC clerk was speaking to me in the most insulting manner after not even being able to locate me in the AZBOC database.

I asked the unnamed AZBOC clerk for a copy of the Rule she said I was breaking regarding photocopying my own license. I have been asking the AZBOC Compliance Officer ever since.

I have left recorded requests on AZBOC phone messaging. I have, many times, written AZBOC my request for the rule or practice that prohibits the use of a valid license copy. I have multiply requested to communicate in writing with AZBOC, and AZBOC has answered with a request that we "just talk".

I also, early on, tried calling the "direct line" of the Compliance Officer at AZBOC, as she requested, but it always, always just went to the message machine.

I have always answered her calls with an email response and also asked for confirmation of receipt and received confirmation.. I repeatedly asked to communicate in writing only, esp since the last message I left got me so upset that I became tearful with frustration. And because these issues require clear and concise communication.

The last written communication I had from the AZBOC Compliance Officer is her statement that she believes I am “not in compliance”. And yet, I always am.. I am also wondering why I have not been immediately inspected if they believe I am wrongdoing.. I feel that I am being intimidated by AZBOC to be silent but this will not stop me from seeking the facts and assistance from you.

I had outlined some serious concerns I had at the place of business where the inspection and this issue arose.

None of my requests have been addressed in these past 9 weeks.

\*\*\*\*\*However, on October 25, I received a call from the Director of the Academy Villas Assisted Living where the Aug 2019 inspection occurred. She has apparently been contacted by AZBOC. She said she is worried that my actions might cause AZBOC to fine the facility in which their Salon is located. I have to be concerned that I will be let go, after nearly 10 years due to AZBOC conduct/intimidating tactics. The Director also said that she thinks both myself and the hairdresser must always have our original (not photocopied) licenses on display at all times, 24/7, inside the Villa Salon even though we both work other locations. .and the hairdresser has been carrying her original license to each location, while mine remains inside my own Salon and I carry a photocopy.

I have (saved) phone messages I have received from AZBOC Compliance:

(the reason why my timely license renewal has been delayed long past my license expiration) and (even though my check had been cashed for over a month), (“It takes 2 weeks for a 1<sup>st</sup> class letter from PHX to reach Tucson”, she says in the phone message).

I saved the message from the AZBOC Compliance Officer saying that she has listed me as the Complainant for mentioning some suspicious acts that the Aug 2019 Inspector failed to notice. You will find both my written response and the Compliance Officers response in the attached paperwork.

Specifically, A hairdresser renting space inside the salon is advertising a nonexistent hair salon business to the Public, the Academy Village residents, and inside the actual licensed Salon out there

And, unless I “contact the Compliance Officer and tell her I want to be an “Anonymous Complainant” I will be named as the complainer. Until all of this happened, I felt the AZBOC inspector would certainly have noticed the advertising and questioned it during her August inspection.

I replied in writing that it is the responsibility of AZBOC to discover fraudulent salons, or unregistered hair styling businesses during their inspections, and to leave my name out of it.

Pressure has been applied to get me to be quiet about wanting the written practices of AZBOC as pertains to use a copy of a license owner, and I feel it is still being applied.

I also feel that the AZBOC should have initiated their own re-inspection. Very important things were missed during that Aug 2019 inspection. Innocent clients should not be unaware that they are handing their credit card to a licensee who is advertising a salon/hair business that does not exist.

If there are written Procedures or written AZBOC Rules regarding the display of a photocopied

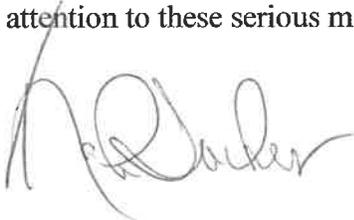
licensee's license, the AZBOC is refusing to provide it to me by ignoring my multiple verbal and written requests for it.

Please consider that requiring multiple purchases of the same license (as opposed to displaying a clear copy of a licensee's valid AZBOC license), is an undue burden on all AZBOC licensees that it does not serve the needs or safety of the public in the least.

