DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 10, Article 1, Health Care Institutions: Licensing

New Section: R9-10-121

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: October 6, 2020

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

FROM: Council Staff

DATE: **September 9, 2020**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES (R20-1001)**
Title 9, Chapter 10, Article 1, General

New Section: R9-10-121

Summary:

This regular rulemaking from the Department of Health Services (Department) relates to a rule in Title 9, Chapter 10, Article 1. As the Department explains in Item 6 of its Preamble, this rule was initially adopted as an emergency rule in March 2020 pursuant to the Governor's Executive Order (EO) 2020-07. This EO directed the Department to conduct an emergency rulemaking to adopt requirements designed to prevent the spread of COVID-19 to vulnerable Arizonans residing in nursing care institutions, intermediate care facilities for individuals with intellectual disabilities, or assisted living facilities. This rulemaking became effective as of March 16, 2020 and expired on September 12, 2020. The Department is now conducting this regular rulemaking to continue this rule to prevent exposure to the virus and the spread of COVID-19 in these health care institutions. In addition, the Department seeks to address issues it discovered during the implementation of the emergency rule.

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?

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 Department did not review or rely on a study in conducting this rulemaking. However, the Department states that it relied on the data being compiled on the incidence of COVID-19 in Arizona, which is publicly available on the Department's website.

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

In March 2020, the Governor declared that a State of Emergency exists in Arizona due to the COVID-19 outbreak. The Department subsequently conducted an emergency rulemaking to adopt requirements designed to prevent the spread of COVID-19 to vulnerable Arizonans residing in nursing care institutions, intermediate care facilities of individuals with intellectual disabilities, or assisted living facilities. The emergency rule is set to expire on September 12, 2020.

This rulemaking is to ensure continued protection of vulnerable individuals in health care facilities past September 12, 2020. As in the emergency rule, the Department is adopting requirements for establishing, documenting, and implementing policies and procedures to help prevent exposure to the virus and the spread of COVID-19 in these health care institutions. These include policies and procedures to require screening and triage before entry of personnel members, employees, visitors, and any other individuals entering the facility.

However, as part of this rulemaking, the Department is revising the rules to address issues that were identified during implementation. These include clarifying that emergency medical care technicians responding to a call for emergency medical services do not need to be screened before entry into a nursing care institution, intermediate care facility for individuals with intellectual disabilities, or assisted living facility. To reduce the impact on these health care institutions when the emergency has passed, the Department is also clarifying that the rule will only be in effect during the time when the Governor has declared a state of emergency.

The Department anticipates that while some facilities may incur substantial (over $10,000) costs to implement the required infection control procedures, all stakeholders should benefit from the reduced spread of COVID-19.

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 that there are no less intrusive or less costly alternatives to achieving the purpose of the rule.

Since the requirements in the rule were designed to improve public health and safety and reduce the spread of a potentially deadly disease, the Department anticipates that the general public will receive a significant benefit from the rule.

6. What are the economic impacts on stakeholders?

The Department anticipates that persons affected by the rulemaking include the Department; the Arizona Health Care Cost Containment System (AHCCCS) and other third-party payers; the Department of Economic Security (DES); licensed nursing care institutions, intermediate care facilities for individuals with intellectual disabilities, and assisted living facilities; administrators or managers, personnel members, employees, visitors, and any other individuals entering a nursing care institution, an intermediate care facility for individuals with intellectual disabilities, or an assisted living facility; residents of a nursing care institution, an intermediate care facility for individuals with intellectual disabilities, or an assisted living facility and their families; and the general public.

The Department is expected to receive a significant benefit from having a rule that specifically addresses measures to prevent the spread of COVID-19. Since AHCCCS pays for a large proportion of health care costs in Arizona, the Department believes that AHCCCS may receive substantial cost savings through a reduction in the number of hospitalization or emergency department visits from individuals suffering from COVID-19. Other third-party payers may also receive a substantial cost savings, depending on the number of subscribers who are spared from getting COVID-19 because of the rule. Almost all intermediate care facilities for individuals with intellectual disabilities in Arizona are run under contract with DES. The Department anticipates that DES may incur a substantial cost from implementing the rule, but may also receive a significant benefit from protecting residents, as well as staff, from infection.

For most licensed nursing care institutions, intermediate care facilities for individuals with intellectual disabilities, and assisted living facilities, the Department believes that making changes to their policies and procedures to specifically require the infection control measures required in the rule will cause these facilities to incur minimal costs. However, the Department anticipates that a facility may incur up to substantial costs to implement the required infection control procedures. Because these procedures may reduce the spread of COVID-19 within the facility and protect both residents and staff of the facility, a facility may also receive a significant benefit from implementing the requirements in the rule. Because the proposed rule clarifies that emergency medical care technicians (EMCTs) do not need to be screened before entry, the proposed rule may

provide a minimal benefit to a facility over the current emergency rule in time saved otherwise trying to screen an EMCT responding to a call.

A resident of a nursing care institution, an intermediate care facility for individuals with intellectual disabilities, or an assisted living facility is most at risk of dying from COVID-19. The requirements in the rule were designed to reduce the spread of COVID-19 to residents of these facilities. Thus, the Department anticipates that a resident of one of these facilities may receive a significant benefit from the requirements in the rule.

Personnel members, employees, and others entering one of these facilities for a business-related reason, including the administrators or managers of these facilities, may experience the inconvenience of having to be screened for infection before entering a facility. However, the Department believes that these individuals also receive a significant benefit from having a safer work environment and lower chance of being infected or infecting others in the facility. Similarly, a friend or relative of a resident of one of these facilities may be inconvenienced by screening but receive a significant benefit of knowing that measures are in place to protect a resident from becoming infected by someone entering the facility.

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

No. As the Department states in item 10 of the Preamble, it made minor clarifying and technical changes to the proposed rule between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking. These changes do not result in a rule that is "substantially different" pursuant to A.R.S. § 41-1025.

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

The Department 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?

Not applicable. This rule does 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?

Not applicable. There is no corresponding federal law.

11. Conclusion

In this regular rulemaking, the Department seeks to continue requirements it adopted in an emergency rulemaking in response to EO 2020-07, which are meant to prevent exposure to the virus and stop the spread of COVID-19 in health care institutions.

The Department is requesting an immediate effective date for this rulemaking pursuant to A.R.S. § 41-1032(A)(1) ("[t]o preserve the public peace, health or safety") and (4) ("[t]o provide a benefit to the public and a penalty is not associated with a violation of the rule). Upon review of this statute, Council staff agrees that the Department cites the proper bases to request an immediate effective date for this rulemaking.

Council staff recommends approval of this rulemaking with an immediate effective date.

ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

August 12, 2020

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 10, Article 1, Regular Rulemaking

Dear Ms. Sornsin:

1. The close of record date: August 10, 2020

2. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 10, Article 1, does not relate to a five-year-review report.

3. Whether the rulemaking establishes a new fee and, if so, the statute authorizing the fee:
The rulemaking does not establish a new fee.

4. Whether the rulemaking contains a fee increase:
The rule does not contain a fee increase.

5. Whether an immediate effective date is requested pursuant to A.R.S. 41-1032:
Yes, the Department is requesting an immediate effective date for the rules under A.R.S. § 41-1032(A)(1) and (5).

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

The Department certifies that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.

The following documents are enclosed:

a. Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of the rule;

b. An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055; and
c. General and specific statutes authorizing the rules.

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

Sincerely,

Robert Lane
Director's Designee

RL:rms

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES

HEALTH CARE INSTITUTIONS: LICENSING

PREAMBLE

1.	**Sections Affected**	**Rulemaking Action**
	R9-10-121	New Section

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

Authorizing statutes: A.R.S. §§ 36-104(1)(b)(ii), 36-132(A)(1), 36-136(A)(2), 36-136(G)

Implementing statutes: A.R.S. §§ 36-132(A)(17), 36-136(I)(1), 36-405(A)

3. The effective date of the rules:

The Arizona Department of Health Services (Department) requests an immediate effective date, under A.R.S. § 41-1032(A)(1) and (4). Since the new rules reflect how the Department is currently enforcing the rules and the new requirements are less stringent than current requirements, enabling the Department and stakeholders to implement the new rules upon filing of the rules will allow the Department and stakeholders to receive the benefits of the new rules as quickly as possible.

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 rule:

Notice of Emergency Rulemaking: 26 A.A.R. 509, March 20, 2020

Notice of Rulemaking Docket Opening: 26 A.A.R. 1179, June 12, 2020

Notice of Proposed Rulemaking: 26 A.A.R. 1168, June 12, 2020

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

Name: Colby Bower, Assistant Director

Address: Arizona Department of Health Services
Public Health Licensing Services
150 N. 18th Ave., Suite 510
Phoenix, AZ 85007

Telephone: (602) 542-6383

Fax: (602) 364-4808

E-mail: Colby.Bower@azdhs.gov
or

Name: Robert Lane, Chief
Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Avenue, Suite 200
Phoenix, AZ 85007
Telephone: (602) 542-1020
Fax: (602) 364-1150
E-mail: Robert.Lane@azdhs.gov

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

Over the past few months, COVID-19, the disease caused by novel coronavirus, SARS-CoV-2, has spread to all parts of the globe. On March 11, 2020, the World Health Organization officially declared a pandemic due to COVID-19, with 124,908 total confirmed cases and 4,591 deaths at that time. In Arizona, nine confirmed cases had been reported as of that date. As of August 10, 2020, over 5,000,000 cases of COVID-19 have been confirmed in the United States. In Arizona, over 187,000 confirmed cases have been reported as of August 10, 2020, with over 4,000 deaths. Most at risk for serious morbidity and increased mortality due to the disease are the elderly and those with complicating medical conditions.

To address this public health emergency, on March 11, 2020, the Governor declared that a State of Emergency exists in Arizona due to the COVID-19 outbreak and issued Executive Order 2020-07, which directed the Arizona Department of Health Services (Department) to conduct emergency rulemaking to adopt requirements designed to prevent the spread of COVID-19 to vulnerable Arizonans residing in nursing care institutions, intermediate care facilities for individuals with intellectual disabilities, or assisted living facilities. The Department completed the emergency rulemaking with a rule that establishes requirements in A.A.C. Title 9, Chapter 10, Health Care Institutions, designed to protect these vulnerable individuals in nursing care institutions, intermediate care facilities for individuals with intellectual disabilities, and assisted living facilities from exposure to COVID-19. This rule became effective as of March 16, 2020, and will expire on September 12, 2020, unless renewed.

Concurrent with this emergency action and because it is unclear when the emergency will be over, the Department has initiated a regular rulemaking to ensure continued protection of these vulnerable individuals past September 12, 2020. As in the emergency rule, the Department is adopting requirements for establishing, documenting, and implementing policies and procedures to help prevent exposure to the virus and the spread of COVID-19 in these health care

institutions. These include policies and procedures to require screening and triage before entry of personnel members, employees, visitors, and any other individuals entering the facility. The Department is also specifying requirements for disinfection of frequently touched surfaces and for distancing residents who exhibit symptoms of COVID-19 from other residents. However, as part of this rulemaking, the Department is revising the rule to address issues that were identified during implementation. These include clarifying that emergency medical care technicians responding to a call for emergency medical services do not need to be screened before entry into a nursing care institution, intermediate care facility for individuals with intellectual disabilities, or assisted living facility. Emergency medical services providers and ambulance services already screen their employees, so additional screening by the health care institution is unnecessary to protect residents and may delay the provision of emergency medical services. To reduce the impact on these health care institutions when the emergency has passed, the Department is also clarifying that the rule will only be in effect during the time when the Governor has declared a state of emergency to address a situation described under A.R.S. § 36-787. The new rule will conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

7. A reference to any study relevant to the rules that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rules, 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 related to this rulemaking package. However, the Department relied on the data being compiled on the incidence of COVID-19 in Arizona, as specified on the Department's webpage at https://www.azdhs.gov/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/covid-19/dashboards/index.php.

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

Annual cost/revenue changes are designated as minimal when $1,000 or less, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification. The Department anticipates that persons affected by the rulemaking include the Department; the Arizona Health Care Cost Containment System (AHCCCS) and other third-party

payors; the Department of Economic Security (DES); licensed nursing care institutions, intermediate care facilities for individuals with intellectual disabilities, and assisted living facilities; administrators or managers, personnel members, employees, visitors, and any other individuals entering a nursing care institution, an intermediate care facility for individuals with intellectual disabilities, or an assisted living facility; residents of a nursing care institution, an intermediate care facility for individuals with intellectual disabilities, or an assisted living facility and their families; and the general public.

The Department is expected to receive a significant benefit from having a rule that specifically addresses measures to prevent the spread of COVID-19. Since AHCCCS pays for a large proportion of health care costs in Arizona, the Department believes that AHCCCS may receive up to a substantial cost savings through a reduction in the number of hospitalizations or emergency department visits from individuals suffering from COVID-19. Other third-party payors may also receive up to a substantial cost savings, depending on the number of subscribers who are spared from getting COVID-19 because of the rule. Almost all intermediate care facilities for individuals with intellectual disabilities in Arizona are run under contract with DES. The Department anticipates that DES may incur up to a substantial cost from implementing the rule, but may also receive a significant benefit from protecting residents, as well as staff, from infection.

For most licensed nursing care institutions, intermediate care facilities for individuals with intellectual disabilities, and assisted living facilities, the Department believes that making changes to their policies and procedures to specifically require the infection control measures required in the rule will cause these facilities to incur minimal costs. However, the Department anticipates that a facility may incur up to substantial costs to implement the required infection control procedures. Because these procedures may reduce the spread of COVID-19 within the facility and protect both residents and staff of the facility, a facility may also receive a significant benefit from implementing the requirements in the rule. Because the proposed rule clarifies that emergency medical care technicians (EMCTs) do not need to be screened before entry, the proposed rule may provide a minimal benefit to a facility over the current emergency rule in time saved otherwise trying to screen an EMCT responding to a call be help.

Although it may be thought that an EMCT is included in those who are required to be screened for COVID-19 before entering a facility, the Department has not been enforcing the rule as such. The employers of these individuals have instituted their own screening procedures to protect both their employees and those receiving emergency medical services or ambulance transport from EMCTs. Therefore, it is redundant to require additional screening every time an

EMCT arrives at one of these facilities in response to a call. As stated above, the new rule clarifies that EMCTs do not need to be screened before entry. Thus, the proposed rule may provide a significant benefit to an EMCT over the current emergency rule in time saved otherwise explaining that it is unnecessary be screened or receiving an unnecessary screening.

Residents of nursing care institutions, intermediate care facilities for individuals with intellectual disabilities, and assisted living facilities are predominantly elderly. Others have chronic medical conditions. The elderly and those with chronic medical conditions are most at risk for serious symptoms of infection and have a much higher probability of dying from COVID-19. In Arizona as of August 10, 2020, only about 11.4% of diagnosed cases of COVID-19 are aged 65 or older. However, almost 72% of those dying of the infection are 65 or older. Therefore, a resident of a nursing care institution, an intermediate care facility for individuals with intellectual disabilities, or an assisted living facility is most at risk of dying from COVID-19. The requirements in the rule were designed to reduce the spread of COVID-19 to residents of these facilities. Thus, the Department anticipates that a resident of one of these facilities may receive a significant benefit from the requirements in the rule.

Personnel members, employees, and others entering one of these facilities for a business-related reason, including the administrators or managers of these facilities, may experience the inconvenience of having to be screened for infection before entering a facility. However, the Department believes that these individuals also receive a significant benefit from having a safer work environment and lower chance of being infected or infecting others in the facility. Similarly, a friend or relative of a resident of one of these facilities may be inconvenienced by screening but receive a significant benefit of knowing that measures are in place to protect a resident from becoming infected by someone entering the facility.

Since the requirements in the rule were designed to improve public health and safety and reduce the spread of a potentially deadly disease, the Department anticipates that the general public will receive a significant benefit from the rule.\

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

To reduce the burden on the health care institutions affected by the rule when the emergency has passed, the Department has clarified in the final rule that the rule is only effective during the time when the Governor has declared a state of emergency to address a situation described under A.R.S. § 36-787. This was not clearly stated in the proposed rule. The Department also updated where the incorporation by reference in R9-10-121(G)(3) may be obtained and added the clarification required in A.R.S. § 41-1028.

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

No written comments were received about the rulemaking during the public comment period. The Department held an oral proceeding for the proposed rules on August 10, 2020, which no stakeholder/member of the public attended.

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

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

The rule does not require a permit.

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

Not applicable

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

No business competitiveness analysis was received by the Department.

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

In R9-10-121(G)(3), an EPA-approved list of household disinfectants is incorporated by reference and available at https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2-covid-19.

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

The rule was previously made as an emergency rule at 26 A.A.R. 509, March 20, 2020. As described above, the Department is clarifying that EMCTs responding to a call for emergency medical services do not need to be screened before entry into the affected health care institutions. Emergency medical services providers and ambulance services already screen their employees, so additional screening by the health care institution is unnecessary to protect residents and may delay the provision of emergency medical services. This change is also included in the renewal of

the emergency rule. In addition, the Department has clarified that the rule is only effective during the time when the Governor has declared a state of emergency to address a situation described under A.R.S. § 36-787. This change is not included in the renewal of the emergency rule because the emergency rule is already time-limited.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES

HEALTH CARE INSTITUTIONS: LICENSING

ARTICLE 1. GENERAL

Section

R9-10-121. Disease Prevention and Control

ARTICLE 1. GENERAL

R9-10-121. Disease Prevention and Control

A. This Section applies:

1. When the Governor has declared a state of emergency, as defined in A.R.S. § 26-301, to address a situation described under A.R.S. § 36-787; and
2. To health care institutions licensed under Article 4, 5, or 8 of this Chapter.

B. The following definitions apply in this Section:

1. "Communicable disease" has the same meaning as in A.A.C. R9-6-101.
2. "Infection" has the same meaning as in A.A.C. R9-6-101.
3. "Respiratory symptoms" means coughing, shortness of breath, or wheezing not known to be caused by asthma or another chronic lung-related disease.

C. An administrator or manager, as applicable, shall ensure that policies and procedures are established, documented, and implemented, to protect the health and safety of a resident, that:

1. Cover screening and triage of personnel members, employees, visitors, and, except as provided in subsection (E), any other individuals entering the facility;
2. Cover the manner and frequency of assessing residents to determine a change in a resident's medical condition;
3. Establish disinfection protocols and schedules for frequently touched surfaces; and
4. Specify requirements for distancing residents who exhibit symptoms of a communicable disease from other residents to reduce the chance for infection of another individual.

D. An administrator or manager, as applicable, shall ensure that:

1. Except as provided in subsection (E), before entering the facility, each individual, including a personnel member, employee, or visitor, is screened for fever or respiratory symptoms indicative of a communicable disease;
2. If an individual refuses to be screened, the individual is excluded from entry to the facility;
3. If an individual is determined to have a fever or respiratory symptoms, the individual is excluded from entry to the facility until symptoms have resolved or the individual has been evaluated and cleared by a medical practitioner;
4. If an individual, other than a resident, develops a fever or respiratory symptoms while in the facility, the individual is required to leave the facility and not return until symptoms have resolved or the individual has been evaluated and cleared by a medical practitioner; and

5. If insufficient personnel members are available to meet the needs of all residents in the facility, the administrator or manager, as applicable, implements the disaster plan required in R9-10-424, R9-10-523, or R9-10-818, as applicable, which may include moving a resident to a different facility.

E. An administrator or manager, as applicable, may allow an emergency medical care technician, as defined in A.R.S. § 36-2201, to enter the facility without screening if the emergency medical care technician is responding to a call for providing emergency medical services, as defined in A.R.S. § 36-2201, to a resident or other individual in the facility.

F. An administrator or manager, as applicable, shall ensure that:

1. An assessment of a resident includes whether the resident has a fever or respiratory symptoms indicative of a communicable disease and is documented in the resident's medical record; and
2. If a resident is found to have a fever or respiratory symptoms indicative of a communicable disease:
    a. The resident is evaluated by a medical practitioner within 24 hours to determine what services need to be provided to the resident and what precautions need to be taken by the facility, and the evaluation is documented in the resident's medical record;
    b. To reduce the chance for infection of another individual, the resident is:
        i. Kept at a distance of at least six feet from other residents; or
        ii. If not possible to keep the resident at a distance from other residents, required to wear a facemask;
    c. A personnel member:
        i. Takes precautions, which may include the use of gloves and a facemask or other personal protection equipment, while providing services to the resident; and
        ii. Removes and, if applicable, disposes of the personal protection equipment and washes the personnel member's hands with soap and water for at least 20 seconds or, if soap and water are not available, uses a hand sanitizer containing at least 60% alcohol immediately after providing services to the resident and before providing services to another resident;
    d. Linens, dishes, utensils, and other items used by the resident are:

i. Kept separate from similar items used by a resident who does not have a fever or respiratory symptoms indicative of a communicable disease, and

ii. Disinfected or disposed of in a manner to reduce the chance for infection of another individual; and

e. Surfaces touched by the resident are disinfected before another individual touches the surface.

G. An administrator or manager, as applicable, shall ensure that door handles, tables, chair backs and arm rests, light switches, and other frequently touched surfaces are cleaned and disinfected, according to policies and procedures, with:

1. An alcohol solution containing at least 70% alcohol;

2. A bleach solution containing four teaspoons of bleach per quart of water; or

3. An EPA-approved household disinfectant specified in a list, which is incorporated by reference, available at https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2-covid-19, and does not include any later amendments or editions of the incorporated matter.

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALH SERVICES
HEALTH CARE INSTITUTIONS: LICENSING
ARTICLE 1. GENERAL

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

August 2020

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALH SERVICES

HEALTH CARE INSTITUTIONS: LICENSING

ARTICLE 1. GENERAL

1. An identification of the rulemaking

Over the past few months, COVID-19, the disease caused by novel coronavirus, SARS-CoV-2, has spread to all parts of the globe. On March 11, 2020, the World Health Organization officially declared a pandemic due to COVID-19, with 124,908 total confirmed cases and 4,591 deaths as of that date. In Arizona, nine confirmed cases had been reported as of that date. As of August 10, 2020, over 5,000,000 cases of COVID-19 have been confirmed in the United States. In Arizona, over 187,000 confirmed cases have been reported as of August 10, 2020, with over 4,000 deaths. Most at risk for serious morbidity and increased mortality due to the disease are the elderly and those with complicating medical conditions.

To address this public health emergency, on March 11, 2020, the Governor declared that a State of Emergency exists in Arizona due to the COVID-19 outbreak and issued Executive Order 2020-07, which directed the Arizona Department of Health Services (Department) to conduct emergency rulemaking to adopt requirements designed to prevent the spread of COVID-19 to vulnerable Arizonans residing in nursing care institutions, intermediate care facilities for individuals with intellectual disabilities, or assisted living facilities. The Department completed the emergency rulemaking with a rule that establishes requirements in A.A.C. Title 9, Chapter 10, Health Care Institutions, designed to protect these vulnerable individuals in nursing care institutions, intermediate care facilities for individuals with intellectual disabilities, and assisted living facilities from exposure to COVID-19. This rule became effective as of March 16, 2020, and will expire on September 12, 2020, unless renewed.

Concurrent with this emergency action and because it is unclear when the emergency will be over, the Department has initiated a regular rulemaking to ensure continued protection of these vulnerable individuals past September 12, 2020. As in the emergency rule, the Department is adopting requirements for establishing, documenting, and implementing policies and procedures to help prevent exposure to the virus and the spread of COVID-19 in these health care institutions. These include policies and procedures to require screening and triage before entry of personnel members, employees, visitors, and any other individuals entering the facility. The Department is also specifying requirements for disinfection of frequently touched surfaces and for

distancing residents who exhibit symptoms of COVID-19 from other residents. However, as part of this rulemaking, the Department is revising the rule to address issues that were identified during implementation. These include clarifying that emergency medical care technicians responding to a call for emergency medical services do not need to be screened before entry into a nursing care institution, intermediate care facility for individuals with intellectual disabilities, or assisted living facility. Emergency medical services providers and ambulance services already screen their employees, so additional screening by the health care institution is unnecessary to protect residents and may delay the provision of emergency medical services. To reduce the impact on these health care institutions when the emergency has passed, the Department is also clarifying that the rule will only be in effect during the time when the Governor has declared a state of emergency to address a situation described under A.R.S. § 36-787.