I am very concerned why AZBOC cannot or will not provide the written AZBOC Rules or Practice requiring repeated purchase of a licensee license.

Thank you for your attention to these serious matters,

Kathleen Tucker  
9241 E Helen St.  
Tucson, AZ 85715

A handwritten signature in black ink, appearing to read 'K. Tucker', written over the typed name and address.

520 885-2247 for telephone messages, [deadline@cox.net](mailto:deadline@cox.net)  
520 305-7093, [ambientbohemia@gmail.com](mailto:ambientbohemia@gmail.com)



Kathleen Tucker &lt;ambientbohemia@gmail.com&gt;

**Re: From K Tucker Re Inspection Salon at the Villas Tucson**

1 message

Irma Telles-Stewart <itelles@azboc.gov>  
To: Kathleen Tucker <ambientbohemia@gmail.com>

Mon, Oct 7, 2019 at 11:20 AM

I understand. I am hoping you get your license soon. Please let me know if you are having issues with your license..

As your unresolved issues, I talked to the assigned inspector regarding her visit regarding posting of salon license. I did try calling you twice in reference to inspector's inspection to no avail. At this time, I do not have your salon file in front of me or investigator's report. I am out of the office today but I will call you first thing tomorrow morning.

Thank you.

Thank you.

Thank you.

On Mon, Oct 7, 2019 at 10:58 AM Kathleen Tucker <ambientbohemia@gmail.com> wrote:  
I have received your email. I am in Tucson so going to your office for pickup is a no.

On Mon, Oct 7, 2019, 8:51 AM Irma Telles-Stewart <itelles@azboc.gov> wrote:

I apologize I have not returned your call. I am out of the office. I called the office this morning for status of your 2021 renewal. Your personal 2021 license renewal was received in the office on the 9th of September (take 2 to 3 weeks) for license to be processed. On the 3rd of October your 2021 license was printed and mailed to your address listed in the system. Pickup mail for Board is twice a day morning & late afternoon. I can have a license printed today at no charge and you may pick it up today. Once you received the initial 2021 license that was mailed on the 3rd, you will need to return one of the licenses. Please confirm that you will pick up license or wait until you get the initial license that was mailed to you on the 3rd.

On Mon, Oct 7, 2019 at 8:18 AM Kathleen Tucker <ambientbohemia@gmail.com> wrote:  
Dear Ms Telles,

I prefer communicating in writing so that there are no misunderstandings regarding my frustration over not receiving my personal license in the mail even though I mailed it on Sept 3, it was received in. PHX Sept 4, and cleared my bank before Sept 10.

My birthday was Oct 2. I now have no paper license to carry with me, hang in my shop, or make copies of. This is NOT acceptable especially since I left a voice mail to you on Oct. 3 without any reply as yet. I was so upset my voice was quivering and I repeated myself several times. I am today even more upset after still not receiving either.

I will likely be sent home today and my scheduled appts cancelled if I am asked for a current license that I cannot produce - but was paid for over a month ago. This has never happened in my 21 yrs of being an AZ licensed nail tech. I will disappoint all my senior clients and lose my income over this. The stress is unhealthy and losses unforgivable.

I also previously, verbally and in writing, asked for a paper copy of the AZBOC Rule to require multiple duplicate purchases of the same valid license. I read every word of the Board's written Rules. I read that a Duplicate costs \$30 and that a reason must be given for the duplicate request. I do not see a Rule saying anything past the Rule of having a valid license in plain sight.

I need my license delivered to me ASAP. I have made a screen shot of my license being ACTIVE thru Oct 2 2021. This is not the same as having the license in plain sight, and the 1st time EVER I will go to work without proper paperwork ie a license.