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

- The Department
- Arizona Health Care Cost Containment System (AHCCCS) and other third-party payors
- The Department of Economic Security (DES)
- Licensed nursing care institutions, intermediate care facilities for individuals with intellectual disabilities, and assisted living facilities
- Administrators or managers, personnel members, employees, visitors, and any other individuals entering a nursing care institution, an intermediate care facility for individuals with intellectual disabilities, or an assisted living facility
- Residents of a nursing care institution, an intermediate care facility for individuals with intellectual disabilities, or an assisted living facility and their families
- General public

3. Cost/Benefit Analysis

This analysis covers costs and benefits associated with the rule changes and does not describe any other effects imposed by Executive Orders. No new FTEs will be required due to this rulemaking. Annual costs/revenues changes are designated as minimal when $1,000 or less, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
A. State and Local Government Agencies			
Department	Having in rule requirements that specifically address measures to prevent or reduce the spread of COVID-19	None	Significant
AHCCCS	Having in rule requirements that specifically address measures to prevent or reduce the spread of COVID-19	None	Minimal-to-substantial
DES	Having in rule requirements that specifically address measures to prevent or reduce the spread of COVID-19	Minimal-to-substantial	Significant
B. Privately Owned Businesses			
Third-party payors	Having in rule requirements that specifically address measures to prevent or reduce the spread of COVID-19	None	Minimal-to-substantial
Nursing care institutions, intermediate care facilities for individuals with intellectual disabilities, and assisted living facilities	Having in rule requirements that specifically address measures to prevent or reduce the spread of COVID-19 Implementing requirements to prevent or reduce the spread of COVID-19 Excepting EMCTs from additional screening requirements	Minimal Minimal-to-substantial None	None Significant Minimal
Emergency medical care technicians (EMCTs) and their employers	Being excepted from additional screening requirements	None	Significant
C. Consumers			
Residents of a nursing care institution, an intermediate care facility for individuals with intellectual disabilities, or an assisted living facility and their families	Having in rule requirements that specifically address measures to prevent or reduce the spread of COVID-19	None	Significant
Personnel members, employees, and others entering one of these facilities for a business-related reason, including the administrators or managers	Having in rule requirements that specifically address measures to prevent or reduce the spread of COVID-19	None	Significant

of the facilities			
General public	Having in rule requirements that specifically address measures to prevent or reduce the spread of COVID-19	None	Significant

- **The Department**

  Under A.R.S. § 36-136(I), the Department is required to "[d]efine and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases." When the COVID-19 epidemic began in Arizona, the Department initiated activities to comply with the statute. The Department began compiling data on COVID-19 cases and COVID-19-related deaths. These data are shown at: https://azdhs.gov/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/covid-19/dashboards/index.php. Pursuant to Executive Order 2020-07, the Department was required to conduct emergency rulemaking to adopt specific requirements designed to prevent the spread of COVID-19 to vulnerable Arizonans residing in nursing care institutions, intermediate care facilities for individuals with intellectual disabilities, or assisted living facilities. As stated above, the Department completed the rulemaking, adopting a rule that became effective as of March 16, 2020. This rule will expire on September 12, 2020, unless renewed. At this time, it is unclear when the emergency situation will be over. The Department believes that having in rule requirements that specifically address measures to prevent the spread of COVID-19, or similar conditions for which the Governor has declared a state of emergency may provide a significant benefit to public health and to the Department.

- **AHCCCS and other third-party payors**

  Since AHCCCS pays for a large proportion of health care costs in Arizona, any increase in the incidence of a disease may cause an increase in the costs incurred by AHCCCS in paying for health care for its members. Any measures that decrease the incidence of a disease would be expected to result in a concomitant decrease in costs incurred by AHCCCS. The same rationale would apply to other third-party payors for health care. The Department believes that fewer individuals may become infected with COVID-19 because of implementation of the requirements in the rule and, thus, AHCCCS and other third-party payors may receive up to a substantial cost savings through a reduction in the number of hospitalizations or emergency department visits from individuals suffering from COVID-19.

- **DES**

Intermediate care facilities for individuals with intellectual disabilities are a class of health care institutions that primarily provide health and rehabilitative services to individuals with developmental disabilities. Almost all of these facilities in Arizona are run under contract with DES. The Department anticipates that DES may incur up to a substantial cost from implementing the rule, but may also receive a significant benefit from protecting residents, as well as staff, from infection.

- **Licensed nursing care institutions, intermediate care facilities for individuals with intellectual disabilities, and assisted living facilities**

  There are 114 licensed nursing care institutions, 11 intermediate care facilities for individuals with intellectual disabilities, and over 2,100 assisted living facilities in Arizona. These facilities are licensed under 9 A.A.C. 10, Articles 4, 5, or 8, respectively. For most licensed nursing care institutions, intermediate care facilities for individuals with intellectual disabilities, and assisted living facilities, the Department believes that making changes to their policies and procedures to specifically require the infection control measures required in the rule will cause these facilities to incur minimal costs. However, the Department anticipates that a facility may incur up to substantial costs to implement the required infection control procedures. Because these procedures may reduce the spread of COVID-19 within the facility and protect both residents and staff of the facility, a facility may also receive a significant benefit from implementing the requirements in the rule. Because the proposed rule clarifies that emergency medical care technicians (EMCTs) do not need to be screened before entry, the proposed rule may provide a minimal benefit to a facility over the current emergency rule in time saved otherwise trying to screen an EMCT responding to a call be help.

- **Emergency medical care technicians (EMCTs) and their employers**

  As of July 1, there have been over one million EMCT-contacts made due to 9-1-1 calls in Arizona this year. Since the COVID-19 epidemic began in Arizona, the emergency medical services providers and ambulance services employing these individuals have implemented screening procedures for COVID-19 for their employees to protect both their employees and those receiving emergency medical services or ambulance transport from EMCTs. Therefore, it is redundant to require additional screening every time an EMCT arrives at a nursing care institution, intermediate care facility for individuals with intellectual disabilities, or assisted living facility in response to a call for emergency medical services or ambulance transport. Under the current emergency rules, it is not clear that these individuals do not need to be screened by a facility when the EMCT is responding to a call. The new rules make clear that

EMCTs are not required to be screened before entry when responding to a call. Thus, the new rule may provide a significant benefit to an EMCT and the EMCT's employer over the current emergency rule in time saved otherwise explaining that it is unnecessary be screened or receiving an unnecessary screening.

- **Residents of nursing care institutions, intermediate care facilities for individuals with intellectual disabilities, and assisted living facilities and their families**
  Residents of nursing care institutions, intermediate care facilities for individuals with intellectual disabilities, and assisted living facilities are predominantly elderly. Others have chronic medical conditions. The elderly and those with chronic medical conditions are most at risk for serious symptoms of infection and have a much higher probability of dying from COVID-19. In Arizona as of August 10, 2020, only about 11.4% of diagnosed cases of COVID-19 are aged 65 or older. However, almost 72% of those dying of the infection are 65 or older. Therefore, a resident of a nursing care institution, an intermediate care facility for individuals with intellectual disabilities, or an assisted living facility is most at risk of dying from COVID-19. The requirements in the rule were designed to reduce the spread of COVID-19 to residents of these facilities. Thus, the Department anticipates that a resident of one of these facilities may receive a significant benefit from the requirements in the rule. A friend or relative of a resident of one of these facilities may be inconvenienced by screening but receive a significant benefit of knowing that measures are in place to protect a resident from becoming infected by someone entering the facility.
- **Personnel members, employees, and others entering one of these facilities for a business-related reason, including the administrators or managers**
  Personnel members, employees, and others entering one of these facilities for a business-related reason, including the administrators or managers of these facilities, may experience the inconvenience of having to be screened for infection before entering a facility. However, the Department believes that these individuals also receive a significant benefit from having a safer work environment and lower chance of being infected or infecting others in the facility.
- **General public**
  Since the requirements in the rule were designed to improve public health and safety and reduce the spread of a potentially deadly disease, the Department anticipates that the general public will receive a significant benefit from the rule

4. A general description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking

Public and private employment in the State of Arizona is not expected to be affected due to the requirements in the rule.

5. A statement of the probable impact of the rules on small business

a. Identification of the small businesses subject to the rules

Small businesses subject to the rule may include small nursing care institutions, intermediate care facilities for individuals with intellectual disabilities, and assisted living facilities.

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

Anticipated costs for complying with the rule are described under paragraph 3.

c. A description of the methods that the agency may use to reduce the impact on small businesses

The rule does not require that a resident with a fever or respiratory symptoms indicative of a communicable disease be kept in a separate room or in isolation, which could be difficult or impossible in a small facility. Instead, the rule requires such a resident to be kept at a distance of at least six feet from other residents. If not possible to keep the resident at a distance from other residents, the rule requires that the resident wear a facemask. The Department knows of no other measures that can be used to minimize the effect of the rule on small businesses while achieving the intent of the rule.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rules

The Department does not anticipate any costs to private persons from the rule.

6. A statement of the probable effect on state revenues

While the COVID-19 epidemic may affect state revenues, the Department does not expect the rule to affect state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking

There are no less intrusive or less costly alternatives for achieving the purpose of the rule.

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

Data were obtained from the information collected by the Department.

Statutory Authority for 9 A.A.C. 10, Article 1

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

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

1. Protect the health of the people of the state.

2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.

3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.

4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.

5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.

7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

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

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

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

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

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

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

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from

unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

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

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

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

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

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

provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

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

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

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

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

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

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

Q. For the purposes of this section, "fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-405. <u>Powers and duties of the director</u>

A. The director shall adopt rules to establish minimum standards and requirements for the construction, modification and licensure of health care institutions necessary to ensure the public health, safety and welfare. The standards and requirements shall relate to the construction, equipment, sanitation, staffing for medical, nursing and personal care services, and recordkeeping pertaining to the administration of medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. The director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or those adopted by any recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

1. Classify and subclassify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care and standard of patient care required for the purposes of licensure. Classes of health care institutions may include hospitals, infirmaries, outpatient treatment centers, health screening services centers and residential care facilities. Whenever the director reasonably deems distinctions in rules and standards to be appropriate among different classes or subclasses of health care institutions, the director may make such distinctions.

2. Prescribe standards for determining a health care institution's substantial compliance with licensure requirements.

3. Prescribe the criteria for the licensure inspection process.

4. Prescribe standards for the selection of health care-related demonstration projects.

5. Establish nonrefundable application and licensing fees for health care institutions, including a grace period and a fee for the late payment of licensing fees, and fees for architectural plans and specifications reviews.

6. Establish a process for the department to notify a licensee of the licensee's licensing fee due date.

7. Establish a process for a licensee to request a different licensing fee due date, including any limits on the number of requests by the licensee.

C. The director, by rule, shall adopt licensing provisions that facilitate the colocation and integration of outpatient treatment centers that provide medical, nursing and health-related services with behavioral health services consistent with article 3.1 of this chapter.

D. Ninety percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

E. Subsection B, paragraph 5 of this section does not apply to a health care institution operated by a state agency pursuant to state or federal law or to adult foster care residential settings.

36-406. Powers and duties of the department

In addition to its other powers and duties:

1. The department shall:

(a) Administer and enforce this chapter and the rules, regulations and standards adopted pursuant thereto.

(b) Review, and may approve, plans and specifications for construction or modification or additions to health care institutions regulated by this chapter.

(c) Have access to books, records, accounts and any other information of any health care institution reasonably necessary for the purposes of this chapter.

(d) Require as a condition of licensure that nursing care institutions and assisted living facilities make vaccinations for influenza and pneumonia available to residents on site on a yearly basis. The department shall prescribe the manner by which the institutions and facilities shall document compliance with this subdivision, including documenting residents who refuse to be immunized. The department shall not impose a violation on a licensee for not making a vaccination available if there is a shortage of that vaccination in this state as determined by the director.

2. The department may:

(a) Make or cause to be made inspections consistent with standard medical practice of every part of the premises of health care institutions which are subject to the provisions of this chapter as well as those which apply for or hold a license required by this chapter.

(b) Make studies and investigations of conditions and problems in health care institutions, or any class or subclass thereof, as they relate to compliance with this chapter and rules, regulations and standards adopted pursuant thereto.

(c) Develop manuals and guides relating to any of the several aspects of physical facilities and operations of health care institutions or any class or subclass thereof for distribution to the governing authorities of health care institutions and to the general public.

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

Amend: R9-10-201, R9-10-208, R9-10-209

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: October 6, 2020

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

FROM: Council Staff

DATE: September 9, 2020

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

Amend: R9-10-201, R9-10-208, R9-10-209

Summary:

This is a regular rulemaking from the Department of Health Services ("Department") which seeks to amend three rules in Title 9, Chapter 10, Article 2 related to hospitals. Specifically, the Department indicates it has become aware that the rules for hospitals do not appear to adequately address assistance provided to a patient by another individual in the patient's residence, which is not part of a health care institution, following care provided at a hospital and discharge of the patient. The Department indicates these amendments clarify requirements for discharge planning and discharge and add requirements related to an individual providing assistance to a patient in the patient's home after discharge, termed "aftercare."

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

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?

The Department indicates that 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 Department did not review or rely on any study in conducting this rulemaking.

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

The Department is revising the rules to address issues related to hospital discharges to home. Stakeholders include the Department, hospitals operating under Title 9, Chapter 10, Article 2, patients receiving aftercare services upon discharge from a hospital and their families, aftercare providers, and the general public.

The Department licenses approximately 117 hospitals in Arizona, which have a combined license capacity of over 17,000 beds. The rulemaking is clarifying existing requirements for discharging a patient. The Department anticipates that the economic impact of the rulemaking will result in some cost to stakeholders but may result in patients receiving better care.

The changes include clarifying requirements for discharge planning and discharge and adding requirements related to an individual providing assistance to a patient in the patient's home after discharge, termed "aftercare."

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 has determined that there are no less intrusive or less costly alternatives for achieving the purpose of the rulemaking.

6. What are the economic impacts on stakeholders?

The Department anticipates the changes may impose a minimal cost on the Department due to the additional time it may take during an inspection to make sure the requirements are being met. The Department believes the changes may provide a significant benefit of better patient recoveries. They state that hospitals many incur a minimal cost from reviewing and assessing the procedures, but may benefit significantly from better patient care. The Department believes the changes may also provide a significant benefit to patients being discharged from a hospital and their families, aftercare providers, and the general public. The rulemaking is not expected to have an impact on private or public employment. The Department anticipates little or no effect on small business.

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

The Notice of Proposed Rulemaking submitted by the Department contained proposed clarifying amendments to R9-10-209 in addition to the proposed amendments related to aftercare. The Notice of Proposed Rulemaking also contained proposed amendments to R9-10-210 related to transport, or a patient going back to another health care institution after an outpatient discharge, and R9-10-211 related to transfer, or a patient going to another health care institution after an inpatient discharge. After review of public comments received from several stakeholders indicated there was no consensus on the proposed changes related to transport or transfer, the Department filed a Notice of Supplemental Proposed Rulemaking which removed most of the clarifying changes to R9-10-209 and all the proposed changes to R9-10-210 and R9-10-211, but retained the proposed amendments related to aftercare, about which there was a consensus among stakeholders.

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

The Department received numerous written and oral comments from various stakeholders including lobbyists on behalf of assisted living facilities, a representative of the Arizona Hospital and Healthcare Association, a representative of AARP, as well as a representative of Health System Alliance of Arizona. The Department held oral proceedings on the Notice of Proposed Rulemaking on June 9, 2020. As outlined above, in response to both written and oral comments on the Department's Notice of Proposed Rulemaking, the Department filed a Notice of Supplemental Proposed Rulemaking which removed proposed amendments on which stakeholders could not reach a consensus. The Department received additional written comments and oral comments at a subsequent oral proceeding on August 10, 2020 related to the Notice of Supplemental Proposed Rulemaking.

A summary of all comments received by the Department is provided in Section 11 of the Department's Notice of Final Rulemaking and copies of the written comments are provided for your reference. The Department has adequately addressed the comments on the proposed rules as well as the supplemental proposal.

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

The rules do not require a permit, license, or agency authorization.

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

Not applicable. There are no corresponding federal laws.

11. Conclusion

This regular rulemaking seeks to amend three rules in Title 9, Chapter 10, Article 2 related to hospitals to clarify requirements for discharge planning and discharge and add requirements related to an individual providing assistance to a patient in the patient's home after discharge, termed "aftercare."

At the request of stakeholders, the Department is requesting an effective date of January 1, 2021. Pursuant to A.R.S. § 41-1032(B), an agency may specify an effective date more than sixty days after the filing of the rule in the office of the secretary of state if the agency determines that good cause exists for and the public interest will not be harmed by the later date. The Department believes this delay will provide enough time for both the Department and regulated entities to implement the changes included in the rulemaking and minimize the administrative and regulatory burden on hospitals, without harming the public interest. Council staff believes the Department has shown adequate good cause and the public interest will not be harmed by an effective date of January 1, 2021.

Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

August 17, 2020

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 10, Article 2, Regular Rulemaking

Dear Ms. Sornsin:

1. The close of record date: August 10, 2020

2. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 10, Article 2, does not relate to a five-year-review report.

3. Whether the rulemaking establishes a new fee and, if so, the statute authorizing the fee:
The rulemaking does not establish a new fee.

4. Whether the rulemaking contains a fee increase:
The rulemaking does contain a fee increase.

5. Whether an immediate effective date is requested pursuant to A.R.S. 41-1032:
No, the Department is requesting an effective date for the rules of January 1, 2021, under A.R.S. § 41-1032(B), based on stakeholder suggestions.

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

The Department certifies that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.

The following documents are enclosed:

a. Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of the rule;

b. An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055;
c. Comments received about the proposed rules;
d. Comments received about the supplemental proposed rules; and
e. General and specific statutes authorizing the rules.

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

Sincerely,

Robert Lane
Director's Designee

RL:rms

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES

HEALTH CARE INSTITUTIONS: LICENSING

ARTICLE 2. HOSPITALS

PREAMBLE

1. Articles, Part, and Sections Affected (as applicable) Rulemaking Action

R9-10-201	Amend
R9-10-208	Amend
R9-10-209	Amend

2. Citations to the agency's statutory rulemaking authority to include authorizing statutes (general) and the implementing statutes (specific):

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

Implementing statutes: A.R.S. §§ 36-405 and 36-406

3. The effective date of the rules:

At the request of stakeholders, the Arizona Department of Health Services (Department) requests an effective date of January 1, 2021, for these rules, as specified in A.R.S. § 41-1032(B). The Department believes that this delay will provide enough time for both the Department and regulated entities to implement the changes included in the rulemaking and minimize the administrative and regulatory burden on hospitals, without harming public interest.

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 rule:

Notice of Rulemaking Docket Opening: 25 A.A.R. 2266, September 6, 2019

Notice of Proposed Rulemaking: 26 A.A.R. 879, May 8, 2020

Notice of Supplemental Proposed Rulemaking: 26 A.A.R. 1357, July 10, 2020

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

Name: Kathryn McCanna, Branch Chief

Address: Arizona Department of Health Services
Health Care Institution Licensing
150 N. 18th Ave., Suite 450
Phoenix, AZ 85007

Telephone: (602) 364-2841

Fax: (602) 364-4808
E-mail: Kathryn.McCanna@azdhs.gov
or
Name: Robert Lane, Chief
Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Avenue, Suite 200
Phoenix, AZ 85007
Telephone: (602) 542-1020
Fax: (602) 364-1150
E-mail: Robert.Lane@azdhs.gov

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

In order to ensure public health, safety, and welfare, Arizona Revised Statutes (A.R.S.) §§ 36-405 and 36-406 require the Arizona Department of Health Services (Department) to adopt rules establishing minimum standards and requirements for construction, modification, and licensure of health care institutions. The Department has adopted rules for licensing health care institutions in Arizona Administrative Code (A.A.C.) Title 9, Chapter 10. Article 2 of 9 A.C.C. Title 10 contains the rules specifically for hospitals as a class of health care institutions. The Department has become aware that the rules for hospitals do not appear to adequately address assistance provided to a patient by another individual in the patient's residence, which is not part of a health care institution, following care provided at a hospital and discharge of the patient. The Department has defined this as "aftercare." A patient going back to another health care institution after an outpatient discharge would be a transport, covered under R9-10-210. A patient going to another health care institution after an inpatient discharge would be a transfer, covered under R9-10-211. After receiving an exception from the rulemaking moratorium pursuant to Executive Order 2019-01, the Department has revised the rules in Article 2 for the purpose of enhancing the existing discharge procedures at hospitals to address issues related to hospital discharge to home. The new rules conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

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

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

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

Not applicable

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

The Department anticipates that the rulemaking may affect the Department, hospitals, patients being discharged from a hospital and their families, individuals providing assistance to a patient in the patient's home after discharge, and the general public. The changes include clarifying requirements for discharge planning and discharge and adding requirements related to an individual providing assistance to a patient in the patient's home after discharge, termed "aftercare." Although these changes may impose a minimal cost on the Department due to the additional time it may take during an inspection to make sure these requirements are being met, the Department anticipates that the changes being made in the new rules may provide a significant benefit to the Department. They may also provide a significant benefit to patients being discharged from a hospital and their families, aftercare providers, and the general public. The Department believes that the new requirements related to aftercare may cause a hospital to incur minimal-to-moderate additional costs from updating policies and procedures, monitoring compliance, and possibly retraining staff to ensure compliance. A hospital may receive a significant benefit from knowing that a patient can be safely discharged to home, and possibly up to a substantial benefit if the tasks performed by an aftercare provider who is competent in carrying out the discharge instructions results in the patient not being readmitted under conditions that may affect Medicare reimbursement.

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

The Notice of Proposed Rulemaking submitted by the Department contained the rule changes that were in the last of four drafts for the rulemaking that had been posted for public comment and included changes to address issues related to transport and transfer brought up during the rulemaking process by representatives of assisted living facilities, as well as the changes suggested by AARP about aftercare. As described below, comments received by the Department on the proposed rules indicated that there was no consensus on the proposed changes related to transport or transfer suggested by representatives of assisted living facilities, while there was consensus with respect to aftercare. In the Notice of Supplemental Proposed Rulemaking, the Department kept changes related to aftercare, but removed most of the clarifying changes to R9-

10-209 and all of the proposed changes to R9-10-210 Transport and R9-10-211 Transfer from the rulemaking. No changes were made between the Notice of Supplemental Proposed Rulemaking and the Notice of Final Rulemaking.

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

Six sets of written comments were received about the rulemaking during the public comment period for the Notice of Proposed Rulemaking. The first and sixth sets of comments came from a lobbyist representing an entity on behalf of assisted living facilities who also attended the oral proceeding for the proposed rules that the Department held on June 9, 2020. The first was received before the oral proceeding, and the sixth after the oral proceeding. The second came from a representative of the Arizona Hospital and Healthcare Association. The third and fifth came from different members of the Arizona Hospital and Healthcare Association. The fourth came from a representative of AARP who participated in the oral proceeding by teleconference. An additional set of comments was received from a representative of the Health System Alliance of Arizona after the close of record, but these comments were also reviewed and considered when determining what course of action to follow for the rulemaking.

The written and oral comments from the lobbyist reiterated the comments the Department had received about the last draft rules, requesting changes specific to assisted living facilities and other requirements that the Department believed would be unduly burdensome to hospitals and had not been incorporated into the proposed rules. The written comments from the Arizona Hospital and Healthcare Association expressed support for many of the changes made but suggested that more work "needs to be done on both sides of the isle—acute, post-acute, SNF, and assisted living. Moreover, not all of this work can nor should be legislated." A comment suggested that an effective date of January 1, 2021, would be appropriate due to COVID-19. The written and oral comments from the representative of AARP expressed support for the changes being made related to aftercare. However, the comment was also made that, with respect to "transfers and discharges between health care institutions, AARP is supportive of a brief pause for the parties involved to resolve their concerns. In the event that the issues cannot be resolved in a timely fashion, we respectfully request that the rules move forward without the contentious issues in order to allow the consensus issues relating to after care and the aftercare provider to advance forward." The Department agreed with the suggestion from AARP and remove contested changes from the rules in the Notice of Supplemental Proposed Rulemaking.

The comments made about the proposed rules in the Notice of Proposed Rulemaking and the Department's responses are shown below:

Comments		Department's Responses
Comments Received Before the Close of Record, in Writing or at the Oral Proceeding		
The Department received the comments below before the oral proceeding from a lobbyist representing an entity on behalf of assisted living facilities, who also attended the oral proceeding and provided the same comments:		
1a	In R9-10-209 (B)(1)(d) – Add "language that the COVID status, or any similar type pandemic causing a public health emergency, be provided for a patient being discharged as a transfer"	In all cases of transfer of a patient, not just during a public health emergency and not just for a communicable disease, a receiving health care institution should know what the needs of the patient are, before admission/acceptance, to ensure the health care institution can meet those needs. This is why the current rules, in R9-10-211(1)(a) and corresponding Sections in other Articles in 9 A.A.C. 10, require coordination between the sending and receiving health care institutions. The Department would encourage health care institutions admitting/accepting patients/ residents from a hospital to reach out to the discharge coordinators of the hospital to try to resolve any misunderstandings or issues. If sufficient information is not provided by a hospital to ensure that adequate care can be provided, the health care institution potentially receiving the patient/resident has the option to not admit/accept the patient/resident from the hospital. No change will be made based on this comment.
1b	In R9-10-209(B)(2) – "Request that the DHS add language to require the medical practitioner who provided medical services to the patient before discharge sign the orders and that such orders comply with DHS Rule R9-10-807(B). R9-10-807(B) requires Assisted Living facilities to have signed orders outlining the level of care the resident needs when admitting a resident. This ensures that Assisted Living facilities can comply with DHS requirements when admitting a resident from a hospital."	Many medical practitioners may have provided medical services to a hospital patient, sometimes in a very transitory capacity. With the suggested wording, the rule could be interpreted as requiring several different discharge orders to be prepared. The current wording requires the medical practitioner who coordinated care, and presumably is better acquainted with the patient's needs, to complete the discharge order. According to 2018 Hospital Discharge data, collected according to A.R.S. § 36-125.05, over 88% of all patients (inpatient and emergency room only) are discharged to home, while only 0.1% are documented as being discharged to assisted living facilities. A hospital is already required by R9-10-210(A)(1)(a) and R9-10-211(1)(a) to have policies and procedures to address coordination with another health care institution for transports or transfers, respectively. In addition, if an assisted living facility does not believe it received all the information it needs through coordination discussions or discharge orders, it may request additional information to be provided according to R9-10-210(A)(1)(d) or R9-10-211(1)(c), as applicable. No change will be made based on these comments.
1c	In R9-10-209(F)(1) - Clarify "that the discharge order must comply with R9-10-807(B), the DHS rule governing Assisted Living Facilities admission requirements. This provides for consistency between what the hospitals must provide and what information DHS rules require the A/L have before admitting a resident."	
1d	Add a new R9-10-209(D): "D. For a patient being transferred from a hospital to a health care institution, an administrator shall ensure that the level of care provided by the health care institution to which the patient is being transferred is considered, as part of	R9-10-209(C) in the proposed rules was added at the request of stakeholders to clarify that the health care institution from which a patient was transferred to a hospital and to which the patient wants to return after discharge should be considered during discharge planning to determine if the patient may safely return there. However, coordination of transfers for that and

	discharge planning, by coordinating with the health care institution to determine whether the level of care may meet the patient's assessed and anticipated needs after discharge." R9-10-209(C) of the "proposed draft rules provides for coordination for a patient that resided in an Assisted Living facility prior to entering the hospital. The proposed rules do not provide for a patient that did not reside in an A/L prior to arriving at the hospital. Adding R9-10-209.D. provides for a patient who is being admitted to an Assisted Living Facility for the first time." In R9-10-209(C) – Request changes to provide "clarity that there will be coordination with the patient's current residence/assisted living facility"	other circumstances is covered under R9-10-211(1)(a) and should not be otherwise duplicated. A cross-reference to these requirements is specified in R9-10-209(B)(4). No change will be made based on these comments.
1e	In R9-10-211(1)(a) and (c) – The change requested in "R9-10-211.1.a. provides clarification that the discharge order must comply with R9-10-807(B), the DHS rules governing Assisted Living facilities admission requirements. This provides for consistency between what the hospitals must provide to A/L and what information the A/L is required to have by DHS rules before admitting a resident." The change, to require that a hospital specify a physician, registered nurse practitioner, registered nurse, or physician assistant to answer questions, requested in "R9-10-211.1.c. provides specificity regarding the type of personnel member point of contact being provided to the A/L facility; the A/L facility must be able to communicate with someone knowledgeable to address health care questions."	Patients are transferred to more than assisted living facilities. Requiring in R9-10-211 compliance with requirements in R9-10-807 in inappropriate. If the information provided to or accompanying a patient as part of a transfer is insufficient, a personnel member identified by a hospital can provide the information needed by an assisted living facility or any other HCI, either from a hospital record or by asking an appropriate individual. If a patient has a medical appointment with a medical practitioner in a private office or clinic, it would be an office staff member that would provide information to a caller. Rarely would the practitioner get on the phone. Similarly, and to a greater extent, it would be an undue burden on a hospital to require a medical practitioner to speak directly with an assisted living facility unless other means of conveying the required information fail. If a patient is expected to be unable to ask questions, receive documents, and bring these documents to the assisted living facility, a staff member of an assisted living facility could accompany the patient upon discharge from the hospital. No change will be made based on this comment.
1f	R9-10-211(2) – Changes are requested to require a medical record to contain certain information and to specify additional information related to the administration of medications, beyond what was added in the proposed rules. All the information outlined in the requested changes "is needed by an A/L facility to properly transition the patient to the facility. In addition adds clarity regarding the information provided as discussed above, such as: medication dose and time received; any new medications whether prescribed, e-scribed or provided in a written script and the name of the receiving pharmacy; the orders are in compliance with R9-10-807(B) and requires insurance/Medicare information."	The current rule in R9-10-211 allows a copy of the entire medical record to accompany the patient (subsection (2)(a)). In lieu of providing an entire copy, certain information in the medical record is specified in subsection (2)(b) as being necessary to continuing care. The suggested change in this subsection is inappropriate. It is an undue burden to require a hospital to specify each date, dose, and time of medication administered while the patient is in the hospital. Medications may have been started then discontinued as unneeded. Discharge instructions should include information as to what medications to take and when to start them upon discharge. If a patient transferred from a hospital to an assisted living facility is believed incapable of bringing a prescription to the assisted living facility or telling where the patient asked for an e-script to be sent, a personnel member from the assisted living facility

1g	In R9-10-209(B)(2), changes are requested to "add language to address medications administered, including date, dosage and time administered. It also requests that discharge orders include any new medication prescribed, e-scribed or a written prescription and the location and phone number of the receiving pharmacy. This mirrors what is required in the outpatient discharge planning section R9-10-209.E. under the DHS proposed rulemaking. The same medication information is needed whether the discharge is from inpatient or outpatient."	(or any other health care institution) to which the patient is being transferred could accompany the patient to receive or provide the information or obtain the information as part of coordinating the transfer. Since a patient could be transferred to a health care institution other than an assisted living facility, it is not appropriate to require compliance with assisted living facility rules. Nor is it appropriate to require a hospital to gather information for another health care institution that has to do with payment. No change will be made based on this comment.
1h	In R9-10-209(F)(1)(a), (b),and (d) – The change requested to "R9-10-209.F.1.a. provides necessary medication information for the safety of the patient/resident be included in the discharge order. Without this information the A/L facility has no way of knowing when to administer medication leaving the resident at risk for medical complications due to medication being administered too soon or not soon enough." The change requested to "R9-10-209.F.1.b. provides clarification that the new medication prescribed, may be through an e-script or provided in a written prescription and requires the location and phone number of the receiving pharmacy. It is impossible for an A/L to know where the prescription is without this information. R9-10-209.F.1.d. provides the discharge order include a point of contact the A/L can discuss transition of care issues for the safety of the patient."	Subsection (E/F) in the proposed rules (subsection (D) in the current rues) applies to discharges from outpatient treatment – most often not to another health care institution (over 2,200,000 in 2018), and if to another health care institution, is more likely to be a transport rather than a transfer. Again, not every patient is going to assisted living (less than 1,300 in 2018), so it is inappropriate to require information specific to assisted living facilities. The suggested changes are already in 210(A)(1)(d) and should not be duplicated. In addition, a transport is also required to be coordinated, and the additional suggested information could be requested, if required for continuing care and appropriate to the patient, but is not necessary for a patient being discharged home, and necessary information may already be included in discharge instructions. Discharge instructions would include what the patient needs to do upon discharge, including when to start medications. It is an undue burden to require these unnecessary additional actions of a hospital for every discharge when a health care institution can obtain any information it needs as part of coordination or by calling the hospital afterwards. No change will be made based on this comment.
1i	Another comment was made that "requests that the name and contact information for a physician, RNP, RN, or PA that can respond to questions be provided." In R9-10-210(A)(1)(d) – "Adds specificity regarding the type of personnel member point of contact being provided to the Assisted Living facility; the A/L must be able to communicate with someone knowledgeable to address health care questions." In R9-10-210(B)(1)(d) – "Adds specificity regarding the type of personnel member point of contact being provided to the A/L facility; the A/L facility must be able to communicate with someone knowledgeable to address health care concerns."	As stated above in the response to comment (1)(e), if the information provided to or accompanying a patient as part of an outpatient discharge is insufficient, a personnel member identified by a hospital can provide the information needed by an assisted living facility or any other HCI, either from a hospital record or by asking an appropriate individual. Just as for a private medical office or clinic, it would usually be an office staff member that would provide information to a caller rather than the practitioner. Again, it would be an undue burden on a hospital to require a medical practitioner in an emergency department or hospital outpatient clinic to speak directly with an assisted living facility unless other means of conveying the required information fail. No change will be made based on this comment.
1j	In R9-10-210(B)(1)(c) – "Provides necessary medication information regarding date, dosage and	A transport is required to be coordinated from both ends. For assisted living facilities, this requirement is in R9-10-809 (A).

	time when the medication was administered for the safety of the patient/resident. Without this information the A/L facility has no way of knowing when to administer medication leaving the resident at risk for medical complications from taking medication too soon or not soon enough. This mirrors the other related sections of the rules regarding medication administration."	The additional information could be requested, if appropriate to the patient, as part of the coordination if not included as part of discharge instructions or brought back by the patient. It is an undue burden to require a hospital to provide a list to an assisted living facility of every time a medication was given to the patient while in the hospital and the specific dose and time when the information can be obtained, if necessary, as part of the coordination. Discharge instructions would include what the patient needs to do upon discharge, including when to start medications. No change will be made based on this comment.
The Department received the comments below from a representative of the Arizona Hospital and Healthcare Association:		
2a	"We appreciate the work that ADHS has put into trying to meet multiple stakeholder concerns. Patients and their caregivers should receive detailed discharge instructions from hospitals, and hospitals must make a concerted effort to respond to patient and caregiver questions. We believe most facilities are responsive to these needs, but we also understand that rulemakings are sometimes necessary to further this goal. With this in mind, we are generally supportive of the proposed rulemaking."	The Department thanks the commenter for these thoughts.
2b	"We have not had a chance to vet the new language that was added to address transitions of care between hospitals and other healthcare institutions, but much of it seems reasonable. We would not have been supportive of a rule that stratified requirements based upon discharge to specific classes of healthcare institutions; rules should be more general in nature. As such, we appreciate the modifications made by ADHS. Having said this, we believe more work needs to be done on both sides of the isle—acute, post-acute, SNF, and assisted living. Moreover, not all of this work can nor should be legislated. We will continue to work with all stakeholders to improve transitions of care. This work is often challenging, but is also critically important."	The language to address transitions of care between hospitals and other healthcare institutions was included in the January draft rules that were posted for comment from January 27, 2020, to March 1, 2020. During that period, the Department only received one comment about the draft, which appears to have the same content as the comments provided by the lobbyist. The Department also appreciates the work being done independently by stakeholders, outside the rulemaking framework, to resolve issues. The Department hopes these efforts will continue and will offer any assistance it can in this endeavor.
2c	"We agree with the intent of R9-10-209(C). It is in line with the Medicare Conditions of Participation Interpretive Guidelines (Tag A-0806 of the State Operations Manual). Patients should certainly return to their originating healthcare institution (e.g., assisted living facility) if the facility can provide the right level of care and the patient wishes to return there. However, we want to make sure that the rule does not create an expectation that the hospital hold a patient ready for discharge	The Department appreciates the comment and the statement that the requirement is in line with Medicare requirements. The Department also appreciates the statement that, "A safe discharge, patient wishes, and continuity of care are our primary concerns." The Department does not interpret this subsection as requiring that a hospital hold a patient for an extended period of time waiting for the health care institution to decide whether the health care institution will accept the patient, only that the hospital assess whether the level of care available at and provided through the health care institution is appropriate for

	for several hours or overnight while the originating healthcare institution is determining whether it has capacity, can provide the right level of care, or is negotiating financial arrangements with the patient or patient's family. These delays often create bottlenecks and setbacks to discharges, impacting care across the entire hospital system. A safe discharge, patient wishes, and continuity of care are our primary concerns. During times of heavy surge, however, these must also be balanced with the need to make additional space available for other patients."	the patient, given the possibility that the patient may need more care after discharge than when the patient was last admitted to/accepted by the health care institution. This is especially important for patients who had been living on a campus under the same umbrella, but composed of different health care institutions offering a variety of levels of care. A hospital is still required, in the current rules, to coordinate with another health care institution as part of a transfer. It may be that more discussion about this proposed change needs to occur. The Department plans to remove the added proposed subsection (C) in the supplemental proposed rules in the Notice of Supplemental Rulemaking.
2d	"Because hospitals are in the midst of responding to a pandemic and resources are strained, we urge the Department to adopt a delayed effective date of no sooner than January 1, 2021. We do not know what the next several months will bring with COVID-19. And, hospitals will need time to revise and implement new policies and procedures to come into compliance with this new rule."	The Department agrees that an effective date of January 1, 2021 would be appropriate and plans to request this date.
The Department received the comments below from a member of the Arizona Hospital and Healthcare Association:		
3a	"I believe that R9-10-209, A4bii "providing a demonstration of the aftercare tasks to the patient, patient's representative or the patients aftercare provider as applicable" may be difficult to document and to demonstrate. Who determines what is applicable? My definition may be different than the surveyors. I'm thinking of ADLs. I think this is very broad and could take days delaying discharges. My other concern with this section is how do we document and what happens when the representative says they didn't understand. Is the hospital held accountable? Will it increase length of stay? What if the patient disagrees and demands to stay longer? Do we just document it?"	The Department interprets this subsection to mean that aftercare tasks are demonstrated to whoever will be doing them, be it the patient, the patient's representative, or the patient's aftercare provider, whichever of them will be carrying out the discharge instructions (as stated in subsection (A)(4)(b)). If during a demonstration, the individual who will be carrying out the discharge instructions states or shows an inability to perform a task, the task can be demonstrated again. If it appears that tasks included in discharge instructions are beyond the ability of the individual expected to perform them, the hospital may consider whether it is safe to discharge the patient to that situation. If adequate coordination occurs prior to discharge, the Department would not expect this requirement to significantly affect the length of stay. No change will be made based on this comment.
3b	"What is the definition of a healthcare institution? Is this strictly licensed facilities to include ALFs, group homes, SNFs, home health agencies, home care agencies or does this also mean behavioral health. Would it also extend to adult day care centers?"	The definition of "health care institution" is in A.R.S. § 36-401. It includes assisted living facilities, nursing care institutions (termed "skilled nursing facilities" in federal regulations), home health agencies, and facilities providing behavioral health, but it does not include group homes or home care agencies. No change will be made based on this comment.
The Department received the comments below from a representative of AARP who participated in the oral proceeding by teleconference and expressed the same concerns:		
4a	"AARP supports the changes being made to include "after care" and the "after care provider", relating to discharge of a patient to a patient's residence."	The Department thanks the commenter for these thoughts.
4b	"We understand there are concerns related to	In reviewing the 2018 Hospital Discharge data, the Department

	changes that have been proposed about transfers and discharges between health care institutions. With respect to the provisions relating to transfers and discharges between health care institutions, AARP is supportive of a brief pause for the parties involved to resolve their concerns. In the event that the issues cannot be resolved in a timely fashion, we respectfully request that the rules move forward without the contentious issues in order to allow the consensus issues relating to after care and the aftercare provider to advance forward."	noted that over 88% of all discharges and 72% of inpatient discharges were to home. The Department does not want these patients to lose the benefit the rule changes related to aftercare may provide them while other issues identified by assisted living facilities are addressed. Therefore, in the supplemental proposed rules, the Department is keeping those changes for which there is consensus (those related to aftercare) and removing the changes for which there is no consensus and for which more discussion is necessary. The Department will work with the stakeholders to try to resolve issues and achieve consensus before moving forward with more revisions related to hospital discharges, transfers, and transports.
The Department received the comments below from another member of the Arizona Hospital and Healthcare Association:		
5a	"Aftercare provider- I understand the "ask", but if patient have no one at home to assist with ADLs (not always needed) do we now have to document, no aftercare provider designed?"	According to the new R9-10-208(7), a patient or the patient's representative may designate an aftercare provider at the time of admission. Therefore, that information should already be in the patient's record and could be confirmed at the time of discharge. A hospital would include in its policies and procedures what someone preparing a patient for discharge would need to do, but the Department anticipates that this could be the process that a hospital puts into policies and procedures No change will be made based on these comments.
5b	"4a. This is simply an attempted call to the patient's family (aftercare provider) only if designated, to advise of discharge- correct? If the patient does not designate this role- no call is needed."	
5c	"4b. 1 -2. This is confusing- case managers don't show patient how to dress their wound, give Lovenox or insulin (after care tasks) or review new medications- this is done by nursing."	The rules don't state who does what, just that it has to be done. The administrator, through policies and procedures, would describe how this requirement would be satisfied, and presumably include the interaction between nursing staff and case managers. No change will be made based on this comment.
5d	"4.5- ???? Classes and Sub classes of health care institutions in written form? We use Silver Vue, an electronic platform which allows patient/families choice in selecting post- acute placement and displays CMS ratings. We can also email the same information to representatives. We speak to the level of care needed based on medical acuity and PT/OT recommendation- there is no written documentation to share."	The subsection cited is a current requirement that has been in place since 2013. No change will be made based on this comment.
5e	"B 1 b- a list of medications administered – discharged patients always have a current list, time last administered, new medications and medications to stop called out. This should meet the criteria unless, they want a list of all medications administered during this stay? Statement is vague."	This comment seems to contradict what has been alleged by assisted living facilities, and may reflect the practices of different hospitals rather than the current rules. Since the current rule appears to be clear to at least some of those implementing it and the proposed change appears to be causing confusion, the Department is removing the change in the supplemental proposed rules.
5f	E 1A- after care provider – not part of the assessment in the ED , unless designee is on site.	The Department believes that R9-10-208 applies to all hospital admissions, not just to inpatient admissions. Therefore, a patient admitted as an outpatient could designate an aftercare provider

		and give contact information. The individual designated could be the one onsite, but that is not required. If a patient in the ED (emergency department) came from another health care institution and will be returning, that would be a transport and R9-10-210(B)(1)(c) would apply. If going from the ED to an initial or new health care institution, that would be a transfer and R9-10-211(2) would apply. The requirements in R9-10-209(D) (subsection (E) in the proposed rules) would be more important for patients being discharged home. To avoid confusion, only requirements related to aftercare are in the supplemental proposed rules.
5g	E2 – care plan- the nursing care plans are sent but do not contain this information.? Different consult would reflect this information but not one POC	
The Department received the comments below after the oral proceeding from a lobbyist representing an entity on behalf of assisted living facilities:		
6a	"Based on the oral proceedings today, in particular the clarification provided by Ms. Smejkal, I am withdrawing my earlier comments submitted on Monday, June 1, 2020 at 3:57pm and substituting the comments below and the attached recommended changes."	The Department thanks the commenter, but the Department must respond to the comments received.
6b	"I would like to reiterate Arizona LeadingAge's full support of AARP's suggested rule changes. AARP's goal to provide information to care givers that have the responsibility to care for individuals discharged to home, aligns with Arizona LeadingAge's goal to ensure adequate care is provided, particularly to our most vulnerable population. With over 2,300 Assisted Living facilities, our members see firsthand that without adequate information, some of our most frail citizens suffer."	The Department thanks the commenter for these thoughts.
6c	"R9-10-209.B.1.d. – Adds language that the COVID status, or any similar type pandemic causing a public health emergency, be provided for a patient being discharged as a transfer."	Please refer to the response to comment (1)(a).
6d	"R9-10-209.B.2. – Request that DHS add language to address medications administered, including date, dosage and time administered. It also requests that discharge orders include any new medication prescribed, e-scribed or a written prescription and the location and phone number of the receiving pharmacy. This mirrors what is required in the outpatient discharge planning section R9-10-209.E. under the DHS proposed rulemaking. The same medication information is needed whether the discharge is from inpatient or outpatient. The change also requests that the name and contact information for a physician, RNP, RN, or PA that can respond to questions be provided."	Please refer to the response to comment (1)(b).