Because I am concerned about retaliatory actions over my multiple recent complaints to you, I feel that I should report these issues to Governor's Office, the Auditor Generals Office and the Ombudsmen and a private attorney in the coming days if I don't receive written assurance that my license will be delivered to me immediately and with any known reason for the egregious delay, and with the docs I've requested outlining the requirement to purchase

the same license. As I stated, I have twice, in the past 21 years, sent a check for a Duplicate license to carry on my kit, and had my checks returned with a notice that the purchase was not necessary. . and containing the requested a Duplicate license both times. I mentioned this to you and said that your records in my license can confirm my statement. You should have been able to verify this and the 180\* change from the Aug 19 shop inspection and the one prior (when all ref to any salons other than the one for that address were ordered taken down) etc.

There were many other compliance concerns that we discussed in Sept (3 & 4) that remain unresolved. At this point, I am focusing on my undelivered renewed license, when to expect it, and the reason why.

Sincerely,

Kathleen C Tucker Lic#59818065

9241 E Helen St  
Tucson 85715

On Fri, Sep 6, 2019, 8:31 AM Irma Telles-Stewart <[itelles@azboc.gov](mailto:itelles@azboc.gov)> wrote:

In receipt to your email, you may call me I am here to speak with you with any concerns you have.

Thank you,

Irma

On Fri, Sep 6, 2019 at 5:33 AM [ambientbohemia@gmail.com](mailto:ambientbohemia@gmail.com) <[ambientbohemia@gmail.com](mailto:ambientbohemia@gmail.com)> wrote:

I've had a hard time connecting with you this week regarding the recent inspection and the msg passed on to me that the photocopy of my license is inadequate.

I am frustrated. Prior inspector had me remove all signage mentioning my Nail Fairy Salon. She had the Assisted Livings Director take it off the wall right then. That inspector said the only Salon License to be hanging was the one issued to that address.

I go out there using my mobile kit and have had my mobile kit inspected a number of times over the past 20 yrs. A copy of my license is attached to it and every area of my kit is always pass ready and has passed all inspectors ie cleanliness, MSDS sheets, 1st aid kit with procedures, etc. I keep a copy on the wall also and it was never questioned these past 9 years.

As I mentioned earlier this week to you: I have twice sent a check to purchase a duplicate license and twice had the check returned to me with a note that the purchase wasn't required. You should be able to verify that in my files. I have been the administrator, in the past, for the Tucson prisons' Policies and Procedures and I imagine you also have numerous notebooks of these rules and amendments. I know things change. I would like the document that requires the purchase (as opposed to the carrying of) an original for every place services are performed. I noticed this week that the hair stylist has taken her license off the wall at the Villas. The head caregiver told me that she is (now) keeping it with her since she works other salons.

I am sure that a part of my frustration stems from the fact that I was rather looking forward to the next inspection since I felt the inspector would have hard questions about just who or what The Silver Studio is . which is what this hair stylist has named her business. Note: There isn't a salon licensed in AZ by that name on these attached photos and there is no business registered to Sandra Cavataio nor The Silver Studio in either Tucon or Pima County, as verified by Michael in the Pima County Dept of Licensing and Revenue. There are shady doings here that I thought the inspector would notice and correct. The business office for the entire Academy Village including the Assisted Livings thinks that Sandra Cavataio (unsure of spelling) is being sent out by Rincon Family Salons yet there is nothing indicating current involvement by Rincon Family Salon shown inside this salon. Yes. It is a box of rocks that needs sorting out. I live my life and business without needing reprimand because I follow and exceed requirements and rules. Please advise me on how to sort this mess out. Sandra Cavataio is not the salon manager. Please see attachments of this unlicensed hair business and the true licensee of the Villa.

Regards, Kathleen Tucker [520 885-2247](tel:5208852247) or cell [520 305-7093](tel:5203057093).

On Wed, Oct 9, 2019 at 3:19 PM Kathleen Tucker <[ambientbohemia@gmail.com](mailto:ambientbohemia@gmail.com)> wrote:  
Ms Telles,

Please confirm that you are aware that my Nail Tech license has still not been received by me. lic #59818065. As discussed, the license expired Oct 2.