6e	"R9-10-209.E.1.a, b and d – R9-10-209.F.1.a. provides necessary medication information for the safety of the patient/resident be included in the discharge order. Without this information there is no way of knowing when to administer medication creating risk for medical complications due to medication being administered too soon or not soon enough. R9-10-209.F.1.b. provides clarification that the new medication prescribed, may be through an e-script or provided in a written prescription and requires the location and phone number of the receiving pharmacy. It is impossible to know where the prescription is without this information. R9-10-209.F.1.d. provides the discharge order include a point of contact who can discuss transition of care issues for the safety of the patient."	Please refer to the response to comment (1)(c) and (d).
6f	"R9-10-210.A.1.c. and d. – R9-10-210A.1.c. retains the language "shall" to add clarity that the information is a requirement. R9-10-210A.1.d. Adds specificity regarding the type of personnel member point of contact being provided; there must be the ability to communicate with someone knowledgeable to address health care questions."	The "shall" is in the lead-in in (A) and does not need to be repeated. For subsection (A)(1)(d), as in the responses to comments (1)(e) and (1)(i), if the information provided to or accompanying a patient as part of a transport is insufficient, a personnel member identified by a hospital can provide the information needed by an assisted living facility or any other HCI, either from a hospital record or by asking an appropriate individual. Just as for a patient calling a medical practitioner in a private office or clinic, it would be an office staff member that would provide information to a caller rather than the practitioner in most cases. It would be an undue burden on a hospital to require a medical practitioner to speak directly with an assisted living facility unless other means of conveying the required information fail. No change will be made based on this comment.
6g	"R9-10-210.B.1.c. – Provides necessary medication information regarding date, dosage and time when the medication was administered for the safety of the patient. Without this information there is no way of knowing when to administer medication leaving the resident at risk for medical complications from taking medication too soon or not soon enough. This mirrors the other related sections of the rules regarding medication administration."	Please refer to the response to comment (1)(b). No change will be made based on this comment.
6h	"R9-10-210.B.1.d. – Adds specificity regarding the type of personnel member point of contact being provided; there must be the ability to communicate with someone knowledgeable to address health care concerns."	Please refer to the response to comment (1)(d). No change will be made based on this comment.
6i	"R9-10-211.1.c. –R9-10-211.1.c. provides	Please refer to the response to comment (1)(e). No change will

	specificity regarding the type of personnel member point of contact being provided; there must be the ability to communicate with someone knowledgeable to address health care questions."	be made based on this comment.
6j	"R9-10-211.2. - Adds clarity regarding the information provided as discussed above, such as: medication dose and time received; any new medications whether prescribed, e-scribed or provided in a written script and the name of the receiving pharmacy, and requires insurance/Medicare information."	Please refer to the response to comment (1)(f). No change will be made based on this comment.
Comments Received After the Close of Record		
The Department received the comments below from a representative of the Health System Alliance of Arizona:		
a	"The members of the Alliance have prioritized the establishment of policies and procedures within their facilities to ensure that patients are discharged to a safe place and that caregivers are provided with clear information on how to best care for their loved one. In crafting the rulemaking that was drafted in August 2019, AARP worked collaboratively with the Alliance to ensure that these proposed rules were consistent with best practices and the policies that were already in place in hospitals across Arizona. We appreciated their willingness to include our feedback in the crafting of the underlying rule package and continue to support codification of these practices and policies into Department rule."	The Department thanks the commenter for these thoughts.
b	"However, the Alliance cannot support the changes incorporated into to the rule promulgated on May 8, 2020. These additional requirements were proposed without comprehensive stakeholder engagement, are in several instances duplicative of existing regulatory requirements and pose a undue burden on an industry already strained from combatting COVID-19."	Although there was no second stakeholder meeting at which the changes in the proposed rules were discussed, as alluded to in comment (b), a draft containing them was posted for over a month. Only one set of comments was received about the January 2020 draft. These were consistent with the comments received from the lobbyist representing an entity on behalf of assisted living facilities during the formal comment period, asking for even more changes to be made. As mentioned in comment (c), some of the changes may seem duplicative of current requirements, but they would serve to clarify them. In response to comment (d), this change was made to address one of the most pressing concerns from assisted living facilities, that of a patient being sent back to a facility that cannot meet the patient's needs. Because of the lack of consensus about these changes and other changes added in the January draft, the Department has removed in the supplemental proposed rules most of the changes that had been added in the January draft. The Department is requesting an effective date of January 1, 2021 to give time for things to have settled down with COVID while still providing benefit to the multitude of patients who would benefit from the aftercare requirements.
c	"Specifically, the proposed changes outlined in require that a health care institution complete an assessment of a patient to determine the level of care that is required upon discharge and whether a patient may be able to return to the health care institution from which they originated. This provision of the proposed rule is duplicative of current rule, which already requires that patient be given information on the level of care available to meet assessed and anticipated needs	

	postdischarge."	
d	"This proposal goes a step further to also require that health care institutions evaluate the level of care provided in the originating facility to determine whether the patient may return. This provision is unduly burdensome on hospitals who do not have resources or information necessary to conduct an evaluation of originating facilities to determine whether they can adequately meet patients' needs."	
e	"The proposed rule requires that a discharge order include detail of any medications administered to the patient, together with a list of any new medications prescribed post-discharge. Current rule requires that discharge summaries for patients being transferred or discharged include detail of any "medical services provided to the patient," which would inherently include a list of medications administered to treat their condition. Further, R9-10-209 requires that discharge orders include "information from the patient's medical record, including orders that are in effect at the time of transfer…" This would include any medication orders in place at the time of discharge. Hospitals are already required to conduct assessments of patients prior to discharge and include information as part of the discharge summary that details the medical services provided to the patient and the orders in place to continue care post-discharge. The Department has the regulatory authority to take action against health care institutions that do not comply with these requirements. For this reason, we find the changes to the proposed rule to be unnecessarily duplicative and once again, burdensome."	While the proposed requirements about medications are similar to the current requirement, the proposed language is more specific to reduce the chance for misinterpretation. If the commenter believes this is duplicative and already being done by hospitals, there would be no burden imposed by clarifying the requirement. However, because of the lack of consensus about these changes as well as other changes added in the January draft, the Department has removed in the supplemental proposed rules this and most other changes that had been added in the January draft.
f	"As stated previously, we appreciate AARP's willingness to engage in a comprehensive stakeholder discussion and continue to support the provisions of the rule as drafted in August 2019. At the appropriate time, we would welcome the opportunity to engage with the proponents of the revisions to this draft rule to discuss how hospitals and assisted living facilities can better partner to ensure that patient discharges and transfers between their facilities can work in a more efficient manner for patients and their families. Unfortunately, we cannot support the proposed changes amended to the May 8th draft rule absent this discussion and without consideration of the considerable limitation on hospital resources	Because of the lack of consensus about changes added in the January draft, the Department has removed in the supplemental proposed rules most changes that had been added in the January draft and included in the proposed rules. The Department appreciates the willingness of the commenter to continue to discuss the concerns addressed by these changes so consensus can be reached.

	during the current crisis."	

Based on these comments, the Department made changes to the proposed rules, as included in the Notice of Supplemental Proposed Rulemaking. The Department held an oral proceeding for the supplemental proposed rules on August 10, 2020. The oral proceeding was attended by the lobbyist representing an entity on behalf of assisted living facilities, who also had attended the oral proceeding on June 9, 2020. Another representative of the same entity, as well as a representative of AARP participated by teleconference. At the oral proceeding, the lobbyist provided comments from a written set of comments provided to the Department after the oral proceeding. These comments were echoed by the other representative of the entity representing assisted living facilities. The representative of AARP stated that AARP supports the revised proposed rules in the supplemental rulemaking. A summary of the comments received and the Department's responses follows. Since the oral comments mirrored the written comments made by the lobbyist, the summary reflects both written and oral comments.

Comments	Department's Responses
The comment was made that "Arizona LeadingAge is beyond disappointed" that the Department "not only failed to include any suggested modifications to its proposed Hospital Discharge rules, but it eliminated the modest improvements to address hospital discharge to another health care institution."	This rulemaking began with the intention of adding requirements related to aftercare. In meeting with stakeholders, the Department listened to the concerns expressed by assisted living facilities and tried to make rule changes to address them. However, these "modest improvements" did not appear to be enough to satisfy Arizona LeadingAge and seemed too much for hospitals. In the absence of consensus, the Department went back to the original focus of the rulemaking, which is aftercare and is reflected in the supplemental proposed rules.
The comment was made that meetings with assisted living facilities, hospitals, AARP, and the Department began in July 2018 and continued into 2020 to address "hospital discharges to senior care facilities.". The statement was made that the Department suggested drafting compromise language "taking into consideration feedback from the hospital associations, AARP and the assisted living community." The statement was also made that Arizona LeadingAge thought the language in the proposed rules published on May 8, 2020, "while not capturing all the changes desired by the industry, was a fair compromise between the parties."	While the Department may have participated informally in some discussions, these meetings were outside the rulemaking process, which began after the Department received a rulemaking exception on August 2, 2019. The exception was for a rulemaking "for the purpose of enhancing the existing discharge procedures at hospitals with respect to caregiver notification and discharge instructions." Draft rules were posted for comment in August, revised, and the September Draft was posted and discussed with stakeholders at a meeting on September 20, 2019. Meeting Notes document that the Department intended to focus on discharge and "aftercare" rather than on the topics one stakeholder brought up and to which the Department responded as specified in an initial part of the Notes, before discussing the draft rules. Based on the discussion of the draft rules at the meeting, further revisions were made and November Draft rules were posted for comment, again focusing on aftercare. The staff working on the rulemaking is unaware of any suggestion made by the Department to draft compromise language, other than replacing the term "aftercare provider" for "caregiver" to reduce
After quoting extensively from the	

Preamble to the Notice of Proposed Rulemaking, the comment was made that "Arizona Leading Age agrees with the Department's conclusions in developing the proposed rulemaking published on May 8, 2020." The statement was made that the changes in the proposed rules were "a first step in ensuring continuity of care as a senior is discharged from a hospital to another health care institution."	confusion with the "caregivers" who are staff of assisted living facilities. However, the same concerns as were discussed at the beginning of the meeting were again raised as comments on the November Draft. Thinking that some clarification of existing requirements could be included in the rules under the exception and could address some of these concerns, the Department added the language in the January Draft. The same language was included in the proposed rules and goes as far as the exception would permit. From the comments summarized in the Table above, there was no consensus from stakeholders on any changes other than aftercare.
The comment was made that "changes that were originally published by the ADHS was language the Department had developed as a compromise after two years of meetings and discussions between assisted living, AARP and the hospital associations. As stated above, the Arizona Leading Age supported and continues to support the proposed rulemaking drafted by the ADHS as a compromise between assisted living, AARP and the hospital associations published on May 8, 2020 and discussed in the oral proceeding on June 9, 2020."	The clarification of existing requirements that had been part of the January Draft and proposed rules was not "developed as a compromise." Nor had there been discussions during the rulemaking about these clarifications, other that the request for comments about the January Draft, on which only the lobbyist representing Arizona LeadingAge submitted comments and for which more, very specific changes were requested. From the summary in the Table above of comments sets (1) and (6), it does not appear that Arizona Leading Age supported the proposed rulemaking. While continued discussions with all parties can still take place to develop clarifying language applicable to all health care institutions, not just assisted living facilities, the time spent developing a consensus should not detract from the benefits that the vast majority of patients who are discharged to home could experience from the rule changes in the supplemental proposed rules. Therefore, the Department is not planning to make any further changes to the rules at this time.

The Department understands the concerns of assisted living facilities, but rules are meant to have general applicability. The Department would encourage assisted living facilities to communicate with hospitals to which or from which residents are transported or transferred to try to resolve these issues. If an assisted living facility believes that a hospital is not following existing rules and not providing information needed by the assisted living facility to provide adequate care, it could submit a complaint about the hospital. However, in the past five years, the Department is aware of few assisted living facilities doing so.

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:

There are no other matters prescribed by statutes applicable specifically to the Department or this specific rulemaking.

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:

Although licensing of health care institutions is not addressed in this rulemaking, A.R.S. § 36-407 prohibits a person from establishing, conducting, or maintaining "a health care institution or any class or subclass of health care institution unless that person holds a current and valid license issued by the [D]epartment specifying the class or subclass of health care institution the person is establishing, conducting or maintaining." A health care institution license is specific to the licensee, class or subclass of health care institution, facility location, and scope of services provided. As such, a general permit is not applicable and 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:

Not applicable

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

No business competitiveness analysis was received by the Department.

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

Not applicable

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

Not applicable

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES

HEALTH CARE INSTITUTIONS: LICENSING

ARTICLE 2. HOSPITALS

Section

R9-10-201. Definitions

R9-10-208. Admission

R9-10-209. Discharge Planning; Discharge

ARTICLE 2. HOSPITALS

R9-10-201. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following definitions apply in this Article unless otherwise specified:

1. "Adult" means an individual the hospital designates as an adult based on the hospital's criteria.
2. "Aftercare" means assistance provided to a patient by another individual in the patient's residence, which is not part of a health care institution, following care provided at a hospital, and may include:
   a. Assisting the patient with activities of daily living, and
   b. Following the discharge instructions provided by the hospital.
3. "Aftercare provider" means an individual who:
   a. May be a friend or relative of a patient or be the patient's representative,
   b. Is designated by the patient or the patient's representative to perform aftercare tasks, and
   c. Is not compensated for performing aftercare tasks for the patient.

~~2.~~4. "Care plan" means a documented guide for providing nursing services and rehabilitation services to a patient that includes measurable objectives and the methods for meeting the objectives.

~~3.~~5. "Continuing care nursery" means a nursery where medical services and nursing services are provided to a neonate who does not require intensive care services.

~~4.~~6. "Critically ill inpatient" means an inpatient whose severity of medical condition requires the nursing services of specially trained registered nurses for:
   a. Continuous monitoring and multi-system assessment,
   b. Complex and specialized rapid intervention, and
   c. Education of the inpatient or inpatient's representative.

~~5.~~7. "Device" has the same meaning as in A.R.S. § 32-1901.

~~6.~~8. "Diet" means food and drink provided to a patient.

~~7.~~9. "Diet manual" means a written compilation of diets.

~~8.~~10. "Dietary services" means providing food and drink to a patient according to an order.

~~9.~~11. "Diversion" means notification to an emergency medical services provider, as defined in A.R.S. § 36-2201, that a hospital is unable to receive a patient from an emergency medical services provider.

~~10.~~12. "Drug formulary" means a written list of medications available and authorized for use developed according to R9-10-218.

~~11.~~13. "Gynecological services" means medical services for the diagnosis, treatment, and management of conditions or diseases of the female reproductive organs or breasts.

~~12.~~14. "Hospital services" means medical services, nursing services, and health-related services provided in a hospital.

~~13.~~15. "Infection control risk assessment" means determining the probability for transmission of communicable diseases.

~~14.~~16. "Inpatient" means an individual who:

a. Is admitted to a hospital as an inpatient according to policies and procedures,

b. Is admitted to a hospital with the expectation that the individual will remain and receive hospital services for 24 consecutive hours or more, or

c. Receives hospital services for 24 consecutive hours or more.

~~15.~~17. "Intensive care services" means hospital services provided to a critically ill inpatient who requires the services of specially trained nursing and other personnel members as specified in policies and procedures.

~~16.~~18. "Medical staff regulations" means standards, approved by the medical staff, that govern the day-to-day conduct of the medical staff members.

~~17.~~19. "Multi-organized service unit" means an inpatient unit in a hospital where more than one organized service may be provided to a patient in the inpatient unit.

~~18.~~20. "Neonate" means an individual:

a. From birth until discharge following birth, or

b. Who is designated as a neonate by hospital criteria.

~~19.~~21. "Nurse anesthetist" means a registered nurse who meets the requirements of A.R.S. § 32-1601 and who has clinical privileges to administer anesthesia.

~~20.~~22. "Nurse executive" means a registered nurse accountable for the direction of nursing services provided in a hospital.

~~21.~~23. "Nursery" means an area in a hospital designated only for neonates.

~~22.~~24. "Nurse supervisor" means a registered nurse accountable for managing nursing services provided in an organized service in a hospital.

~~23.~~25. "Nutrition assessment" means a process for determining a patient's dietary needs using information contained in the patient's medical record.

~~24.~~26. "On duty" means that an individual is at work and performing assigned responsibilities.

~~25.~~27. "Organized service" means specific medical services, such as surgical services or emergency services, provided in an area of a hospital designated for the provision of those medical services.

~~26.~~28. "Outpatient" means an individual who:

a. Is admitted to a hospital with the expectation that the individual will receive hospital services for less than 24 consecutive hours; or

b. Except as provided in subsection (17) receives, hospital services for less than 24 consecutive hours.

~~27.~~29. "Pathology" means an examination of human tissue for the purpose of diagnosis or treatment of an illness or disease.

~~28.~~30. "Patient care" means hospital services provided to a patient by a personnel member or a medical staff member.

~~29.~~31. "Pediatric" means pertaining to an individual designated by a hospital as a child based on the hospital's criteria.

~~30.~~32. "Perinatal services" means medical services for the treatment and management of obstetrical patients and neonates.

~~31.~~33. "Post-anesthesia care unit" means a designated area for monitoring a patient following a medical procedure for which anesthesia was administered to the patient.

~~32.~~34. "Private duty staff" means an individual, excluding a personnel member, compensated by a patient or the patient's representative.

~~33.~~35. "Psychiatric services" means the diagnosis, treatment, and management of a mental disorder.

~~34.~~36. "Social services" means assistance, other than medical services or nursing services, provided by a personnel member to a patient to assist the patient to cope with concerns about the patient's illness or injury while in the hospital or the anticipated needs of the patient after discharge.

~~35.~~37. "Specialty" means a specific branch of medicine practiced by a licensed individual who has obtained education or qualifications in the specific branch in addition to the education or qualifications required for the individual's license.

~~36.~~38. "Surgical services" means medical services involving a surgical procedure.

~~37.~~39. "Transfusion" means the introduction of blood or blood products from one individual into the body of another individual.

~~38.~~40. "Unit" means a designated area of an organized service.

~~39.~~41. "Vital record" has the same meaning as in A.R.S. § 36-301.

~~40.~~42. "Well-baby bassinet" means a receptacle used for holding a neonate who does not require treatment and whose anticipated discharge is within 96 hours after birth.

R9-10-208. Admission

An administrator shall ensure that:

1. A patient is admitted as an inpatient on the order of a medical staff member;
2. An individual, authorized by policies and procedures, is available to accept a patient for admission;
3. Except in an emergency, informed consent is obtained from a patient or the patient's representative before or at the time of admission;
4. The informed consent obtained in subsection (3) or the lack of consent in an emergency is documented in the patient's medical record;
5. A physician or other medical staff member performs a medical history and physical examination on a patient within 30 calendar days before admission or within 48 hours after admission and documents the medical history and physical examination in the patient's medical record within 48 hours after admission; ~~and~~
6. If a physician or other medical staff member performs a medical history and physical examination on a patient before admission, the physician or the medical staff member enters an interval note into the patient's medical record at the time of admission~~.~~; and
7. A patient or the patient's representative is given an opportunity to:
   a. Designate an individual who is willing to participate in discharge planning and act as the patient's aftercare provider;
   b. Provide contact information for the patient's aftercare provider; and
   c. Change the patient's designated aftercare provider before discharge.

R9-10-209. Discharge Planning; Discharge

A. For an inpatient, an administrator shall ensure that discharge planning:

1. Is completed before discharge occurs;
~~1.~~2. Identifies the specific needs of the patient after discharge, if applicable;
~~2.~~3. Includes the participation of the patient or ~~the~~ patient's representative and, if applicable, the patient's aftercare provider;
~~3. Is completed before discharge occurs;~~
4. If the patient is being discharged to the patient's residence, which is not part of a health care institution:
   a. Includes at least one attempt, which is documented in the patient's medical record, to notify the patient's aftercare provider, if designated, before the

patient's discharge; and

b. Prepares the patient, the patient's representative, or the patient's aftercare provider, as applicable, to carry out the discharge instructions required in subsection (B)(3)(a), including:

i. Answering questions about the discharge instructions and aftercare; and

ii. Providing a demonstration of the aftercare tasks to the patient, the patient's representative, or the patient's aftercare provider, as applicable;

~~4.~~5. Provides the patient or the patient's representative with written information identifying classes or subclasses of health care institutions and the level of care that the health care institutions provide that may meet the patient's assessed and anticipated needs after discharge, if applicable; and

~~5.~~6. Is documented in the patient's medical record.

B. For an inpatient discharge or a transfer of an inpatient, an administrator shall ensure that:

1. There is a discharge summary that includes:
   a. A description of the patient's medical condition and the medical services provided to the patient~~;~~, and
   b. The signature of the medical practitioner coordinating the patient's medical services;
2. There is a documented discharge order for the patient by a medical practitioner coordinating the patient's medical services before discharge unless the patient leaves the hospital against a medical staff member's advice; ~~and~~
3. If the patient is not being transferred:
   a. There are documented discharge instructions; and
   b. The patient or ~~the~~ patient's representative and the patient's aftercare provider, if designated, is provided with a copy of the discharge instructions~~.~~; and
4. If the patient is being transferred, the transfer complies with R9-10-211.

C. Except as provided in subsection (D~~)~~, an administrator shall ensure that an outpatient is discharged according to policies and procedures.

D. For a discharge of an outpatient receiving emergency services, an administrator shall ensure that:

1. A discharge order is documented by a medical practitioner who provided medical services to the patient before the patient is discharged, unless the patient leaves against a medical staff member's advice; and
2. Discharge instructions are documented and provided to the patient or ~~the~~ patient's representative and the patient's aftercare provider, if designated before the patient is

discharged, unless the patient leaves the hospital against a medical staff member's advice.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES
HEALTH CARE INSTITUTIONS: LICENSING
ARTICLE 2. HOSPITALS

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

August 2020

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES

HEALTH CARE INSTITUTIONS: LICENSING

ARTICLE 2. HOSPITALS

1. An identification of the rulemaking

Arizona Revised Statutes (A.R.S.) §§ 36-405 and 36-406 require the Arizona Department of Health Services (Department) to adopt rules establishing minimum standards and requirements for construction, modification, and licensure of health care institutions. The Department has adopted rules for licensing health care institutions in Arizona Administrative Code (A.A.C.) Title 9, Chapter 10, with rules specific to hospitals in Article 2 of the Chapter. The Department has become aware that the rules for hospitals do not appear to adequately address assistance provided to a patient by another individual in the patient's residence following care provided at a hospital. In this rulemaking, the Department is revising the rules in 9 A.A.C. 10, Article 2, to address issues related to hospital discharges to home.

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

- The Department
- Hospitals operating under 9 A.A.C. 10, Article 2
- Patients receiving aftercare services upon discharge from a hospital and their families
- Aftercare providers
- General public

3. Cost/Benefit Analysis

This analysis covers costs and benefits associated with the rule changes. No new FTEs will be required due to this rulemaking; nor does the rulemaking establish a new fee or change an existing fee. Annual costs/revenues are designated as minimal when more than $0 and $1,000 or less, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue

A. State and Local Government Agencies			
Department	Clarifying existing requirements for discharging a patient Adding requirements specifically related to aftercare	None Minimal	Significant Significant
B. Privately Owned Businesses			
Hospitals	Adding requirements related to aftercare Clarifying requirements for discharge planning related to aftercare	Minimal-to-moderate Minimal	Significant/Up to substantial Significant
C. Consumers			
Patients receiving aftercare services upon discharge from a hospital and their families	Adding requirements related to aftercare	None	Significant
Aftercare providers	Adding requirements related to aftercare	None	Significant
General public	Having an improved health care system		

- **The Department**

The Department licenses approximately 117 hospitals in Arizona, which have a combined licensed capacity of over 17,000 beds. Each hospital is required to comply with licensure requirements in 9 A.A.C. 10, with requirements specific to hospitals in Article 2 of the Chapter. According to 2018 Hospital Discharge data, collected according to A.R.S. § 36-125.05, over 88% of all patients (inpatient and emergency room only) are discharged to home. Various stakeholders have actively encouraged the Department to undertake a rulemaking for the purpose of enhancing the existing discharge procedures at hospitals, including better addressing assistance provided to a patient by another individual in the patient's residence following care provided at a hospital. These stakeholders included AARP, the Arizona Hospital and Healthcare Association, and the Health System Alliance of Arizona. In this rulemaking the Department is making changes to address these concerns.

As part of the rulemaking, the Department is clarifying existing requirements for discharging a patient. These include clarifying that the transfer of a patient to another health care institution must comply with R9-10-211, the Section in Article 2 containing specific requirements for transfers. The Department anticipates that these changes may provide a significant benefit from

adding in R9-10-209(B)(4) reference to patients not included under R9-10-209(B)(3) in the current rule and increasing awareness of the content in R9-10-211.

Because of insurance and other issues, patients are now discharged from a hospital earlier in their recovery than they were years ago and need continuing care at home that had formerly been provided at the hospital or at another health care institution. Therefore, a patient being discharged may have a relative or a friend with little or no training assist them with tasks to help them complete their recovery. These tasks may include assisting the patient with activities of daily living and following the discharge instructions provided by the hospital. These services are defined in the new rules as "aftercare," and the individual helping the patient is defined as an "aftercare provider" to distinguish this individual from home health personnel members or other caregivers. The new rules add a requirement for a hospital to give a patient an opportunity to designate an aftercare provider, provide contact information for the aftercare provider, and change the designation. The new rules also add requirements for a hospital to include an aftercare provider in discharge planning, to attempt to notify an aftercare provider before a patient is discharged, and to prepare applicable individuals to carry out discharge instructions. A copy of discharge instructions is also required to be given to an aftercare provider, if designated. The Department anticipates that these changes may impose a minimal cost on the Department due to the additional time it may take during an inspection to make sure these requirements are being met, but believes that the changes may provide a significant benefit because of better patient recoveries.

- **Hospitals**

A hospital may discharge a patient to home or to another health care institution as a transfer or transport, as defined in R9-10-101. Requirements related to the transport of a patient back to the health care institution from which the patient came to the hospitals for services are contained in R9-10-210. The requirements for the transfer of a patient to another health care institution are contained in R9-10-211. Neither of these situations are addressed in this rulemaking. The new rules add requirements related to aftercare, as described above. The Department believes that many hospitals have already been involving individuals who would be caring for a patient upon discharge to home in discharge planning, especially if requested to do so by a patient or the patient's representative. Hospitals also currently provide a copy of discharge instructions to a patient or the patient's representative before discharge, and a copy of these instructions may be given to the individual who would be helping the patient when the patient returned home. The Department believes that the new requirements related to aftercare may cause a hospital that has been doing these things as part of the services provided to patient to incur minimal additional

costs from updating policies and procedures and monitoring compliance. However, a hospital that has not been involving an aftercare provider in discharge planning may possibly incur as much as moderate costs due to not only updating policies and procedures to include these requirements, but also retraining staff to ensure compliance. A hospital may receive a significant benefit from knowing that a patient can be safely discharged to home, and possibly up to a substantial benefit if the tasks performed by an aftercare provider who is competent in carrying out the discharge instructions results in the patient not being readmitted with a condition for which Medicare may withhold reimbursement or cause the hospital to not attain a Medicare metric that affects reimbursement. For example, the Hospital Readmissions Reduction Program is a pay-for-performance program that lowers payments to Inpatient Prospective Payment System hospitals with too many readmissions. The program, established in 2010, gives hospitals a strong financial incentive to improve their communication and care coordination efforts and work better with patients and caregivers on post-discharge planning.