The renewal check was received by AZBOC no later than Sept 4. This is impacting me because I have never been out of compliance.

I carry a valid AZBOC license, a current Tucson business license and salon and personal liability docs on my person/in my work space. I cannot seek new business nor buy product without a current license.

Our 1st conversation was on Sept 3 regarding the late-August 2019 inspection Salon at the Villas. I have sent you photos of the Salon at the Villas license, a photo of that inspection report and photos of a fake business advertising hair services that was and still is advertising out there:

Here is the summary of what we have previously discussed and what I have previously written:

: The Salon inside the Academy Villas belongs to the Academy Villas.

1. No AZ salon exists for the entity that Sandra Cavataio is selling ie "The Silver Studio" in her advertising to the people inside Academy Villas Assisted Living bldgs, it's Salon, to the neighborhood of the Academy Village, and to the public with her sandwich board sign inviting the public into her (bogus) "Silver Studio", and with the price list flyers she is distributing advertising The Silver Studio.

2. Ms Cavataio has no authority to change the name of the Salon at the Villas.

3. AZBOC rules are clear that any salon name change must be reported.

4. The price list for her bogus business is not readable from 10 ft.

5. Sandra Cavataio had no business license in Pima County whatsoever.

6. Sandra Cavataio is not the Salon Manager at Academy Villas aka Salon at the Villas.

I do not know Sandra Cavataio. I have never seen her. I know the residents are pleased with her hair work. I have no desire to have her leave the Salon. However:

I also know she is not a child and that her 30plus years as an AZ licensed cosmetologist includes the knowledge that she is breaking city, county and state laws with this unlicensed salon business.

I feel certain that the public is not adequately protected when a rogue salon business is allowed to continue deceiving the public as to being a licensed salon business.

As I stated in previous emails, I was rather looking forward to the next AZBOC inspection bc I felt these suspicious actions by Rincon Family Salons' making up the salon name "The Silver Studio at Academy Villas", then hiring cosmetologists to work inside the Academy Villas/Village on their behalf..

Rincon Family salon removed all reference to Rincon Family Salon several months ago while leaving Sandra Cavataio in place to continue to operate the bogus Silver Studio on Thurs and Fri inside actual The Salon at The Villas.

UPDATE: There was some kind of blowup between the owner of Rincon Family Salon (Tammy) and Sandra Cavataio late last week. Tammy wasn't getting her cut of the bogus Silver Studio income? Tammy stormed the Academy Villas and removed her property that Cavataio had been using (tools, hand mirror, rubber under chair pad, electric vac, etc).

I told you this is a box of rocks with silent shadow partners in a bogus hair business.

I am also still waiting for (please send me) a copy of the AZBOC Rule that states the requirement of purchasing additional copies ie "Duplicate Licenses" and the Rule that prohibits the use of a copy by the lawful owner of AZBOC licenses.

Sincerely  
Kathleen Tucker

I have my new personal license already ordered and look forward to receiving a copy of the Policy requiring purchasing additional copies as opposed to carrying the original from place to place.

Powered by Cricket Wireless

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*Irma Telles-Stewart*  
*Investigator Supv.III*  
480-889-2954  
[itelles@azboc.gov](mailto:itelles@azboc.gov)

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*Irma Telles-Stewart*  
*Investigator Supv.III*  
480-889-2954  
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Kathleen Tucker &lt;ambientbohemia@gmail.com&gt;

**Re: License Received**

1 message

Irma Telles-Stewart <itelles@azboc.gov>  
To: Kathleen Tucker <ambientbohemia@gmail.com>

Thu, Oct 10, 2019 at 3:51 PM

Ms. Tucker,

As I mentioned, Inspector did not find any of the concerns that you listed on your email dated 10.9.2019 during Inspection of Salon at Villas on 8.29.19. However, a complaint was generated regarding your concerns. Investigator will conduct an investigation of Salon at Villas #SCOS19835.