The clarifications of requirements for discharge planning related to discharge and aftercare, as described above, reflect national standards, such as those required by Medicare, which a hospital that is Medicare-certified would have to follow regardless of the Department's licensing requirements. In clarifying these requirements, the Department is enabling a hospital to better assess whether their current policies and procedures meet these requirements. The Department believes that the new rules could impose a minimal cost from reviewing and assessing its procedures, and may provide a significant benefit from making clearer the Department's expectations and from better patient care.

- **Patients receiving aftercare services upon discharge from a hospital and their families**

Patients who are discharged from a hospital currently receive discharge instructions from the hospital, describing the care the patient is likely to need to fully recover. Many patients discharged to home need help completing the tasks involved in providing this care, with the help often being provided by the patient's family or friends. Depending on the experience of the family member or friend in completing necessary tasks and the complexity of the care needed by the patient, a family member or friend may need extensive guidance to adequately provide the care needed by the patient. The new rules provide for a patient to designate someone as an aftercare provider, to be involved in discharge planning and to receive instructions about and be provided with a demonstration of the care that will need to be provided to the patient after discharge. The Department believes that these changes may make the family member or friend designated by a patient as an aftercare provider better prepared to provide care to the patient after

discharge. This may result in the patient receiving better care and, thus, a significant benefit from the rule change.

- **Aftercare providers**

  As mentioned above, a family member or friend of a patient, designated by the patient as the patient's aftercare provider, may have extensive experience or no experience in completing the tasks involved in providing necessary care to the patient after hospital discharge. The rule changes related to aftercare specify that an aftercare provider may be involved in discharge planning and receive information and a demonstration of how to carry out the discharge instructions. This may make an aftercare provider more skilled and comfortable in adequately carrying out the tasks involved in the patient's care after discharge. Therefore, the Department believes that these rule changes may provide a significant benefit to an aftercare provider.

- **The general public**

  The Department anticipates that the rules may provide a significant benefit to the general public by improving the health care system in Arizona. By adding requirements related to aftercare and increasing communication among health care institutions providing services to a patient, the patient is likely to receive better care and have a better outcome. This contributes to a healthier and more satisfied population and improved wellbeing of society.

4. A general description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking

The rulemaking is not expected to have an impact on private or public employment.

5. A statement of the probable impact of the rules on small business

a. Identification of the small businesses subject to the rules

Small business subject to the rules include small hospitals.

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

The administrative and other costs required for compliance with the rules are described in paragraph 3.

c. A description of the methods that the agency may use to reduce the impact on small businesses

The rule changes are expected to have little or no effect on small businesses. The costs or benefits are described in paragraph 3.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rules

The costs and benefits to private persons and consumers from the rulemaking are described in paragraph 3.

6. A statement of the probable effect on state revenues

The Department does not expect the rules to have an effect on state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking

The Department has determined that there are no less intrusive or less costly alternatives for achieving the purpose of the rulemaking.

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

Not applicable

Comment 1

Gmail by Google

Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

Fwd: Comments Re: Proposed Rulemaking 9 A.A.C. 10 Department of Health Services - Health Care Institutions; Licensing

1 message

Stephanie Elzenga <stephanie.elzenga@azdhs.gov> Mon, Jun 1, 2020 at 4:00 PM
To: Colby Bower <colby.bower@azdhs.gov>, Kathryn Mccanna <kathryn.mccanna@azdhs.gov>, Robert Lane <robert.lane@azdhs.gov>, Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

Please see below. Thanks

---------- Forwarded message ---------
From: **Marie Isaacson** <marie@isaacsonlawaz.com>
Date: Mon, Jun 1, 2020 at 3:57 PM
Subject: Comments Re: Proposed Rulemaking 9 A.A.C. 10 Department of Health Services - Health Care Institutions; Licensing
To: Kathryn.McCanna@azdhs.gov <Kathryn.McCanna@azdhs.gov>, Stephanie Elzenga <stephanie.elzenga@azdhs.gov>
CC: Pam A. Koester - LeadingAge Arizona (pkoester@leadingageaz.org) <pkoester@leadingageaz.org>, Don Isaacson <don@isaacsonlawaz.com>

Ms. McCanna and Ms. Elzenga,

Thank you for the opportunity to provide written comments on the proposed rulemaking 9 A.A.C. 10 Department of Health Services – Health Care Institutions. Our client, Arizona LeadingAge, has participated in several meetings with DHS and the hospitals to provide input into these rules.

Attached is a draft that includes our requested revisions to the proposed rules. We are available to meet at your convenience to discuss our recommended changes.

In summary, our changes:

1. Adds requirement to provide COVID status of individual being discharged;
2. Add similar language regarding discharge orders for inpatient or transfer as were added to outpatient discharge orders;
3. Add language to cover hospital discharges to assisted living facilities that the patient has not been admitted to previously;
4. Additional information regarding medications;
5. Further define the hospital personnel member who will answer questions after discharge, and
6. Delineate what will accompany the patient upon transfer.

Specifically, the changes requested, outlined in the attached proposed rules, are:

1. R9-10-209.B.1.d. – Adds language that the COVID status, or any similar type pandemic causing a public health emergency, be provided for a patient being discharged as a transfer.

2. R9-10-209.B.2. – Request that DHS add language to require the medical practitioner who provided medical services to the patient before discharge sign the orders and that such orders comply with DHS Rule R9-10-807(B). R9-10-807(B) requires Assisted Living facilities to have signed orders outlining the level of care the resident needs when admitting a resident. This ensures that Assisted Living facilities can comply with DHS requirements when admitting a resident from a hospital.

   Also, add language to address medications administered, including date, dosage and time administered. It also requests that discharge orders include any new medication prescribed, e-scribed or a written prescription and the location and phone number of the receiving pharmacy. This mirrors what is required in the outpatient discharge planning section R9-10-209.E. under the DHS proposed rulemaking. The same medication information is needed whether the discharge is from inpatient or outpatient.

   The change also requests that the name and contact information for a physician, RNP, RN, or PA that can respond to questions be provided.

3. R9-10-209.C. - Provides clarity that there will be coordination with the patient's current residence/assisted living facility.

4. R9-10-209.D. - R9-10-209.C. proposed draft rules provide for coordination for a patient that resided in an Assisted Living facility prior to entering the hospital. The proposed rules do not provide for a patient that did not reside in an A/L prior to arriving at the hospital. Adding R9-10-209.D. provides for a patient who is being admitted to an Assisted Living Facility for the first time.

5. R9-10-209.F.1 - This change provides clarification that the discharge order must comply with R9-10-807(B), the DHS rule governing Assisted Living Facilities admission requirements. This provides for consistency between what the hospitals must provide and what information DHS rules require the A/L have before admitting a resident.

6. R9-10-209.F.1.a, b and d – R9-10-209.F.1.a. provides necessary medication information for the safety of the patient/resident be included in the discharge order. Without this information the A/L facility has no way of knowing when to administer medication leaving the resident at risk for medical complications due to medication being administered too soon or not soon enough. R9-10-209.F.1.b. provides clarification that the new medication prescribed, may be through an e-script or provided in a written prescription and requires the location and phone number of the receiving pharmacy. It is impossible for an A/L to know where the prescription is without this information. R9-10-209.F.1.d. provides the discharge order include a point of contact the A/L can discuss transition of care issues for the safety of the patient.

7. R9-10-210.A.1.d. – Adds specificity regarding the type of personnel member point of contact being provided to the Assisted Living facility; the A/L must be able to communicate with someone knowledgeable to address health care questions.

8. R9-10-210.B.1.c. – Provides necessary medication information regarding date, dosage and time when the medication was administered for the safety of the patient/resident. Without this information the A/L facility has no way of knowing when to administer medication leaving the resident at risk for medical complications from taking medication too soon or not soon enough. This mirrors the other related sections of the rules regarding medication administration.

9. R9-10-210.B.1.d. – Adds specificity regarding the type of personnel member point of contact being provided to the A/L facility; the A/L facility must be able to communicate with someone knowledgeable to address health

care concerns.

10. R9-10-211.1.a. and c. – R9-10-211.1.a. provides clarification that the discharge order must comply with R9-10-807(B), the DHS rules governing Assisted Living facilities admission requirements. This provides for consistency between what the hospitals must provide to A/L and what information the A/L is required to have by DHS rules before admitting a resident. R9-10-211.1.c. provides specificity regarding the type of personnel member point of contact being provided to the A/L facility; the A/L facility must be able to communicate with someone knowledgeable to address health care questions.

11. R9-10-211.2. - All the information outlined in R9-10-211.2, is needed by an A/L facility to properly transition the patient to the facility. In addition adds clarity regarding the information provided as discussed above, such as: medication dose and time received; any new medications whether prescribed, e-scribed or provided in a written script and the name of the receiving pharmacy; the orders are in compliance with R9-10-807(B) and requires insurance/Medicare information.

We look forward to continuing to work with you and welcome the opportunity to meet and briefly discuss these matters. Please let us know if you have any questions. Thank you.

Marie

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Health and Wellness for all Arizonans

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TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES

HEALTH CARE INSTITUTIONS: LICENSING

ARTICLE 2. HOSPITALS

Section

R9-10-201. Definitions
R9-10-208. Admission
R9-10-209. Discharge Planning; Discharge
R9-10-210. Transport
R9-10-211. Transfer

ARTICLE 2. HOSPITALS

R9-10-201. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following definitions apply in this Article unless otherwise specified:

1. "Adult" means an individual the hospital designates as an adult based on the hospital's criteria.
2. "Aftercare" means assistance provided to a patient by another individual in the patient's residence, which is not part of a health care institution, following care provided at a hospital, and may include:
   a. Assisting the patient with activities of daily living, and
   b. Following the discharge instructions provided by the hospital.
3. "Aftercare provider" means an individual who:
   a. May be a friend or relative of a patient or be the patient's representative,
   b. Is designated by the patient or the patient's representative to perform aftercare tasks, and
   c. Is not compensated for performing aftercare tasks for the patient.

~~2.~~4. "Care plan" means a documented guide for providing nursing services and rehabilitation services to a patient that includes measurable objectives and the methods for meeting the objectives.

~~3.~~5. "Continuing care nursery" means a nursery where medical services and nursing services are provided to a neonate who does not require intensive care services.

~~4.~~6. "Critically ill inpatient" means an inpatient whose severity of medical condition requires the nursing services of specially trained registered nurses for:
   a. Continuous monitoring and multi-system assessment,
   b. Complex and specialized rapid intervention, and
   c. Education of the inpatient or inpatient's representative.

~~5.~~7. "Device" has the same meaning as in A.R.S. § 32-1901.

~~6.~~8. "Diet" means food and drink provided to a patient.

~~7.~~9. "Diet manual" means a written compilation of diets.

~~8.~~10. "Dietary services" means providing food and drink to a patient according to an order.

~~9.~~11. "Diversion" means notification to an emergency medical services provider, as defined in A.R.S. § 36-2201, that a hospital is unable to receive a patient from an emergency medical services provider.

~~10.~~12. "Drug formulary" means a written list of medications available and authorized for use developed according to R9-10-218.

~~11.~~13. "Gynecological services" means medical services for the diagnosis, treatment, and management of conditions or diseases of the female reproductive organs or breasts.

~~12.~~14. "Hospital services" means medical services, nursing services, and health-related services provided in a hospital.

~~13.~~15. "Infection control risk assessment" means determining the probability for transmission of communicable diseases.

~~14.~~16. "Inpatient" means an individual who:

a. Is admitted to a hospital as an inpatient according to policies and procedures,

b. Is admitted to a hospital with the expectation that the individual will remain and receive hospital services for 24 consecutive hours or more, or

c. Receives hospital services for 24 consecutive hours or more.

~~15.~~17. "Intensive care services" means hospital services provided to a critically ill inpatient who requires the services of specially trained nursing and other personnel members as specified in policies and procedures.

~~16.~~18. "Medical staff regulations" means standards, approved by the medical staff, that govern the day-to-day conduct of the medical staff members.

~~17.~~19. "Multi-organized service unit" means an inpatient unit in a hospital where more than one organized service may be provided to a patient in the inpatient unit.

~~18.~~20. "Neonate" means an individual:

a. From birth until discharge following birth, or

b. Who is designated as a neonate by hospital criteria.

~~19.~~21. "Nurse anesthetist" means a registered nurse who meets the requirements of A.R.S. § 32-1601 and who has clinical privileges to administer anesthesia.

~~20.~~22. "Nurse executive" means a registered nurse accountable for the direction of nursing services provided in a hospital.

~~21.~~23. "Nursery" means an area in a hospital designated only for neonates.

~~22.~~24. "Nurse supervisor" means a registered nurse accountable for managing nursing services provided in an organized service in a hospital.

~~23.~~25. "Nutrition assessment" means a process for determining a patient's dietary needs using information contained in the patient's medical record.

~~24.~~26. "On duty" means that an individual is at work and performing assigned responsibilities.

~~25.~~27. "Organized service" means specific medical services, such as surgical services or emergency services, provided in an area of a hospital designated for the provision of those medical services.

~~26.~~28. "Outpatient" means an individual who:

a. Is admitted to a hospital with the expectation that the individual will receive hospital services for less than 24 consecutive hours; or

b. Except as provided in subsection (17) receives, hospital services for less than 24 consecutive hours.

~~27.~~29. "Pathology" means an examination of human tissue for the purpose of diagnosis or treatment of an illness or disease.

~~28.~~30. "Patient care" means hospital services provided to a patient by a personnel member or a medical staff member.

~~29.~~31. "Pediatric" means pertaining to an individual designated by a hospital as a child based on the hospital's criteria.

~~30.~~32. "Perinatal services" means medical services for the treatment and management of obstetrical patients and neonates.

~~31.~~33. "Post-anesthesia care unit" means a designated area for monitoring a patient following a medical procedure for which anesthesia was administered to the patient.

~~32.~~34. "Private duty staff" means an individual, excluding a personnel member, compensated by a patient or the patient's representative.

~~33.~~35. "Psychiatric services" means the diagnosis, treatment, and management of a mental disorder.

~~34.~~36. "Social services" means assistance, other than medical services or nursing services, provided by a personnel member to a patient to assist the patient to cope with concerns about the patient's illness or injury while in the hospital or the anticipated needs of the patient after discharge.

~~35.~~37. "Specialty" means a specific branch of medicine practiced by a licensed individual who has obtained education or qualifications in the specific branch in addition to the education or qualifications required for the individual's license.

~~36.~~38. "Surgical services" means medical services involving a surgical procedure.

~~37.~~39. "Transfusion" means the introduction of blood or blood products from one individual into the body of another individual.

~~38.~~40. "Unit" means a designated area of an organized service.

~~39.~~41. "Vital record" has the same meaning as in A.R.S. § 36-301.

~~40.~~42. "Well-baby bassinet" means a receptacle used for holding a neonate who does not require treatment and whose anticipated discharge is within 96 hours after birth.

R9-10-208. Admission

An administrator shall ensure that:

1. A patient is admitted as an inpatient on the order of a medical staff member;
2. An individual, authorized by policies and procedures, is available to accept a patient for admission;
3. Except in an emergency, informed consent is obtained from a patient or the patient's representative before or at the time of admission;
4. The informed consent obtained in subsection (3) or the lack of consent in an emergency is documented in the patient's medical record;
5. A physician or other medical staff member performs a medical history and physical examination on a patient within 30 calendar days before admission or within 48 hours after admission and documents the medical history and physical examination in the patient's medical record within 48 hours after admission; ~~and~~
6. If a physician or other medical staff member performs a medical history and physical examination on a patient before admission, the physician or the medical staff member enters an interval note into the patient's medical record at the time of admission.; and
7. A patient or the patient's representative is given an opportunity to:
   a. Designate an individual, who is willing to participate in discharge planning and ~~to provide aftercare,~~ act as the patient's aftercare provider;
   b. Provide contact information for the patient's aftercare provider; and
   c. Change the designated patient's aftercare provider before discharge.

R9-10-209. Discharge Planning; Discharge

A. For an inpatient, an administrator shall ensure that discharge planning:

1. Is completed before discharge occurs;
~~1.~~2. Identifies the specific needs of the patient after discharge, if applicable;
~~2.~~3. Includes the participation of the patient or ~~the~~ patient's representative and, if applicable, the patient's aftercare provider;
~~3. Is completed before discharge occurs;~~
4. If the patient is being discharged to the patient's residence, which is not part of a health care institution:

a. Includes at least one attempt, which is documented in the patient's medical record, to notify the patient's aftercare provider before the patient's discharge; and

b. Prepares the patient, the patient's representative, or the patient's aftercare provider, as applicable, to carry out the discharge instructions required in subsection (B)(3)(a), including:

i. Answering questions about the discharge instructions and aftercare; and

ii. Providing a demonstration of the aftercare tasks to the patient, the patient's representative, or the patient's aftercare provider, as applicable;

4.5. Except as provided in subsection (C) and (D), ~~Provides~~ provides the patient or the patient's representative with written information identifying classes or subclasses of health care institutions and the level of care that the health care institutions provide that may meet the patient's assessed and anticipated needs after discharge, if applicable; and

~~5.~~6. Is documented in the patient's medical record.

B. For an inpatient discharge or a transfer of an inpatient, an administrator shall ensure that:

1. There is a discharge summary that includes:

a. A description of the patient's medical condition and the medical services provided to the patient~~;~~, ~~and~~

b. A list of the medications administered to the patient, ~~and~~

~~b.~~c. The signature of the medical practitioner coordinating the patient's medical services; and

d. The COVID status, or any similar pandemic causing a public health emergency, of every discharged patient being transferred.

2. There is a documented discharge order for the patient by a medical practitioner who provided ~~coordinating the patient's~~ medical services to the patient before discharge and that such orders comply with R9-10-807(B), unless the patient leaves the hospital against a medical staff member's advice, and includes the following information:~~;~~

~~and~~ a. Medications administered to the patient, including date, dosage and time of administration,

b. Any new medication prescribed for the patient, e-scribed or written prescription and the location and phone number of the receiving pharmacy,

c. Any changes to the medications the patient had been taking before admission; and

d. The name and contact information for a physician, registered nurse practitioner,

Commented [MI1]: Adds the patient who is being discharged to an Assisted Living facility for the first time.

Commented [MI2]: Provides A/L the ability to protect all other residents from highly infectious pandemic now and in the future.

Commented [MI3]: Add language to require the medical practitioner who provided medical services to the patient before discharge sign the orders and that such orders comply with DHS Rule R9-10-807(B). R9-10-807(B) requires Assisted Living facilities to have signed orders outlining the level of care the resident needs when admitting a resident.

Also add language to address medications administered, as is required in outpatient discharge planning, to an in-patient, when the medication was administered, the dosage and when last administered. It also requests that if there is information provided regarding any new medication prescribed, e-scribed or given in a written prescription and the location and phone number of the receiving pharmacy be provided. This mirrors what is required in the outpatient discharge planning section R9-10-209.E. under the DHS proposed rule making. The same medication information is needed whether the discharge is from inpatient or outpatient.

The change also requests that the name and contact information for a physician, RNP, RN, or PA that can respond to questions be provided.

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registered nurse, or physician assistant of the sending hospital who can answer questions from the receiving health care institution; and

3. If the patient is not being transferred:

a. There are documented discharge instructions that include recommendations for additional medical services, nursing services, rehabilitation services, personal care services, or directed care services, as applicable, to meet the patient's assessed and anticipated needs after discharge; and

b. The patient or ~~the~~ patient's representative and the patient's aftercare provider, if designated, is provided with a copy of the discharge instructions.; and

4. If the patient is being transferred, the transfer complies with R9-10-211.

C. For a patient transferred to a hospital from another health care institution , an administrator shall ensure that the level of care provided by the health care institution from which the patient had been transferred is considered, as part of discharge planning, by coordinating with the health care institution from which the patient had been transferred to determine whether:

1. The level of care may meet the patient's assessed and anticipated needs after discharge, and

2. The patient may return to the health care institution.

~~C.~~ D. For a patient being transferred from a hospital to a health care institution, an administrator shall ensure that the level of care provided by the health care institution to which the patient is being transferred is considered, as part of discharge planning, by coordinating with the health care institution to determine whether the level of care may meet the patient's assessed and anticipated needs after discharge,

E. Except as provided in subsection ~~(D)~~ (FE), an administrator shall ensure that an outpatient is discharged according to policies and procedures.

~~D.~~FE. For a discharge of an outpatient receiving emergency services, an administrator shall ensure that:

1. A discharge order is documented by a medical practitioner who provided medical services to the patient before the patient is discharged and that such orders comply with R9-10-807(B), unless the patient leaves against a medical staff member's advice, and includes the following information;; ~~and~~

a. Medications administered to the patient, including date, dosage and time of administration,

b. Any new medications prescribed for the patient, ~~and~~ e-scribed or written prescription and the location and phone number of the receiving pharmacy.

Commented [MI4]: Provides clarity that there will be coordination with the patient's current residence/assisted living facility.

Commented [MI5]: R9-10-209.C. proposed draft rules provide for coordination for a patient that resided in an Assisted Living facility prior to entering the hospital. The proposed rules do not provide for a patient that did not reside in an A/L prior to arriving at the hospital. Adding R9-10-209.D. provides for a patient who is being admitted to an Assisted Living Facility for the first time.

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Commented [MI6]: This provides clarification that the discharge order must comply with R9-10-807(B), the DHS rules governing Assisted Living Facilities admission requirements. This provides for consistency between what the hospitals must provide and what information the A/L is required to have by DHS rules before admitting a resident.

Commented [MI7]: Provides necessary medication administration information for the safety of the patient/resident. Without this information the A/L facility has no way of knowing when to administer medication leaving the resident at risk for medical complications due to medication being administered too soon or not soon enough.

Commented [MI8]: Provides clarity that the prescription could be e-scribed or provided in a written prescription and requires the location and phone number of the receiving pharmacy. It is impossible for an A/L to know what new medications were prescribed and where the prescription is without this information.

c. Any changes to the medications the patient had been taking before admission; and

d. The name and contact information for a physician, registered nurse practitioner, registered nurse, or physician assistant of the sending hospital who can answer questions from the receiving health care institution; and

Commented [MI9]: Provides a point of contact the A/L can discuss transition of care issues for the safety of the patient.

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2. Discharge instructions:

a. ~~are~~ Are documented and provided to the patient or ~~the~~ patient's representative and the patient's aftercare provider, if designated before the patient is discharged, unless the patient leaves the hospital against a medical staff member's advice; and

b. Include recommendations for additional medical services, nursing services, rehabilitation services, personal care services, or directed care services, as applicable, to meet the patient's assessed and anticipated needs after discharge.

R9-10-210. Transport

A. For a transport of a patient, the administrator of a sending hospital shall ensure that:

1. Policies and procedures are established, documented, and implemented that:

a. Specify the process by which the sending hospital personnel members coordinate the transport and the medical services provided to a patient to protect the health and safety of the patient;

b. Require an assessment of the patient by a registered nurse or a medical staff member before transporting the patient and after the patient's return;

c. Specify the information in the sending hospital's patient medical record that is required to accompany the patient, which shall ~~shall~~ include ~~the~~ information related to the medical services, nursing services, rehabilitation services, personal care services, or directed care services ~~to be provided to~~ needed by the patient at the receiving health care institution;

d. Specify how the sending hospital personnel members communicate patient medical record information that the sending hospital does not provide at the time of transport but is requested by the receiving health care institution, including the name and contact information for a ~~personnel member~~ physician, registered nurse practitioner, registered nurse, or physician assistant of the sending hospital who can answer questions from the receiving health care institution; and

Commented [MI10]: The A/L must be able to communicate with someone knowledgeable to address health care questions.

e. Specify how a medical staff member explains the risks and benefits of a transport

to the patient or the patient's representative based on the:

i. Patient's medical condition, and

ii. Mode of transport; and

2. Documentation in the patient's medical record includes:

a. Consent for transport by the patient or the patient's representative or why consent could not be obtained;

b. The acceptance of the patient by and communication with an individual at the receiving health care institution;

c. The date and the time of the transport to the receiving health care institution;

d. The date and time of the patient's return to the sending hospital, if applicable;

e. The mode of transportation; and

f. The type of personnel member or medical staff member assisting in the transport if an order requires that a patient be assisted during transport.

B. For a transport of a patient to a receiving hospital, the administrator of the receiving hospital shall ensure that:

1. Policies and procedures are established, documented, and implemented that:

a. Specify the process by which the receiving hospital personnel members coordinate the transport and the medical services provided to a patient to protect the health and safety of the patient;

b. Require an assessment of the patient by a registered nurse or a medical staff member upon arrival of the patient and before the patient is returned to the sending health care institution unless the receiving facility is a satellite facility, as established in A.R.S. § 36-422, and does not have a registered nurse or a medical staff member at the satellite facility;

c. Specify the information in the receiving hospital's patient medical record required to accompany the patient when the patient is returned to the sending health care institution, if applicable~~;~~ ~~and~~ including:

ia. Medications administered to the patient, including date, dosage and time of administration,

ii~~b~~. Any new medications prescribed for the patient, ~~and~~ e-scribed or written prescription and the location and phone number of the receiving pharmacy, and

iii~~c~~. Any changes to the medications the patient had been taking before admission; and

Commented [MI11]: Provides necessary medication information for the safety of the patient/resident. Without this information the A/L facility has no way of knowing when to administer medication leaving the resident at risk for medical complications from taking medication too soon or not soon enough.

Commented [MI12]: Provides clarification that it is either a written script or e-script; also requires providing the location of the pharmacy and phone number. It is impossible for an A/L to know where the prescription is without this information.

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d. Specify how the receiving hospital personnel members communicate patient medical record information to the sending health care institution that is not provided at the time of the patient's return, including the name and contact information for a ~~personnel member~~ physician, registered nurse practitioner, registered nurse, or physician assistant of the receiving hospital who can answer questions from the sending health care institution; and

Commented [MI13]: The A/L facility must be able to communicate with someone knowledgeable to address health care concerns.

2. Documentation in the patient's medical record includes:
   a. The date and time the patient arrived at the receiving hospital;
   b. The medical services provided to the patient at the receiving hospital;
   c. Any adverse reaction or negative outcome the patient experienced at the receiving hospital, if applicable;
   d. The date and time the receiving hospital returned the patient to the sending health care institution, if applicable;
   e. The mode of transportation to return the patient to the sending health care institution, if applicable; and
   f. The type of personnel member or medical staff member assisting in the transport if an order requires that a patient be assisted during transport.

R9-10-211. Transfer

For a transfer of a patient, the administrator of a sending hospital shall ensure that:

1. Policies and procedures are established, documented, and implemented that:
   a. Specify the process by which the sending hospital personnel members coordinate the transfer and the medical services provided to a patient to protect the health and safety of the patient during the transfer, including, if applicable, discharge orders in R9-10-209(B)(2) or R9-10-209(~~E~~F)(1) required for the patient by the receiving health care institution, and that such orders are on in compliance with R9-10-807(B);

Commented [MI14]: This provides clarification that the discharge order must comply with R9-10-807(B), the DHS rules governing Assisted Living Facilities admission requirements. This provides for consistency between what the hospitals must provide and what information the A/L is required to have by DHS rules before admitting a resident.

   b. Require an assessment of the patient by a registered nurse or a medical staff member of the sending hospital before the patient is transferred;
   c. Specify how the sending hospital personnel members communicate medical record information that is not provided at the time of the transfer, including the name and contact information for a ~~personnel member~~ physician, registered nurse practitioner, registered nurse, or physician assistant of the sending hospital who can answer questions from the receiving health care institution; and

Commented [MI15]: The A/L must be able to communicate with someone knowledgeable to address health care questions.

   d. Specify how a medical staff member explains the risks and benefits of a transfer

to the patient or the patient's representative based on the:

i. Patient's medical condition, and

ii. Mode of transfer;

2. ~~One of t~~The following information accompanies the patient during transfer:

a. A copy of the patient's medical record for the current inpatient admission; ~~or~~

~~b.~~ that contains ~~A~~all of the following for the current inpatient admission:

i. A medical staff member's summary of medical services provided to the patient~~;~~;

ii. A care plan containing up-to-date information, including, as applicable, the patient's need for:

(1). Programs and services for a patient who is incapable of recognizing danger, summoning assistance, expressing need, or making basic care decisions;

(2) Assistance with activities of daily living that can be performed by persons without professional skills or professional training;

(3) The coordination or provision of intermittent nursing services; and

(4) The administration of medication, including date, dosage and time of administration.

iii. Consultation reports~~;~~;

iv. Laboratory and radiology reports~~;~~;

v. A record of medications administered to the patient for the seven calendar days before the date of transfer~~;~~;

vi. Any new medication prescribed for the patient, e-scribed or written prescription for the new medication and the location of the receiving pharmacy;

vii. Any change to the medications the patient had been taking before admission;

~~vi.~~ viii. Medical staff member's orders in effect at the time of transfer in compliance with R9-10-807(B)~~;~~; ~~and~~

~~vii.~~ ix. Any known allergy; and

x. Insurance and/or Medicare information for the patient.

3. Documentation in the patient's medical record includes:

a. Consent for transfer by the patient or the patient's representative, except in an

Commented [MI16]: All the information is needed by an A/L facility to properly transition the patient to the facility.

Commented [MI17]: Provides clarity; without the location of the pharmacy, the A/L can't access the needed medication.

Commented [MI18]: Ensures the information DHS requires of the A/L facilities to have prior to admission is available.

Commented [MI19]: Provides necessary information required to transition the patient.

emergency;

b. The acceptance of the patient by and communication with an individual at the receiving health care institution;

c. The date and the time of the transfer to the receiving health care institution;

d. The mode of transportation; and

e. The type of personnel member or medical staff member assisting in the transfer if an order requires that a patient be assisted during transfer.

Comment 2

Gmail by Google

Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

Re: NOPR: Discharge Planning

1 message

Kathryn Mccanna <kathryn.mccanna@azdhs.gov> Tue, Jun 9, 2020 at 3:10 PM
To: Debbie Johnston <DJohnston@azhha.org>
Cc: Ruthann Smejkal <ruthann.smejkal@azdhs.gov>, Vicki Buchda <vbuchda@azhha.org>, "stephanie.elzenga@azdhs.gov" <stephanie.elzenga@azdhs.gov>

Thank you for the response

I have included Ruthann on the email since she tracks comments

Take care

On Tue, Jun 9, 2020 at 3:08 PM Debbie Johnston <DJohnston@azhha.org> wrote:

> Kathy,
>
> Thanks for the response yesterday. In case we are not able to get an extension for more robust feedback from members, here are a couple of comments/observations on the Discharge Planning NOPR published in the May 8 Arizona Administrative Register. I apologize for not drafting a formal comment letter, but like the Department, we have been fully absorbed with COVID-19 response.
>
> We appreciate the work that ADHS has put into trying to meet multiple stakeholder concerns. Patients and their caregivers should receive detailed discharge instructions from hospitals, and hospitals must make a concerted effort to respond to patient and caregiver questions. We believe most facilities are responsive to these needs, but we also understand that rulemakings are sometimes necessary to further this goal. With this in mind, we are generally supportive of the proposed rulemaking.
>
> We have not had a chance to vet the new language that was added to address transitions of care between hospitals and other healthcare institutions, but much of it seems reasonable. We would not have been supportive of a rule that stratified requirements based upon discharge to specific classes of healthcare institutions; rules should be more general in nature. As such, we appreciate the modifications made by ADHS.
>
> Having said this, we believe more work needs to be done on both sides of the isle—acute, post-acute, SNF, and assisted living. Moreover, not all of this work can nor should be legislated. We will continue to work with all stakeholders to improve transitions of care. This work is often challenging, but is also critically important.
>
> Pending additional feedback from members, we have two initial comments on the proposed rule:

1. We agree with the intent of R9-10-209(C). It is in line with the Medicare Conditions of Participation Interpretive Guidelines (Tag A-0806 of the State Operations Manual). Patients should certainly return to their originating healthcare institution (e.g., assisted living facility) if the facility can provide the right level of care and the patient wishes to return there. However, we want to make sure that the rule does not create an expectation that the hospital hold a patient ready for discharge for several hours or overnight while the originating healthcare institution is determining whether it has capacity, can provide the right level of care, or is negotiating financial arrangements with the patient or patient's family. These delays often create bottlenecks and setbacks to discharges, impacting care across the entire hospital system. A safe discharge, patient wishes, and continuity of care are our primary concerns. During times of heavy surge, however, these must also be balanced with the need to make additional space available for other patients.
2. Because hospitals are in the midst of responding to a pandemic and resources are strained, we urge the Department to adopt a delayed effective date of no sooner than January 1, 2021. We do not know what the next several months will bring with COVID-19. And, hospitals will need time to revise and implement new policies and procedures to come into compliance with this new rule.

Thank you for considering these comments. Please let me know if you have any questions.

Debbie Johnston

Senior Vice President, Policy Development

Arizona Hospital and Healthcare Association

P: 602-445-4304

C: 602-501-0671

A: 2800 N. Central Ave, Suite 1450, Phoenix, AZ 85004

W: www.azhha.org E: djohnston@azhha.org

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Kathryn McCanna, RN, BSN, CPHQ
Branch Chief, Health Care Institution Licensing
Division of Public Health Licensing
602-364-2841
Kathryn.McCanna@azdhs.gov

Comment 3

Gmail by Google

Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

Fwd: FW: Discharge Planning Notice of Rulemaking: Comments due Tuesday by 4pm

1 message

Kathryn Mccanna <kathryn.mccanna@azdhs.gov> Tue, Jun 9, 2020 at 3:29 PM
To: Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

---------- Forwarded message ---------
From: **Debbie Johnston** <DJohnston@azhha.org>
Date: Tue, Jun 9, 2020 at 3:28 PM
Subject: FW: Discharge Planning Notice of Rulemaking: Comments due Tuesday by 4pm
To: Kathryn Mccanna <kathryn.mccanna@azdhs.gov>
Cc: stephanie.elzenga@azdhs.gov <stephanie.elzenga@azdhs.gov>

Kathy – This just came in from one of our members…Sorry I could not incorporate it into my earlier email.

"I believe that R9-10-209, A4bii "providing a demonstration of the aftercare tasks to the patient, patient's representative or the patients aftercare provider as applicable" may be difficult to document and to demonstrate. Who determines what is applicable? My definition may be different than the surveyors. I'm thinking of ADLs. I think this is very broad and could take days delaying discharges. My other concern with this section is how do we document and what happens when the representative says they didn't understand. Is the hospital held accountable? Will it increase length of stay? What if the patient disagrees and demands to stay longer? Do we just document it?

What is the definition of a healthcare institution? Is this strictly licensed facilities to include ALFs, group homes, SNFs, home health agencies, home care agencies or does this also mean behavioral health. Would it also extend to adult day care centers?"

AzHHA Arizona Hospital and Healthcare Association

Debbie Johnston

Senior Vice President, Policy Development

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Comment 4

Gmail by Google

Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

Fwd: NPR Health Care Institutions Licensing - hospital discharge - 26 ARR 879

1 message

Kathryn Mccanna <kathryn.mccanna@azdhs.gov> Tue, Jun 9, 2020 at 3:54 PM
To: Ruthann Smejkal <ruthann.smejkal@azdhs.gov>, Robert Lane <robert.lane@azdhs.gov>

From AARP

---------- Forwarded message ---------
From: **Brandy Petrone** <brandy@goodmanschwartz.com>
Date: Tue, Jun 9, 2020 at 3:37 PM
Subject: NPR Health Care Institutions Licensing - hospital discharge - 26 ARR 879
To: Kathryn.McCanna@azdhs.gov <Kathryn.McCanna@azdhs.gov>
Cc: Stuart Goodman <sgoodman@goodmanschwartz.com>

Ms. McCanna,

On behalf of AARP, we wish to submit the following comments relating to DHS Notice of Proposed Rulemaking 26 A.R.R. 879.

AARP supports the changes being made to include "after care" and the "after care provider", relating to discharge of a patient to a patient's residence.

We understand there are concerns related to changes that have been proposed about transfers and discharges between health care institutions. With respect to the provisions relating to transfers and discharges between health care institutions, AARP is supportive of a brief pause for the parties involved to resolve their concerns. In the event that the issues cannot be resolved in a timely fashion, we respectfully request that the rules move forward without the contentious issues in order to allow the consensus issues relating to after care and the after care provider to advance forward.

Thank you for your consideration.

Brandy

Brandy Petrone

Goodman Schwartz Public Affairs

3200 N. Central, Suite 2200

Phoenix, AZ. 85012

O: 602.277.0911

C: 602.821.8318

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Kathryn McCanna, RN, BSN, CPHQ
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Kathryn.McCanna@azdhs.gov

Comment 5

Gmail by Google

Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

Discharge Planning NOPR.

1 message

Debbie Johnston <DJohnston@azhha.org> Tue, Jun 9, 2020 at 3:55 PM
To: Kathryn Mccanna <kathryn.mccanna@azdhs.gov>
Cc: Ruthann Smejkal <ruthann.smejkal@azdhs.gov>, "stephanie.elzenga@azdhs.gov" <stephanie.elzenga@azdhs.gov>

Kathy,

Another response expressing concern…Once again sorry I could not roll these all together.

The language in this document causes concern:

Discharge planning

R9-10-209

Aftercare provider- I understand the "ask", but if patient have no one at home to assist with ADLs(not always needed) do we now have to document , no aftercare provider designed?

4a. This is simply an attempted call to the patient's family (aftercare provider) only if designated, to advise of discharge- correct? If the patient does not designate this role- no call is needed .

4b. 1 -2. This is confusing- case managers don't show patient how to dress their wound, give Lovenox or insulin (after care tasks) or review new medications- this is done by nursing.

4.5- ???? Classes and Sub classes of health care institutions in written form? We use Silver Vue, an electronic platform which allows patient/families choice in selecting post- acute placement and displays CMS ratings. We can also email the same information to representatives . We speak to the level of care needed based on medical acuity and PT/OT recommendation- there is no written documentation to share.

B 1 b- a list of medications administered – discharged patients always have a current list, time last administered , new medications and medications to stop called out. This should meet the criteria unless, they want a list of all medications administered during this stay? Statement is vague.

E 1A- after care provider – not part of the assessment in the ED , unless designee is on site.

E2 – care plan- the nursing care plans are sent but do not contain this information.? Different consult would reflect this information but not one POC

Debbie Johnston

Senior Vice President, Policy Development

Arizona Hospital and Healthcare Association

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Comment 6

Gmail by Google

Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

Fwd: Comments Re: Proposed Rulemaking 9 A.A.C. 10 Department of Health Services - Health Care Institutions; Licensing

1 message

Kathryn Mccanna <kathryn.mccanna@azdhs.gov> Tue, Jun 9, 2020 at 3:55 PM
To: Ruthann Smejkal <ruthann.smejkal@azdhs.gov>, Robert Lane <robert.lane@azdhs.gov>

---------- Forwarded message ---------
From: **Marie Isaacson** <marie@isaacsonlawaz.com>
Date: Tue, Jun 9, 2020 at 3:52 PM
Subject: RE: Comments Re: Proposed Rulemaking 9 A.A.C. 10 Department of Health Services - Health Care Institutions; Licensing
To: Kathryn.McCanna@azdhs.gov <Kathryn.McCanna@azdhs.gov>, Stephanie Elzenga <stephanie.elzenga@azdhs.gov>
Cc: Pam A. Koester - LeadingAge Arizona (pkoester@leadingageaz.org) <pkoester@leadingageaz.org>, Don Isaacson <don@isaacsonlawaz.com>

Ms. McCanna and Ms. Elzenga,

First, I wanted to thank DHS for the opportunity to participate in the oral proceedings today regarding the above referenced rules. It was very helpful to have the opportunity to communicate with you, Ms. McCanna, in person. It was also very helpful to hear the clarifying points shared by the presiding officer, Ms. Ruthann Smejkal, Rules Analyst. Based on the oral proceedings today, in particular the clarification provided by Ms. Smejkal, I am withdrawing my earlier comments submitted on Monday, June 1, 2020 at 3:57pm and substituting the comments below and the attached recommended changes.

Second, I would like to reiterate Arizona LeadingAge's full support of AARP's suggested rule changes. AARP's goal to provide information to care givers that have the responsibility to care for individuals discharged to home, aligns with Arizona LeadingAge's goal to ensure adequate care is provided, particularly to our most vulnerable population. With over 2,300 Assisted Living facilities, our members see first hand that without adequate information, some of our most frail citizens suffer.

Finally, attached is a draft that includes our requested revisions to the proposed rules.

In summary, our changes:

1. Adds requirement to provide COVID status of individual being discharged;
2. Add similar language regarding discharge orders for inpatient or transfer as were added to outpatient discharge orders;
3. Additional information regarding medications;
4. Further define the hospital personnel member who will answer questions after discharge, and

Specifically, the changes requested, outlined in the attached proposed rules, are:

1. R9-10-209.B.1.d. – Adds language that the COVID status, or any similar type pandemic causing a public health emergency, be provided for a patient being discharged as a transfer.

2. R9-10-209.B.2. – Request that DHS add language to address medications administered, including date, dosage and time administered. It also requests that discharge orders include any new medication prescribed, e-scribed or a written prescription and the location and phone number of the receiving pharmacy. This mirrors what is required in the outpatient discharge planning section R9-10-209.E. under the DHS proposed rulemaking. The same medication information is needed whether the discharge is from inpatient or outpatient.

   The change also requests that the name and contact information for a physician, RNP, RN, or PA that can respond to questions be provided.

3. R9-10-209.E.1.a, b and d – R9-10-209.F.1.a. provides necessary medication information for the safety of the patient/resident be included in the discharge order. Without this information there is no way of knowing when to administer medication creating risk for medical complications due to medication being administered too soon or not soon enough. R9-10-209.F.1.b. provides clarification that the new medication prescribed, may be through an e-script or provided in a written prescription and requires the location and phone number of the receiving pharmacy. It is impossible to know where the prescription is without this information. R9-10-209.F.1.d. provides the discharge order include a point of contact who can discuss transition of care issues for the safety of the patient.

4. R9-10-210.A.1.c. and d. – R9-10-210A.1.c. retains the language "shall" to add clarity that the information is a requirement. R9-10-210A.1.d. Adds specificity regarding the type of personnel member point of contact being provided; there must be the ability to communicate with someone knowledgeable to address health care questions.

5. R9-10-210.B.1.c. – Provides necessary medication information regarding date, dosage and time when the medication was administered for the safety of the patient. Without this information there is no way of knowing when to administer medication leaving the resident at risk for medical complications from taking medication too soon or not soon enough. This mirrors the other related sections of the rules regarding medication administration.

6. R9-10-210.B.1.d. – Adds specificity regarding the type of personnel member point of contact being provided; there must be the ability to communicate with someone knowledgeable to address health care concerns.

7. R9-10-211.1.c. –R9-10-211.1.c. provides specificity regarding the type of personnel member point of contact being provided; there must be the ability to communicate with someone knowledgeable to address health care questions.

8. R9-10-211.2. - Adds clarity regarding the information provided as discussed above, such as: medication dose and time received; any new medications whether prescribed, e-scribed or provided in a written script and the name of the receiving pharmacy, and requires insurance/Medicare information.

We look forward to continuing to work with you and appreciate the feedback provided. Please let us know if you have any questions. Thank you.

Marie

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TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES

HEALTH CARE INSTITUTIONS: LICENSING

ARTICLE 2. HOSPITALS

Section

R9-10-201. Definitions
R9-10-208. Admission
R9-10-209. Discharge Planning; Discharge
R9-10-210. Transport
R9-10-211. Transfer

ARTICLE 2. HOSPITALS

R9-10-201. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following definitions apply in this Article unless otherwise specified:

1. "Adult" means an individual the hospital designates as an adult based on the hospital's criteria.
2. "Aftercare" means assistance provided to a patient by another individual in the patient's residence, which is not part of a health care institution, following care provided at a hospital, and may include:
   a. Assisting the patient with activities of daily living, and
   b. Following the discharge instructions provided by the hospital.
3. "Aftercare provider" means an individual who:
   a. May be a friend or relative of a patient or be the patient's representative,
   b. Is designated by the patient or the patient's representative to perform aftercare tasks, and
   c. Is not compensated for performing aftercare tasks for the patient.
4. ~~2.~~ "Care plan" means a documented guide for providing nursing services and rehabilitation services to a patient that includes measurable objectives and the methods for meeting the objectives.
5. ~~3.~~ "Continuing care nursery" means a nursery where medical services and nursing services are provided to a neonate who does not require intensive care services.
6. ~~4.~~ "Critically ill inpatient" means an inpatient whose severity of medical condition requires the nursing services of specially trained registered nurses for:
   a. Continuous monitoring and multi-system assessment,
   b. Complex and specialized rapid intervention, and
   c. Education of the inpatient or inpatient's representative.
7. ~~5.~~ "Device" has the same meaning as in A.R.S. § 32-1901.
8. ~~6.~~ "Diet" means food and drink provided to a patient.
9. ~~7.~~ "Diet manual" means a written compilation of diets.
10. ~~8.~~ "Dietary services" means providing food and drink to a patient according to an order.
11. ~~9.~~ "Diversion" means notification to an emergency medical services provider, as defined in A.R.S. § 36-2201, that a hospital is unable to receive a patient from an emergency medical services provider.

~~10.~~12. "Drug formulary" means a written list of medications available and authorized for use developed according to R9-10-218.

~~11.~~13. "Gynecological services" means medical services for the diagnosis, treatment, and management of conditions or diseases of the female reproductive organs or breasts.

~~12.~~14. "Hospital services" means medical services, nursing services, and health-related services provided in a hospital.

~~13.~~15. "Infection control risk assessment" means determining the probability for transmission of communicable diseases.

~~14.~~16. "Inpatient" means an individual who:

a. Is admitted to a hospital as an inpatient according to policies and procedures,

b. Is admitted to a hospital with the expectation that the individual will remain and receive hospital services for 24 consecutive hours or more, or

c. Receives hospital services for 24 consecutive hours or more.

~~15.~~17. "Intensive care services" means hospital services provided to a critically ill inpatient who requires the services of specially trained nursing and other personnel members as specified in policies and procedures.

~~16.~~18. "Medical staff regulations" means standards, approved by the medical staff, that govern the day-to-day conduct of the medical staff members.

~~17.~~19. "Multi-organized service unit" means an inpatient unit in a hospital where more than one organized service may be provided to a patient in the inpatient unit.

~~18.~~20. "Neonate" means an individual:

a. From birth until discharge following birth, or

b. Who is designated as a neonate by hospital criteria.

~~19.~~21. "Nurse anesthetist" means a registered nurse who meets the requirements of A.R.S. § 32-1601 and who has clinical privileges to administer anesthesia.

~~20.~~22. "Nurse executive" means a registered nurse accountable for the direction of nursing services provided in a hospital.

~~21.~~23. "Nursery" means an area in a hospital designated only for neonates.

~~22.~~24. "Nurse supervisor" means a registered nurse accountable for managing nursing services provided in an organized service in a hospital.

~~23.~~25. "Nutrition assessment" means a process for determining a patient's dietary needs using information contained in the patient's medical record.

~~24.~~26. "On duty" means that an individual is at work and performing assigned responsibilities.

~~25.~~27. "Organized service" means specific medical services, such as surgical services or emergency services, provided in an area of a hospital designated for the provision of those medical services.

~~26.~~28. "Outpatient" means an individual who:

a. Is admitted to a hospital with the expectation that the individual will receive hospital services for less than 24 consecutive hours; or

b. Except as provided in subsection (17) receives, hospital services for less than 24 consecutive hours.

~~27.~~29. "Pathology" means an examination of human tissue for the purpose of diagnosis or treatment of an illness or disease.

~~28.~~30. "Patient care" means hospital services provided to a patient by a personnel member or a medical staff member.

~~29.~~31. "Pediatric" means pertaining to an individual designated by a hospital as a child based on the hospital's criteria.