As for inspector requesting your salon license not to be displayed at said location, your salon license is for your home salon. In order to conduct mobile services, you are required to comply with the rules & laws for mobile services. This is a concern & I would like to review the mobile service & home salon for :Nail Fairy Salon.”.

My office hours are from 7:30 - 4 but I am here from 7 - 5 or 5:30.

Thank you.

On Thu, Oct 10, 2019 at 9:29 AM Kathleen Tucker <ambientbohemia@gmail.com> wrote:

I have now received my license. I really must insist that we discuss Board issues in writing and not thru phone calls.. These issues are much too important. Especially since my initial call regarding the Aug 2019 inspection of the Salon at the Villas was a telephone disaster. I was talked to like I was a criminal.

I had called and identified myself stated the question at hand:

Why was I being told that a photocopy of my valid current license not sufficient when it has historically been approved.. since 1998 thru that prior Villa inspection. .in 2017? 2018? .and why was I being told that I must also display my Salon license when the last inspector from AZBOC had made the Director of the Villas remove all reference to The Nail Fairy Salon right then and there.

This is where my interest on verbal communication ended:

AZBOC staff asked me what salon I own. She looked up The Nail Fairy Salon multiple times. Had me spell it. Spelled it back to me. Yes. Then told me she has no record of a The Nail Fairy Salon. I pulled out my wallet. Got out my AZBOC issued wallet card and read her my Salon License number. She was then able to locate me Salon on your database. I then mentioned my mobile kit. WHAT MOBILE KIT!?, she said, in a tone that accused me. I said, the kit I carry, with my licenses, as in being sent out from my lawful salon, to wherever I am asked to perform services. The kit that has been inspected and approved multiple times by AZBOC inspectors for over two decades. The kit that contains MSDS sheet, 1st aid kit with AZBOC Procedures and hazmat protections, nail supplies, dry storage, wet storage Barbicide Hospital grade along with a hospital grade surface disinfectant that exceeds AZBOC standards 6 times over.

I wonder how many times AZBOC has also told people over the phone that they have no record of a Nail Fairy Salon!

I also have become so upset on subsequent phone calls and while leaving messages that I stuttered, lost my voice, started crying.

This entire saga is so upsetting and exhausting. Of course I want to have your database corrected so that your own staff can find my Salon in it. Of course I want to obtain all Rules that effect me. I want to challenge those Rules that cause undue hardship to myself and others. I want to know that inspections are consistent and that any perceived difficiency is communicated to the license holder directly, in writing.

I will not be available today, tomorrow and thru the wknd. I'm exhausted. I look forward to receiving a copy of the Rule that does not allow the owner of a license to make and use copies.

Regards,  
Kathleen Tucker  
9241 E Helen Tucson 85715



Kathleen Tucker &lt;ambientbohemia@gmail.com&gt;

**Fwd: Kathleen Tucker**

1 message

**Kathleen Tucker** <ambientbohemia@gmail.com>

Thu, Oct 10, 2019 at 7:50 PM

To: me &lt;deadline@cox.net&gt;

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

From: **Irma Telles-Stewart** <itelles@azboc.gov>  
Date: Thu, Oct 10, 2019, 5:02 PM  
Subject: Re: Kathleen Tucker  
To: Kathleen Tucker <ambientbohemia@gmail.com>

I will remove your name as the complainant As I mentioned the Investigator did not find any findings of advertising differently. Investigator will conduct an investigation in reference with your concerns.

I do believe you may not be in compliance with mobile services.

Thank you.

On Thu, Oct 10, 2019 at 3:49 PM Kathleen Tucker <ambientbohemia@gmail.com> wrote:

I received your voice mail. I do NOT want to be named as the complainant for the reinspection of the Academy Villas salon.

I am the complainant regarding the on and off approval of the use of license copies for nonfraudulent purposes by the assigned owner of the license(s).

I expected the issues of the unregistered

"The Silver Studio At Academy Village/Altura"

to be noticed and corrected by AZBOC on inspection..

The residents of the 2 Villas (assisted living residences) are happy with the hair services that Sandra Cavataio is providing. Upheavals should be kept to a minimum.

These are vulnerable adults, (and the public) innocently handing their credit cards to a non-existent business. She uses the space on Thursdays and sometimes on Fridays.

If what she is doing is wrong then it is your place to redirect her, not mine. I have never seen her. Do not know her. Never heard her voice. Never communicated with her. We are out there on different days.

I have been going out there for around 10 years. Taking care of seniors is a lifelong calling. I love when I come in and they all say, "It's the Nail Fairy!", and we laugh and smile. It's a good and happy place and needs to stay that way.

Kathleen Tucker  
9241 E Helen Tucson 85715

On Wed, Oct 9, 2019, 3:38 PM Irma Telles-Stewart <itelles@azboc.gov> wrote:

I am aware. I did leave you a message this morning for a call back in reference with your concerns and the Board's concern. I am in the office.

Thank you.



Kathleen Tucker &lt;ambientbohemia@gmail.com&gt;

**Re: Kathleen Tucker**

1 message

Irma Telles-Stewart <itelles@azboc.gov>  
To: Kathleen Tucker <ambientbohemia@gmail.com>

Wed, Oct 9, 2019 at 3:37 PM

I am aware. I did leave you a message this morning for a call back in reference with your concerns and the Board's concern. I am in the office.

Thank you.

On Wed, Oct 9, 2019 at 3:19 PM Kathleen Tucker <ambientbohemia@gmail.com> wrote:  
Ms Telles,

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I am also still waiting for (please send me) a copy of the AZBOC Rule that states the requirement of purchasing additional copies ie "Duplicate Licenses" and the Rule that prohibits the use of a copy by the lawful owner of AZBOC licenses.

Sincerely  
Kathleen Tucker  
9241 E Helen St  
Tucson 85715

--  
*Irma Telles-Stewart*  
*Investigator Supv.III*  
480-889-2954  
[itelles@azboc.gov](mailto:itelles@azboc.gov)

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Kathleen Tucker &lt;ambientbohemia@gmail.com&gt;

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**Re: Kathleen Tucker**

1 message

**Kathleen Tucker** <ambientbohemia@gmail.com>

Thu, Oct 10, 2019 at 6:23 PM

To: Az Bd Cosmetology IRMA TELLES &lt;itelles@azboc.gov&gt;

I can't imagine why I'm not in compliance with my mobile activities but I will immediately do whatever is required including being inspected any time anywhere. My mobile kit has been inspected many times as part of ea salon inspection. The only things inspector mentioned was that pedi scrub blocks may soon be disallowed. So I switched to a different product and put my unused foot scrub blocks in storage. She inspected my mobile kit and my Salon before I headed out to work at Academy Villas that morning. She also wanted a larger door sign. The next day I made a "The Nail Fairy Salon" door sign using 5 inch tall letters. I am happy to see your inspectors. The inspectors are the reason why we no longer hear of disease being spread by salons in AZ and why Nail Techs can buy liability insurance for our businesses. Twenty years ago no insurance company would touch a Nail salon business to insure them..

I work where complete scrubbing sanitation and tool soaking can be completed between each client. I carry dirty towels in separated bags back to the Salon for washing bleaching drying. My tools are scrubbed scalded and submerged in Barbicide Hospital no rust formula between clients. Every file is also brush scrubbed in hot water with antibacterial soap. And Sprayed with hospital grade disinfectant and air dried before returning to dry storage. I scrub up before touching anyone and often. I do not cut corners. I do not slack off. This is my business, my calling, my reputation. My people. I'm really concerned why you aren't aware of previous inspections of my mobile activity.