~~30.~~32. "Perinatal services" means medical services for the treatment and management of obstetrical patients and neonates.

~~31.~~33. "Post-anesthesia care unit" means a designated area for monitoring a patient following a medical procedure for which anesthesia was administered to the patient.

~~32.~~34. "Private duty staff" means an individual, excluding a personnel member, compensated by a patient or the patient's representative.

~~33.~~35. "Psychiatric services" means the diagnosis, treatment, and management of a mental disorder.

~~34.~~36. "Social services" means assistance, other than medical services or nursing services, provided by a personnel member to a patient to assist the patient to cope with concerns about the patient's illness or injury while in the hospital or the anticipated needs of the patient after discharge.

~~35.~~37. "Specialty" means a specific branch of medicine practiced by a licensed individual who has obtained education or qualifications in the specific branch in addition to the education or qualifications required for the individual's license.

~~36.~~38. "Surgical services" means medical services involving a surgical procedure.

~~37.~~39. "Transfusion" means the introduction of blood or blood products from one individual into the body of another individual.

~~38.~~40. "Unit" means a designated area of an organized service.

~~39.~~41. "Vital record" has the same meaning as in A.R.S. § 36-301.

~~40.~~42. "Well-baby bassinet" means a receptacle used for holding a neonate who does not require treatment and whose anticipated discharge is within 96 hours after birth.

R9-10-208. Admission

An administrator shall ensure that:

1. A patient is admitted as an inpatient on the order of a medical staff member;
2. An individual, authorized by policies and procedures, is available to accept a patient for admission;
3. Except in an emergency, informed consent is obtained from a patient or the patient's representative before or at the time of admission;
4. The informed consent obtained in subsection (3) or the lack of consent in an emergency is documented in the patient's medical record;
5. A physician or other medical staff member performs a medical history and physical examination on a patient within 30 calendar days before admission or within 48 hours after admission and documents the medical history and physical examination in the patient's medical record within 48 hours after admission; ~~and~~
6. If a physician or other medical staff member performs a medical history and physical examination on a patient before admission, the physician or the medical staff member enters an interval note into the patient's medical record at the time of admission~~.~~; and
7. A patient or the patient's representative is given an opportunity to:
   a. Designate an individual, who is willing to participate in discharge planning and ~~to provide aftercare,~~ act as the patient's aftercare provider;
   b. Provide contact information for the patient's aftercare provider; and
   c. Change the designated patient's aftercare provider before discharge.

R9-10-209. Discharge Planning; Discharge

A. For an inpatient, an administrator shall ensure that discharge planning:

1. Is completed before discharge occurs;
~~1.~~2. Identifies the specific needs of the patient after discharge, if applicable;
~~2.~~3. Includes the participation of the patient or ~~the~~ patient's representative and, if applicable, the patient's aftercare provider;
~~3. Is completed before discharge occurs;~~
4. If the patient is being discharged to the patient's residence, which is not part of a health care institution:

a. Includes at least one attempt, which is documented in the patient's medical record, to notify the patient's aftercare provider before the patient's discharge; and

b. Prepares the patient, the patient's representative, or the patient's aftercare provider, as applicable, to carry out the discharge instructions required in subsection (B)(3)(a), including:

i. Answering questions about the discharge instructions and aftercare; and

ii. Providing a demonstration of the aftercare tasks to the patient, the patient's representative, or the patient's aftercare provider, as applicable;

4.5. Except as provided in subsection (C), ~~Provides~~ provides the patient or the patient's representative with written information identifying classes or subclasses of health care institutions and the level of care that the health care institutions provide that may meet the patient's assessed and anticipated needs after discharge, if applicable; and

~~5.~~6. Is documented in the patient's medical record.

B. For an inpatient discharge or a transfer of an inpatient, an administrator shall ensure that:

1. There is a discharge summary that includes:

a. A description of the patient's medical condition and the medical services provided to the patient~~;~~, ~~and~~

b. A list of the medications administered to the patient, ~~and~~

~~b.~~c. The signature of the medical practitioner coordinating the patient's medical services; and

d. The COVID status, or any similar pandemic causing a public health emergency, of every discharged patient being transferred.

2. There is a documented discharge order for the patient by a medical practitioner coordinating the patient's medical services before discharge unless the patient leaves the hospital against a medical staff member's advice, and includes the following information:~~;~~

~~and~~ a. Medications administered to the patient, including date, dosage and time of administration,

b. Any new medication prescribed for the patient, e-scribed or written prescription and the location and phone number of the receiving pharmacy,

c. Any changes to the medications the patient had been taking before admission; and

d. The name and contact information for a physician, registered nurse practitioner,

Commented [MI1]: Provides A/L the ability to protect all other residents from highly infectious pandemic now and in the future.

Commented [MI2]: Add language to address medications administered, duplicating what is required by DHS in outpatient discharge planning R9-10-209.E, to an inpatient, when the medication was administered, the dosage and when last administered. It also requests that if there is information provided regarding any new medication prescribed, e-scribed or given in a written prescription that the location and phone number of the receiving pharmacy be provided. Again, this mirrors what is required in the outpatient discharge planning section R9-10-209.E. under the DHS proposed rule making. The same medication information is needed whether the discharge is from inpatient or outpatient.

The change also requests that the name and contact information for a physician, RNP, RN, or PA that can respond to questions be provided.

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registered nurse, or physician assistant of the sending hospital who can answer questions from the receiving health care institution; and

3. If the patient is not being transferred:

a. There are documented discharge instructions that include recommendations for additional medical services, nursing services, rehabilitation services, personal care services, or directed care services, as applicable, to meet the patient's assessed and anticipated needs after discharge; and

b. The patient or ~~the~~ patient's representative and the patient's aftercare provider, if designated, is provided with a copy of the discharge instructions.; and

4. If the patient is being transferred, the transfer complies with R9-10-211.

C. For a patient transferred to a hospital from another health care institution , an administrator shall ensure that the level of care provided by the health care institution from which the patient had been transferred is considered, as part of discharge planning, to determine whether:

1. The level of care may meet the patient's assessed and anticipated needs after discharge, and

2. The patient may return to the health care institution.

~~C.~~ D. Except as provided in subsection ~~(D)~~ (E), an administrator shall ensure that an outpatient is discharged according to policies and procedures.

~~D.~~E. For a discharge of an outpatient receiving emergency services, an administrator shall ensure that:

1. A discharge order is documented by a medical practitioner who provided medical services to the patient before the patient is discharged, unless the patient leaves against a medical staff member's advice, and includes the following information;: ~~and~~

a. Medications administered to the patient, including date, dosage and time of administration,

b. Any new medications prescribed for the patient, ~~and~~ e-scribed or written prescription and the location and phone number of the receiving pharmacy,

c. Any changes to the medications the patient had been taking before admission; and

d. The name and contact information for a physician, registered nurse practitioner, registered nurse, or physician assistant of the sending hospital who can answer questions from the receiving health care institution; and

2. Discharge instructions;

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Commented [MI3]: Provides necessary medication administration information for the safety of the patient. Without this information there is no way of knowing when to administer medication leaving the patient at risk for medical complications due to medication being administered too soon or not soon enough.

Commented [MI4]: Provides clarity that the prescription could be e-scribed or provided in a written prescription and requires the location and phone number of the receiving pharmacy. It is impossible to know what new medications were prescribed and where the prescription is without this information.

Commented [MI5]: Provides a specific point of contact when questions arise regarding transition of care issues for the safety of the patient.

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a. ~~are~~ Are documented and provided to the patient or ~~the~~ patient's representative and the patient's aftercare provider, if designated before the patient is discharged, unless the patient leaves the hospital against a medical staff member's advice; and

b. Include recommendations for additional medical services, nursing services, rehabilitation services, personal care services, or directed care services, as applicable, to meet the patient's assessed and anticipated needs after discharge.

R9-10-210. Transport

A. For a transport of a patient, the administrator of a sending hospital shall ensure that:

1. Policies and procedures are established, documented, and implemented that:
   a. Specify the process by which the sending hospital personnel members coordinate the transport and the medical services provided to a patient to protect the health and safety of the patient;
   b. Require an assessment of the patient by a registered nurse or a medical staff member before transporting the patient and after the patient's return;
   c. Specify the information in the sending hospital's patient medical record that is required to accompany the patient, which shall ~~shall~~ include ~~the~~ information related to the medical services, nursing services, rehabilitation services, personal care services, or directed care services ~~to be provided to~~ needed by the patient at the receiving health care institution;
   d. Specify how the sending hospital personnel members communicate patient medical record information that the sending hospital does not provide at the time of transport but is requested by the receiving health care institution, including the name and contact information for a ~~personnel member~~ physician, registered nurse practitioner, registered nurse, or physician assistant of the sending hospital who can answer questions from the receiving health care institution; and
   e. Specify how a medical staff member explains the risks and benefits of a transport to the patient or the patient's representative based on the:
      i. Patient's medical condition, and
      ii. Mode of transport; and
2. Documentation in the patient's medical record includes:
   a. Consent for transport by the patient or the patient's representative or why consent could not be obtained;
   b. The acceptance of the patient by and communication with an individual at the

Commented [MI6]: Maintaining the word "shall" adds clarity that this is a requirement.

Commented [MI7]: There must be the ability to communicate with someone knowledgeable to address health care questions.

receiving health care institution;

c. The date and the time of the transport to the receiving health care institution;

d. The date and time of the patient's return to the sending hospital, if applicable;

e. The mode of transportation; and

f. The type of personnel member or medical staff member assisting in the transport if an order requires that a patient be assisted during transport.

B. For a transport of a patient to a receiving hospital, the administrator of the receiving hospital shall ensure that:

1. Policies and procedures are established, documented, and implemented that:

a. Specify the process by which the receiving hospital personnel members coordinate the transport and the medical services provided to a patient to protect the health and safety of the patient;

b. Require an assessment of the patient by a registered nurse or a medical staff member upon arrival of the patient and before the patient is returned to the sending health care institution unless the receiving facility is a satellite facility, as established in A.R.S. § 36-422, and does not have a registered nurse or a medical staff member at the satellite facility;

c. Specify the information in the receiving hospital's patient medical record required to accompany the patient when the patient is returned to the sending health care institution, if applicable~~;~~, ~~and~~ including:

ia. Medications administered to the patient, including date, dosage and time of administration,

iib. Any new medications prescribed for the patient, ~~and~~ e-scribed or written prescription and the location and phone number of the receiving pharmacy, and

iiie. Any changes to the medications the patient had been taking before admission; and

Commented [MI8]: Provides necessary medication information for the safety of the patient. Without this information there is no way of knowing when to administer medication leaving the patient at risk for medical complications from taking medication too soon or not soon enough.

Commented [MI9]: Provides clarification that it is either a written script or e-script; also requires providing the location of the pharmacy and phone number. It is impossible to know where the prescription is without this information.

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d. Specify how the receiving hospital personnel members communicate patient medical record information to the sending health care institution that is not provided at the time of the patient's return, including the name and contact information for a ~~personnel member~~ physician, registered nurse practitioner, registered nurse, or physician assistant ~~of~~ the receiving hospital who can answer questions from the sending health care institution; and

Commented [MI10]: There must be the ability to communicate with someone knowledgeable to address health care concerns.

2. Documentation in the patient's medical record includes:

a. The date and time the patient arrived at the receiving hospital;

b. The medical services provided to the patient at the receiving hospital;

c. Any adverse reaction or negative outcome the patient experienced at the receiving hospital, if applicable;

d. The date and time the receiving hospital returned the patient to the sending health care institution, if applicable;

e. The mode of transportation to return the patient to the sending health care institution, if applicable; and

f. The type of personnel member or medical staff member assisting in the transport if an order requires that a patient be assisted during transport.

R9-10-211. Transfer

For a transfer of a patient, the administrator of a sending hospital shall ensure that:

1. Policies and procedures are established, documented, and implemented that:
   a. Specify the process by which the sending hospital personnel members coordinate the transfer and the medical services provided to a patient to protect the health and safety of the patient during the transfer, including, if applicable, discharge orders in R9-10-209(B)(2) or R9-10-209(E)(1) required for the patient by the receiving health care institution;
   b. Require an assessment of the patient by a registered nurse or a medical staff member of the sending hospital before the patient is transferred;
   c. Specify how the sending hospital personnel members communicate medical record information that is not provided at the time of the transfer, including the name and contact information for a ~~personnel member~~ physician, registered nurse practitioner, registered nurse, or physician assistant of the sending hospital who can answer questions from the receiving health care institution; and
   d. Specify how a medical staff member explains the risks and benefits of a transfer to the patient or the patient's representative based on the:
      i. Patient's medical condition, and
      ii. Mode of transfer;
2. One of the following accompanies the patient during transfer:
   a. A copy of the patient's medical record for the current inpatient admission; or
   b. All of the following for the current inpatient admission:
      i. A medical staff member's summary of medical services provided to the patient~~,~~;

Commented [MI11]: There must be the ability to communicate with someone knowledgeable to address health care questions.

ii. A care plan containing up-to-date information, including, as applicable, the patient's need for:

(1). Programs and services for a patient who is incapable of recognizing danger, summoning assistance, expressing need, or making basic care decisions;

(2) Assistance with activities of daily living that can be performed by persons without professional skills or professional training;

(3) The coordination or provision of intermittent nursing services; and

(4) The administration of medication, including date, dosage and time of administration.

iii. Consultation reports~~,~~;

iv. Laboratory and radiology reports~~,~~;

v. A record of medications administered to the patient for the seven calendar days before the date of transfer~~,~~;

vi. Any new medication prescribed for the patient, e-scribed or written prescription for the new medication and the location of the receiving pharmacy;

Commented [MI12]: Provides clarity; without the location of the pharmacy, the medication needed can't be accessed.

vii. Any change to the medications the patient had been taking before admission;

~~vi.~~ viii. Medical staff member's orders in effect at the time of transfer~~,~~; and

~~vii.~~ ix. Any known allergy; and

x. Insurance and/or Medicare information for the patient.

Commented [MI13]: Provides necessary information required to transition the patient.

3. Documentation in the patient's medical record includes:

a. Consent for transfer by the patient or the patient's representative, except in an emergency;

b. The acceptance of the patient by and communication with an individual at the receiving health care institution;

c. The date and the time of the transfer to the receiving health care institution;

d. The mode of transportation; and

e. The type of personnel member or medical staff member assisting in the transfer if an order requires that a patient be assisted during transfer.

Comment 1 on NPR

Gmail

Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

Fwd: Comments Re: Proposed Rulemaking 9 A.A.C. 10 Department of Health Services - Health Care Institutions; Licensing

1 message

Stephanie Elzenga <stephanie.elzenga@azdhs.gov> Mon, Jun 1, 2020 at 4:00 PM
To: Colby Bower <colby.bower@azdhs.gov>, Kathryn Mccanna <kathryn.mccanna@azdhs.gov>, Robert Lane <robert.lane@azdhs.gov>, Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

Please see below. Thanks

---------- Forwarded message ---------
From: **Marie Isaacson** <marie@isaacsonlawaz.com>
Date: Mon, Jun 1, 2020 at 3:57 PM
Subject: Comments Re: Proposed Rulemaking 9 A.A.C. 10 Department of Health Services - Health Care Institutions; Licensing
To: Kathryn.McCanna@azdhs.gov <Kathryn.McCanna@azdhs.gov>, Stephanie Elzenga <stephanie.elzenga@azdhs.gov>
CC: Pam A. Koester - LeadingAge Arizona (pkoester@leadingageaz.org) <pkoester@leadingageaz.org>, Don Isaacson <don@isaacsonlawaz.com>

Ms. McCanna and Ms. Elzenga,

Thank you for the opportunity to provide written comments on the proposed rulemaking 9 A.A.C. 10 Department of Health Services – Health Care Institutions. Our client, Arizona LeadingAge, has participated in several meetings with DHS and the hospitals to provide input into these rules.

Attached is a draft that includes our requested revisions to the proposed rules. We are available to meet at your convenience to discuss our recommended changes.

In summary, our changes:

1. Adds requirement to provide COVID status of individual being discharged;
2. Add similar language regarding discharge orders for inpatient or transfer as were added to outpatient discharge orders;
3. Add language to cover hospital discharges to assisted living facilities that the patient has not been admitted to previously;
4. Additional information regarding medications;
5. Further define the hospital personnel member who will answer questions after discharge, and
6. Delineate what will accompany the patient upon transfer.

Specifically, the changes requested, outlined in the attached proposed rules, are:

1. R9-10-209.B.1.d. – Adds language that the COVID status, or any similar type pandemic causing a public health emergency, be provided for a patient being discharged as a transfer.

2. R9-10-209.B.2. – Request that DHS add language to require the medical practitioner who provided medical services to the patient before discharge sign the orders and that such orders comply with DHS Rule R9-10-807(B). R9-10-807(B) requires Assisted Living facilities to have signed orders outlining the level of care the resident needs when admitting a resident. This ensures that Assisted Living facilities can comply with DHS requirements when admitting a resident from a hospital.

   Also, add language to address medications administered, including date, dosage and time administered. It also requests that discharge orders include any new medication prescribed, e-scribed or a written prescription and the location and phone number of the receiving pharmacy. This mirrors what is required in the outpatient discharge planning section R9-10-209.E. under the DHS proposed rulemaking. The same medication information is needed whether the discharge is from inpatient or outpatient.

   The change also requests that the name and contact information for a physician, RNP, RN, or PA that can respond to questions be provided.

3. R9-10-209.C. - Provides clarity that there will be coordination with the patient's current residence/assisted living facility.

4. R9-10-209.D. - R9-10-209.C. proposed draft rules provide for coordination for a patient that resided in an Assisted Living facility prior to entering the hospital. The proposed rules do not provide for a patient that did not reside in an A/L prior to arriving at the hospital. Adding R9-10-209.D. provides for a patient who is being admitted to an Assisted Living Facility for the first time.

5. R9-10-209.F.1 - This change provides clarification that the discharge order must comply with R9-10-807(B), the DHS rule governing Assisted Living Facilities admission requirements. This provides for consistency between what the hospitals must provide and what information DHS rules require the A/L have before admitting a resident.

6. R9-10-209.F.1.a, b and d – R9-10-209.F.1.a. provides necessary medication information for the safety of the patient/resident be included in the discharge order. Without this information the A/L facility has no way of knowing when to administer medication leaving the resident at risk for medical complications due to medication being administered too soon or not soon enough. R9-10-209.F.1.b. provides clarification that the new medication prescribed, may be through an e-script or provided in a written prescription and requires the location and phone number of the receiving pharmacy. It is impossible for an A/L to know where the prescription is without this information. R9-10-209.F.1.d. provides the discharge order include a point of contact the A/L can discuss transition of care issues for the safety of the patient.

7. R9-10-210.A.1.d. – Adds specificity regarding the type of personnel member point of contact being provided to the Assisted Living facility; the A/L must be able to communicate with someone knowledgeable to address health care questions.

8. R9-10-210.B.1.c. – Provides necessary medication information regarding date, dosage and time when the medication was administered for the safety of the patient/resident. Without this information the A/L facility has no way of knowing when to administer medication leaving the resident at risk for medical complications from taking medication too soon or not soon enough. This mirrors the other related sections of the rules regarding medication administration.

9. R9-10-210.B.1.d. – Adds specificity regarding the type of personnel member point of contact being provided to the A/L facility; the A/L facility must be able to communicate with someone knowledgeable to address health

care concerns.

10. R9-10-211.1.a. and c. – R9-10-211.1.a. provides clarification that the discharge order must comply with R9-10-807(B), the DHS rules governing Assisted Living facilities admission requirements. This provides for consistency between what the hospitals must provide to A/L and what information the A/L is required to have by DHS rules before admitting a resident. R9-10-211.1.c. provides specificity regarding the type of personnel member point of contact being provided to the A/L facility; the A/L facility must be able to communicate with someone knowledgeable to address health care questions.

11. R9-10-211.2. - All the information outlined in R9-10-211.2, is needed by an A/L facility to properly transition the patient to the facility. In addition adds clarity regarding the information provided as discussed above, such as: medication dose and time received; any new medications whether prescribed, e-scribed or provided in a written script and the name of the receiving pharmacy; the orders are in compliance with R9-10-807(B) and requires insurance/Medicare information.

We look forward to continuing to work with you and welcome the opportunity to meet and briefly discuss these matters. Please let us know if you have any questions. Thank you.

Marie

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Health and Wellness for all Arizonans

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January Draft Hospital Discharge 011020 (1) mi (1) (1) June 1 2020.docx
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Attachment to Comment 1 on NPR

Suggested Revisions - Proposed Rules

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES

HEALTH CARE INSTITUTIONS: LICENSING

ARTICLE 2. HOSPITALS

Section

R9-10-201. Definitions

R9-10-208. Admission

R9-10-209. Discharge Planning; Discharge

R9-10-210. Transport

R9-10-211. Transfer

ARTICLE 2. HOSPITALS

R9-10-201. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following definitions apply in this Article unless otherwise specified:

1. "Adult" means an individual the hospital designates as an adult based on the hospital's criteria.
2. "Aftercare" means assistance provided to a patient by another individual in the patient's residence, which is not part of a health care institution, following care provided at a hospital, and may include:
   a. Assisting the patient with activities of daily living, and
   b. Following the discharge instructions provided by the hospital.
3. "Aftercare provider" means an individual who:
   a. May be a friend or relative of a patient or be the patient's representative,
   b. Is designated by the patient or the patient's representative to perform aftercare tasks, and
   c. Is not compensated for performing aftercare tasks for the patient.

~~2.~~4. "Care plan" means a documented guide for providing nursing services and rehabilitation services to a patient that includes measurable objectives and the methods for meeting the objectives.

~~3.~~5. "Continuing care nursery" means a nursery where medical services and nursing services are provided to a neonate who does not require intensive care services.

4.6. "Critically ill inpatient" means an inpatient whose severity of medical condition requires the nursing services of specially trained registered nurses for:
   a. Continuous monitoring and multi-system assessment,
   b. Complex and specialized rapid intervention, and
   c. Education of the inpatient or inpatient's representative.

~~5.~~7. "Device" has the same meaning as in A.R.S. § 32-1901.

~~6.~~8. "Diet" means food and drink provided to a patient.

~~7.~~9. "Diet manual" means a written compilation of diets.

~~8.~~10. "Dietary services" means providing food and drink to a patient according to an order.

~~9.~~11. "Diversion" means notification to an emergency medical services provider, as defined in A.R.S. § 36-2201, that a hospital is unable to receive a patient from an emergency medical services provider.

~~10.~~12. "Drug formulary" means a written list of medications available and authorized for use developed according to R9-10-218.

~~11.~~13. "Gynecological services" means medical services for the diagnosis, treatment, and management of conditions or diseases of the female reproductive organs or breasts.

~~12.~~14. "Hospital services" means medical services, nursing services, and health-related services provided in a hospital.

~~13.~~15. "Infection control risk assessment" means determining the probability for transmission of communicable diseases.

~~14.~~16. "Inpatient" means an individual who:

a. Is admitted to a hospital as an inpatient according to policies and procedures,

b. Is admitted to a hospital with the expectation that the individual will remain and receive hospital services for 24 consecutive hours or more, or

c. Receives hospital services for 24 consecutive hours or more.

~~15.~~17. "Intensive care services" means hospital services provided to a critically ill inpatient who requires the services of specially trained nursing and other personnel members as specified in policies and procedures.

~~16.~~18. "Medical staff regulations" means standards, approved by the medical staff, that govern the day-to-day conduct of the medical staff members.

~~17.~~19. "Multi-organized service unit" means an inpatient unit in a hospital where more than one organized service may be provided to a patient in the inpatient unit.

~~18.~~20. "Neonate" means an individual:

a. From birth until discharge following birth, or

b. Who is designated as a neonate by hospital criteria.

~~19.~~21. "Nurse anesthetist" means a registered nurse who meets the requirements of A.R.S. § 32-1601 and who has clinical privileges to administer anesthesia.

~~20.~~22. "Nurse executive" means a registered nurse accountable for the direction of nursing services provided in a hospital.

~~21.~~23. "Nursery" means an area in a hospital designated only for neonates.

~~22.~~24. "Nurse supervisor" means a registered nurse accountable for managing nursing services provided in an organized service in a hospital.