To clarify: In 2017/18 your inspector had my Villa director take all reference to The Nail Fairy out of the Salon at the Villas during that inspection. This past Aug 2019 inspector told staff that I must have my Nail Fairy license out there. Today you write that it only belongs in my own salon. Wouldn't I need to carry a copy in the mobile kit along with my personal nail tech license? Wouldn't/shouldn't I be allowed to send myself out from my Salon to do mobile services anywhere in Arizona?

Kathleen Tucker

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*Irma Telles-Stewart*  
*Investigator Supv.III*  
480-889-2954  
[itelles@azboc.gov](mailto:itelles@azboc.gov)

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9241 E Helen St  
Tucson 85715

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*Irma Telles-Stewart*  
*Investigator Supv.III*  
480-889-2954  
[itelles@azboc.gov](mailto:itelles@azboc.gov)

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Arizona State  
Board of Cosmetology

Kim Scoplitte, Executive Director

1740 W. Adams • Suite #4400 • Phoenix, AZ 85007  
Phone 480.784.4539 • www.azboc.gov

December 20, 2019

**VIA EMAIL:** [grrc@azdoa.gov](mailto:grrc@azdoa.gov).

Office of the Director  
Governor's Regulatory Review Council  
100 North Fifteen Avenue Suite 305  
Phoenix, Arizona 85007  
(602) 542-2058

**Re: A.R.S. § 41-1033 (G) Petition from Ms. Kathleen Tucker**

Dear Governor's Regulatory Review Council:

The Arizona State Board of Cosmetology Board ("Board") reviewed the Council's December 3, 2019, letter and the supporting documents regarding the petition filed by Kathleen Tucker, an Arizona State licensed nail technician. The Board initially considered the matter at the December 13, 2019, regularly scheduled meeting and held a subsequent special meeting to review the matter and adopt this written response. The Board has reviewed the relevant portions of the A.A.C. R4-10-111 and provides the following explanation to support a decision that the Rule is not unduly burdensome and is necessary to fulfill a public health, safety or welfare concern. A.R.S. § 41-1033(G).

A.A.C. R 4-10-111, Display of Licenses and Signs, provides as follows:

A. The name on an establishment's exterior sign, advertising, and publications shall be the same as the name on the establishment license issued by the Board. The establishment's exterior sign shall contain lettering at least 2 1/2 inches in height.

B. A school shall prominently post a class schedule that lists the names of instructors and classes. The school shall display the school and instructor licenses near the school entrance, visible to the public.

C. A salon shall prominently post the salon license and ensure that the personal license of each licensee performing services in the salon is posted at the licensee's station.

D. A licensee performing mobile services shall prominently display a duplicate personal and establishment license in the area where mobile services are provided. The licensee's original license shall be prominently displayed in the salon from which the licensee was dispatched in accordance with subsection (C).

E. A copy of R4-10-112 shall be prominently posted in each establishment.



Kim Scoplitte, Executive Director

1740 W. Adams • Suite #4400 • Phoenix, AZ 85007  
Phone 480.784.4539 • www.azboc.gov

F. A salon shall prominently post a notice of salon services that are not regulated by the Board and that are provided at the salon.

The relevant sections that apply to the Council's concerns based on Ms. Tucker's petition are subsections (C) (license posting) and (D) (mobile services). The remaining subsections that relate to signage (subsection A), school class schedules (subsection B), posting of infection control and safety standards (subsection E), and posting out of nonregulated services (subsection F), are not factually or legally related to Ms. Tucker's petition. Should the Council require that the Board address those subsections we request that additional time is granted.

The plain language of subsection D provides the framework for how a Board licensee can provide mobile services. First, the licensee can obtain a Board issued duplicate personal and establishment license. The fee for a Board issued duplicate license is \$20.00. A.A.C. R4-10-102 (C)(9). The \$20.00 fee is below the maximum amount of \$30.00 that the Board is authorized to statutorily charge pursuant to A.R.S. § 32-507 (A)(16). The licensee then has the freedom to perform mobile services within Arizona and post the Board issued duplicate licenses in the area where the mobile services are provided. The licensee's original license remains in "the salon from which the licensee was dispatched." The licensee providing mobile services can use the Board issued duplicate licenses in multiple locations through out Arizona and is not required to obtain a Board issued duplicate for each location they provide mobile services.

The term "unduly burdensome" is not defined in the statute. If statutory language is clear and unambiguous, courts will give effect to a statute's plain language without resorting to other rules of statutory construction. *Wells Fargo Credit Corp. v. Tolliver*, 183 Ariz. 343, 903 P.2d 1101, 1103 (App. 1995). Arizona courts have frequently resorted to recognized, authoritative dictionaries of the English language on questions of the ordinary meaning of words contained in statutory provisions. *Airport Properties v. Maricopa County*, 195 Ariz. 89, 99, 985 P.2d 574, 584 (App. 1999). Black's Law Dictionary defines burdensome as "difficult to bear; seriously oppressive." Black's Law Dictionary (10<sup>th</sup> ed. 2014). The modifier "unduly" implies that the burden is "excessive or unwarranted." *Id.*

The rule at issue provides that a licensee has the freedom to deliver mobile services with the only requirement that they obtain a Board issued duplicate personal and establishment license and post those licenses in the area where the services are provided. The licensee can take the duplicate licenses out into the community and use them in multiple locations. Having one duplicate license affords the licensee portability to use the Board issued duplicate personal and establishment licenses in multiple locations. The licensee is not required to have a Board issued duplicate license for each location. The licensee can independently determine when, how often, and where they wish to provide mobile services. A.A.C R4-10-404(A)(2) (mobile appointments maintained through salon appointment book.) This independence and portability provides the licensee with economic opportunities and allows them to respond to the needs within the community for mobile services. The limited regulatory requirement of obtaining Board issued duplicate licenses for a small fee and posting the licenses is a nominal requirement at best and does not rise to the level of an "unduly burdensome" requirement.



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The rule is necessary to specifically fulfill a public health, safety and welfare concern. The requirement that the licensee obtain Board issued licenses protects the licensee's licenses from fraud. It protects their ability to earn a living and provide services outside of their salon while simultaneously providing them with economic opportunities. The requirement also protects the public by providing notice to a consumer that the individual offering regulated services has the requisite license. The posting of the Board issued duplicate license is assurance that the individual has the education and training to perform the services that if in the hands of an unlicensed individual could lead to serious harm. The consumer can rest assured that the licensed individual, for example, using chemicals for hair, skin, and nails will do so safely and competently. Additionally, a licensed individual providing mobile services will employ the infection control and safety standards providing consumers with safely performed services. The Board has recently had to address the rise in fraudulent licenses and has made referrals to the Arizona Attorney General's Office criminal division. Governor Ducey, in Executive Order 2019-01, has directed State agencies to aggressively respond to and employ practices that are directed at "unlicensed individuals who are allegedly holding themselves out as licensed professionals for financial gain." The requirement that a mobile service licensee obtain Board issued duplicate licenses furthers the Governor's objective to protect the public from individuals "trying to defraud unsuspecting consumers." The requirement that individuals seeking to provide mobile services obtain duplicate Board issued licenses stands in slender juxtaposition to the potential threat to consumers by fraud and the conduct of unlicensed individuals.

In conclusion, A.A.C. R 4-10-111 (C), (D) places a nominal requirement of obtaining Board issued licenses on licensees intending to provide mobile services while protecting the licensee and consumers from fraud. The rule protects the license of the licensee which provides economic opportunities and has a direct and positive impact on the economy of the state. The rule also protects the public from fraudulent conduct by unlicensed individuals. The Board respectfully requests that the Council recognize the importance of the rule in protecting the licensee and the public while also providing an avenue for economic benefit to licensees endeavoring to provide mobile services to consumers in the State of Arizona.

Sincerely,

Kim Scoplitte, Executive Director  
Arizona State Board of Cosmetology

Gary Begley, Board Chair  
Arizona State Board of Cosmetology