~~23.~~25. "Nutrition assessment" means a process for determining a patient's dietary needs using information contained in the patient's medical record.

~~24.~~26. "On duty" means that an individual is at work and performing assigned responsibilities.

~~25.~~27. "Organized service" means specific medical services, such as surgical services or emergency services, provided in an area of a hospital designated for the provision of those medical services.

~~26.~~28. "Outpatient" means an individual who:

a. Is admitted to a hospital with the expectation that the individual will receive hospital services for less than 24 consecutive hours; or

b. Except as provided in subsection (17) receives, hospital services for less than 24 consecutive hours.

~~27.~~29. "Pathology" means an examination of human tissue for the purpose of diagnosis or treatment of an illness or disease.

~~28.~~30. "Patient care" means hospital services provided to a patient by a personnel member or a medical staff member.

~~29.~~31. "Pediatric" means pertaining to an individual designated by a hospital as a child based on the hospital's criteria.

~~30.~~32. "Perinatal services" means medical services for the treatment and management of obstetrical patients and neonates.

~~31.~~33. "Post-anesthesia care unit" means a designated area for monitoring a patient following a medical procedure for which anesthesia was administered to the patient.

~~32.~~34. "Private duty staff" means an individual, excluding a personnel member, compensated by a patient or the patient's representative.

~~33.~~35. "Psychiatric services" means the diagnosis, treatment, and management of a mental disorder.

~~34.~~36. "Social services" means assistance, other than medical services or nursing services, provided by a personnel member to a patient to assist the patient to cope with concerns about the patient's illness or injury while in the hospital or the anticipated needs of the patient after discharge.

~~35.~~37. "Specialty" means a specific branch of medicine practiced by a licensed individual who has obtained education or qualifications in the specific branch in addition to the education or qualifications required for the individual's license.

~~36.~~38. "Surgical services" means medical services involving a surgical procedure.

~~37.~~39. "Transfusion" means the introduction of blood or blood products from one individual into the body of another individual.

~~38.~~40. "Unit" means a designated area of an organized service.

~~39.~~41. "Vital record" has the same meaning as in A.R.S. § 36-301.

~~40.~~42. "Well-baby bassinet" means a receptacle used for holding a neonate who does not require treatment and whose anticipated discharge is within 96 hours after birth.

R9-10-208. Admission

An administrator shall ensure that:

1. A patient is admitted as an inpatient on the order of a medical staff member;
2. An individual, authorized by policies and procedures, is available to accept a patient for admission;
3. Except in an emergency, informed consent is obtained from a patient or the patient's representative before or at the time of admission;
4. The informed consent obtained in subsection (3) or the lack of consent in an emergency is documented in the patient's medical record;
5. A physician or other medical staff member performs a medical history and physical examination on a patient within 30 calendar days before admission or within 48 hours after admission and documents the medical history and physical examination in the patient's medical record within 48 hours after admission; ~~and~~
6. If a physician or other medical staff member performs a medical history and physical examination on a patient before admission, the physician or the medical staff member enters an interval note into the patient's medical record at the time of admission.; and
7. A patient or the patient's representative is given an opportunity to:
   a. Designate an individual, who is willing to participate in discharge planning and ~~to provide aftercare,~~ act as the patient's aftercare provider;
   b. Provide contact information for the patient's aftercare provider; and
   c. Change the designated patient's aftercare provider before discharge.

R9-10-209. Discharge Planning; Discharge

A. For an inpatient, an administrator shall ensure that discharge planning:

1. Is completed before discharge occurs;
~~1.~~2. Identifies the specific needs of the patient after discharge, if applicable;
~~2.~~3. Includes the participation of the patient or ~~the~~ patient's representative and, if applicable, the patient's aftercare provider;
~~3. Is completed before discharge occurs;~~
4. If the patient is being discharged to the patient's residence, which is not part of a health care institution;

a. Includes at least one attempt, which is documented in the patient's medical record, to notify the patient's aftercare provider before the patient's discharge; and

b. Prepares the patient, the patient's representative, or the patient's aftercare provider, as applicable, to carry out the discharge instructions required in subsection (B)(3)(a), including:

i. Answering questions about the discharge instructions and aftercare; and

ii. Providing a demonstration of the aftercare tasks to the patient, the patient's representative, or the patient's aftercare provider, as applicable;

4.5. Except as provided in subsection (C) and (D), ~~Provides~~ provides the patient or the patient's representative with written information identifying classes or subclasses of health care institutions and the level of care that the health care institutions provide that may meet the patient's assessed and anticipated needs after discharge, if applicable; and

~~5.~~6. Is documented in the patient's medical record.

B. For an inpatient discharge or a transfer of an inpatient, an administrator shall ensure that:

1. There is a discharge summary that includes:

a. A description of the patient's medical condition and the medical services provided to the patient~~;~~, ~~and~~

b. A list of the medications administered to the patient, ~~and~~

~~b.~~c. The signature of the medical practitioner coordinating the patient's medical services; and

d. The COVID status, or any similar pandemic causing a public health emergency, of every discharged patient being transferred.

2. There is a documented discharge order for the patient by a medical practitioner who provided ~~coordinating the patient's~~ medical services to the patient before discharge and that such orders comply with R9-10-807(B), unless the patient leaves the hospital against a medical staff member's advice, and includes the following information:~~;~~

~~and~~ a. Medications administered to the patient, including date, dosage and time of administration,

b. Any new medication prescribed for the patient, e-scribed or written prescription and the location and phone number of the receiving pharmacy,

c. Any changes to the medications the patient had been taking before admission; and

d. The name and contact information for a physician, registered nurse practitioner,

Commented [MI1]: Adds the patient who is being discharged to an Assisted Living facility for the first time.

Commented [MI2]: Provides A/L the ability to protect all other residents from highly infectious pandemic now and in the future.

Commented [MI3]: Add language to require the medical practitioner who provided medical services to the patient before discharge sign the orders and that such orders comply with DHS Rule R9-10-807(B). R9-10-807(B) requires Assisted Living facilities to have signed orders outlining the level of care the resident needs when admitting a resident.

Also add language to address medications administered, as is required in outpatient discharge planning, to an in-patient, when the medication was administered, the dosage and when last administered. It also requests that if there is information provided regarding any new medication prescribed, e-scribed or given in a written prescription and the location and phone number of the receiving pharmacy be provided. This mirrors what is required in the outpatient discharge planning section R9-10-209.E. under the DHS proposed rule making. The same medication information is needed whether the discharge is from inpatient or outpatient.

The change also requests that the name and contact information for a physician, RNP, RN, or PA that can respond to questions be provided.

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registered nurse, or physician assistant of the sending hospital who can answer questions from the receiving health care institution; and

3. If the patient is not being transferred:

   a. There are documented discharge instructions that include recommendations for additional medical services, nursing services, rehabilitation services, personal care services, or directed care services, as applicable, to meet the patient's assessed and anticipated needs after discharge; and

   b. The patient or ~~the~~ patient's representative and the patient's aftercare provider, if designated, is provided with a copy of the discharge instructions~~.~~; and

4. If the patient is being transferred, the transfer complies with R9-10-211.

C. For a patient transferred to a hospital from another health care institution , an administrator shall ensure that the level of care provided by the health care institution from which the patient had been transferred is considered, as part of discharge planning, by coordinating with the health care institution from which the patient had been transferred to determine whether:

1. The level of care may meet the patient's assessed and anticipated needs after discharge, and
2. The patient may return to the health care institution.

~~C.~~ D. For a patient being transferred from a hospital to a health care institution, an administrator shall ensure that the level of care provided by the health care institution to which the patient is being transferred is considered, as part of discharge planning, by coordinating with the health care institution to determine whether the level of care may meet the patient's assessed and anticipated needs after discharge.

E. Except as provided in subsection ~~(D)~~ (FE), an administrator shall ensure that an outpatient is discharged according to policies and procedures.

~~D.~~FE. For a discharge of an outpatient receiving emergency services, an administrator shall ensure that:

1. A discharge order is documented by a medical practitioner who provided medical services to the patient before the patient is discharged and that such orders comply with R9-10-807(B), unless the patient leaves against a medical staff member's advice, and includes the following information:; ~~and~~
   a. Medications administered to the patient, including date, dosage and time of administration,
   b. Any new medications prescribed for the patient, ~~and~~ e-scribed or written prescription and the location and phone number of the receiving pharmacy.

Commented [MI4]: Provides clarity that there will be coordination with the patient's current residence/assisted living facility.

Commented [MI5]: R9-10-209.C. proposed draft rules provide for coordination for a patient that resided in an Assisted Living facility prior to entering the hospital. The proposed rules do not provide for a patient that did not reside in an A/L prior to arriving at the hospital. Adding R9-10-209.D. provides for a patient who is being admitted to an Assisted Living Facility for the first time.

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Commented [MI6]: This provides clarification that the discharge order must comply with R9-10-807(B), the DHS rules governing Assisted Living Facilities admission requirements. This provides for consistency between what the hospitals must provide and what information the A/L is required to have by DHS rules before admitting a resident.

Commented [MI7]: Provides necessary medication administration information for the safety of the patient/resident. Without this information the A/L facility has no way of knowing when to administer medication leaving the resident at risk for medical complications due to medication being administered too soon or not soon enough.

Commented [MI8]: Provides clarity that the prescription could be e-scribed or provided in a written prescription and requires the location and phone number of the receiving pharmacy. It is impossible for an A/L to know what new medications were prescribed and where the prescription is without this information.

c. Any changes to the medications the patient had been taking before admission; and

d. The name and contact information for a physician, registered nurse practitioner, registered nurse, or physician assistant of the sending hospital who can answer questions from the receiving health care institution; and

Commented [MI9]: Provides a point of contact the A/L can discuss transition of care issues for the safety of the patient.

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2. Discharge instructions:

a. ~~are~~ Are documented and provided to the patient or ~~the~~ patient's representative and the patient's aftercare provider, if designated before the patient is discharged, unless the patient leaves the hospital against a medical staff member's advice; and

b. Include recommendations for additional medical services, nursing services, rehabilitation services, personal care services, or directed care services, as applicable, to meet the patient's assessed and anticipated needs after discharge.

R9-10-210. Transport

A. For a transport of a patient, the administrator of a sending hospital shall ensure that:

1. Policies and procedures are established, documented, and implemented that:

a. Specify the process by which the sending hospital personnel members coordinate the transport and the medical services provided to a patient to protect the health and safety of the patient;

b. Require an assessment of the patient by a registered nurse or a medical staff member before transporting the patient and after the patient's return;

c. Specify the information in the sending hospital's patient medical record that is required to accompany the patient, which shall ~~shall~~ include ~~the~~ information related to the medical services, nursing services, rehabilitation services, personal care services, or directed care services ~~to be provided to~~ needed by the patient at the receiving health care institution;

d. Specify how the sending hospital personnel members communicate patient medical record information that the sending hospital does not provide at the time of transport but is requested by the receiving health care institution, including the name and contact information for a ~~personnel member~~ physician, registered nurse practitioner, registered nurse, or physician assistant of the sending hospital who can answer questions from the receiving health care institution; and

Commented [MI10]: The A/L must be able to communicate with someone knowledgeable to address health care questions.

e. Specify how a medical staff member explains the risks and benefits of a transport

to the patient or the patient's representative based on the:

i. Patient's medical condition, and

ii. Mode of transport; and

2. Documentation in the patient's medical record includes:

a. Consent for transport by the patient or the patient's representative or why consent could not be obtained;

b. The acceptance of the patient by and communication with an individual at the receiving health care institution;

c. The date and the time of the transport to the receiving health care institution;

d. The date and time of the patient's return to the sending hospital, if applicable;

e. The mode of transportation; and

f. The type of personnel member or medical staff member assisting in the transport if an order requires that a patient be assisted during transport.

B. For a transport of a patient to a receiving hospital, the administrator of the receiving hospital shall ensure that:

1. Policies and procedures are established, documented, and implemented that:

a. Specify the process by which the receiving hospital personnel members coordinate the transport and the medical services provided to a patient to protect the health and safety of the patient;

b. Require an assessment of the patient by a registered nurse or a medical staff member upon arrival of the patient and before the patient is returned to the sending health care institution unless the receiving facility is a satellite facility, as established in A.R.S. § 36-422, and does not have a registered nurse or a medical staff member at the satellite facility;

c. Specify the information in the receiving hospital's patient medical record required to accompany the patient when the patient is returned to the sending health care institution, if applicable~~;~~ ~~and~~ including:

ia. Medications administered to the patient, including date, dosage and time of administration,

~~ii~~b. Any new medications prescribed for the patient, ~~and~~ e-scribed or written prescription and the location and phone number of the receiving pharmacy, and

~~iii~~c. Any changes to the medications the patient had been taking before admission; and

Commented [MI11]: Provides necessary medication information for the safety of the patient/resident. Without this information the A/L facility has no way of knowing when to administer medication leaving the resident at risk for medical complications from taking medication too soon or not soon enough.

Commented [MI12]: Provides clarification that it is either a written script or e-script; also requires providing the location of the pharmacy and phone number. It is impossible for an A/L to know where the prescription is without this information.

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d. Specify how the receiving hospital personnel members communicate patient medical record information to the sending health care institution that is not provided at the time of the patient's return, including the name and contact information for a ~~personnel member~~ physician, registered nurse practitioner, registered nurse, or physician assistant ~~of~~ the receiving hospital who can answer questions from the sending health care institution; and

2. Documentation in the patient's medical record includes:
   a. The date and time the patient arrived at the receiving hospital;
   b. The medical services provided to the patient at the receiving hospital;
   c. Any adverse reaction or negative outcome the patient experienced at the receiving hospital, if applicable;
   d. The date and time the receiving hospital returned the patient to the sending health care institution, if applicable;
   e. The mode of transportation to return the patient to the sending health care institution, if applicable; and
   f. The type of personnel member or medical staff member assisting in the transport if an order requires that a patient be assisted during transport.

R9-10-211. Transfer

For a transfer of a patient, the administrator of a sending hospital shall ensure that:

1. Policies and procedures are established, documented, and implemented that:
   a. Specify the process by which the sending hospital personnel members coordinate the transfer and the medical services provided to a patient to protect the health and safety of the patient during the transfer, including, if applicable, discharge orders in R9-10-209(B)(2) or R9-10-209(~~E~~F)(1) required for the patient by the receiving health care institution, and that such orders are on in compliance with R9-10-807(B);
   b. Require an assessment of the patient by a registered nurse or a medical staff member of the sending hospital before the patient is transferred;
   c. Specify how the sending hospital personnel members communicate medical record information that is not provided at the time of the transfer, including the name and contact information for a ~~personnel member~~ physician, registered nurse practitioner, registered nurse, or physician assistant of the sending hospital who can answer questions from the receiving health care institution; and
   d. Specify how a medical staff member explains the risks and benefits of a transfer

Commented [MI13]: The A/L facility must be able to communicate with someone knowledgeable to address health care concerns.

Commented [MI14]: This provides clarification that the discharge order must comply with R9-10-807(B), the DHS rules governing Assisted Living Facilities admission requirements. This provides for consistency between what the hospitals must provide and what information the A/L is required to have by DHS rules before admitting a resident.

Commented [MI15]: The A/L must be able to communicate with someone knowledgeable to address health care questions.

to the patient or the patient's representative based on the:

i. Patient's medical condition, and

ii. Mode of transfer;

2. ~~One of t~~The following information accompanies the patient during transfer:

a. A copy of the patient's medical record for the current inpatient admission; ~~or~~

~~b.~~ that contains ~~A~~all of the following for the current inpatient admission:

i. A medical staff member's summary of medical services provided to the patient~~;~~;

ii. A care plan containing up-to-date information, including, as applicable, the patient's need for:

(1). Programs and services for a patient who is incapable of recognizing danger, summoning assistance, expressing need, or making basic care decisions;

(2) Assistance with activities of daily living that can be performed by persons without professional skills or professional training;

(3) The coordination or provision of intermittent nursing services; and

(4) The administration of medication, including date, dosage and time of administration.

iii. Consultation reports~~;~~;

iv. Laboratory and radiology reports~~;~~;

v. A record of medications administered to the patient for the seven calendar days before the date of transfer~~;~~;

vi. Any new medication prescribed for the patient, e-scribed or written prescription for the new medication and the location of the receiving pharmacy;

vii. Any change to the medications the patient had been taking before admission;

~~vi.~~ viii. Medical staff member's orders in effect at the time of transfer in compliance with R9-10-807(B)~~;~~; ~~and~~

~~vii.~~ ix. Any known allergy; and

x. Insurance and/or Medicare information for the patient.

3. Documentation in the patient's medical record includes:

a. Consent for transfer by the patient or the patient's representative, except in an

Commented [MI16]: All the information is needed by an A/L facility to properly transition the patient to the facility.

Commented [MI17]: Provides clarity; without the location of the pharmacy, the A/L can't access the needed medication.

Commented [MI18]: Ensures the information DHS requires of the A/L facilities to have prior to admission is available.

Commented [MI19]: Provides necessary information required to transition the patient.

emergency;

b. The acceptance of the patient by and communication with an individual at the receiving health care institution;

c. The date and the time of the transfer to the receiving health care institution;

d. The mode of transportation; and

e. The type of personnel member or medical staff member assisting in the transfer if an order requires that a patient be assisted during transfer.

Comment 2 on NPR

Gmail

Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

Re: NOPR: Discharge Planning

1 message

Kathryn Mccanna <kathryn.mccanna@azdhs.gov> Tue, Jun 9, 2020 at 3:10 PM
To: Debbie Johnston <DJohnston@azhha.org>
Cc: Ruthann Smejkal <ruthann.smejkal@azdhs.gov>, Vicki Buchda <vbuchda@azhha.org>, "stephanie.elzenga@azdhs.gov" <stephanie.elzenga@azdhs.gov>

Thank you for the response

I have included Ruthann on the email since she tracks comments

Take care

On Tue, Jun 9, 2020 at 3:08 PM Debbie Johnston <DJohnston@azhha.org> wrote:

> Kathy,
>
> Thanks for the response yesterday. In case we are not able to get an extension for more robust feedback from members, here are a couple of comments/observations on the Discharge Planning NOPR published in the May 8 Arizona Administrative Register. I apologize for not drafting a formal comment letter, but like the Department, we have been fully absorbed with COVID-19 response.
>
> We appreciate the work that ADHS has put into trying to meet multiple stakeholder concerns. Patients and their caregivers should receive detailed discharge instructions from hospitals, and hospitals must make a concerted effort to respond to patient and caregiver questions. We believe most facilities are responsive to these needs, but we also understand that rulemakings are sometimes necessary to further this goal. With this in mind, we are generally supportive of the proposed rulemaking.
>
> We have not had a chance to vet the new language that was added to address transitions of care between hospitals and other healthcare institutions, but much of it seems reasonable. We would not have been supportive of a rule that stratified requirements based upon discharge to specific classes of healthcare institutions; rules should be more general in nature. As such, we appreciate the modifications made by ADHS.
>
> Having said this, we believe more work needs to be done on both sides of the isle—acute, post-acute, SNF, and assisted living. Moreover, not all of this work can nor should be legislated. We will continue to work with all stakeholders to improve transitions of care. This work is often challenging, but is also critically important.
>
> Pending additional feedback from members, we have two initial comments on the proposed rule:

1. We agree with the intent of R9-10-209(C). It is in line with the Medicare Conditions of Participation Interpretive Guidelines (Tag A-0806 of the State Operations Manual). Patients should certainly return to their originating healthcare institution (e.g., assisted living facility) if the facility can provide the right level of care and the patient wishes to return there. However, we want to make sure that the rule does not create an expectation that the hospital hold a patient ready for discharge for several hours or overnight while the originating healthcare institution is determining whether it has capacity, can provide the right level of care, or is negotiating financial arrangements with the patient or patient's family. These delays often create bottlenecks and setbacks to discharges, impacting care across the entire hospital system. A safe discharge, patient wishes, and continuity of care are our primary concerns. During times of heavy surge, however, these must also be balanced with the need to make additional space available for other patients.
2. Because hospitals are in the midst of responding to a pandemic and resources are strained, we urge the Department to adopt a delayed effective date of no sooner than January 1, 2021. We do not know what the next several months will bring with COVID-19. And, hospitals will need time to revise and implement new policies and procedures to come into compliance with this new rule.

Thank you for considering these comments. Please let me know if you have any questions.

Debbie Johnston

Senior Vice President, Policy Development

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Kathryn McCanna, RN, BSN, CPHQ
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Comment 3 on NPR

Gmail

Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

Fwd: FW: Discharge Planning Notice of Rulemaking: Comments due Tuesday by 4pm

1 message

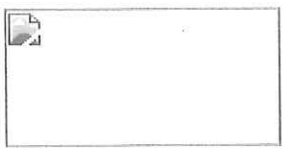
Kathryn Mccanna <kathryn.mccanna@azdhs.gov> Tue, Jun 9, 2020 at 3:29 PM
To: Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

---------- Forwarded message ---------
From: **Debbie Johnston** <DJohnston@azhha.org>
Date: Tue, Jun 9, 2020 at 3:28 PM
Subject: FW: Discharge Planning Notice of Rulemaking: Comments due Tuesday by 4pm
To: Kathryn Mccanna <kathryn.mccanna@azdhs.gov>
Cc: stephanie.elzenga@azdhs.gov <stephanie.elzenga@azdhs.gov>

Kathy – This just came in from one of our members…Sorry I could not incorporate it into my earlier email.

"I believe that R9-10-209, A4bii "providing a demonstration of the aftercare tasks to the patient, patient's representative or the patients aftercare provider as applicable" may be difficult to document and to demonstrate. Who determines what is applicable? My definition may be different than the surveyors. I'm thinking of ADLs. I think this is very broad and could take days delaying discharges. My other concern with this section is how do we document and what happens when the representative says they didn't understand. Is the hospital held accountable? Will it increase length of stay? What if the patient disagrees and demands to stay longer? Do we just document it?

What is the definition of a healthcare institution? Is this strictly licensed facilities to include ALFs, group homes, SNFs, home health agencies, home care agencies or does this also mean behavioral health. Would it also extend to adult day care centers?"



Debbie Johnston

Senior Vice President, Policy Development

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Comment 4 on NPR

Gmail

Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

Fwd: NPR Health Care Institutions Licensing - hospital discharge - 26 ARR 879

1 message

Kathryn Mccanna <kathryn.mccanna@azdhs.gov> Tue, Jun 9, 2020 at 3:54 PM
To: Ruthann Smejkal <ruthann.smejkal@azdhs.gov>, Robert Lane <robert.lane@azdhs.gov>

From AARP

---------- Forwarded message ---------
From: **Brandy Petrone** <brandy@goodmanschwartz.com>
Date: Tue, Jun 9, 2020 at 3:37 PM
Subject: NPR Health Care Institutions Licensing - hospital discharge - 26 ARR 879
To: Kathryn.McCanna@azdhs.gov <Kathryn.McCanna@azdhs.gov>
Cc: Stuart Goodman <sgoodman@goodmanschwartz.com>

Ms. McCanna,

On behalf of AARP, we wish to submit the following comments relating to DHS Notice of Proposed Rulemaking 26 A.R.R. 879.

AARP supports the changes being made to include "after care" and the "after care provider", relating to discharge of a patient to a patient's residence.

We understand there are concerns related to changes that have been proposed about transfers and discharges between health care institutions. With respect to the provisions relating to transfers and discharges between health care institutions, AARP is supportive of a brief pause for the parties involved to resolve their concerns. In the event that the issues cannot be resolved in a timely fashion, we respectfully request that the rules move forward without the contentious issues in order to allow the consensus issues relating to after care and the after care provider to advance forward.

Thank you for your consideration.

Brandy

Brandy Petrone

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Kathryn McCanna, RN, BSN, CPHQ
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Comment 5 on NPR

Gmail

Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

Discharge Planning NOPR.

1 message

Debbie Johnston <DJohnston@azhha.org> Tue, Jun 9, 2020 at 3:55 PM
To: Kathryn Mccanna <kathryn.mccanna@azdhs.gov>
Cc: Ruthann Smejkal <ruthann.smejkal@azdhs.gov>, "stephanie.elzenga@azdhs.gov" <stephanie.elzenga@azdhs.gov>

Kathy,

Another response expressing concern…Once again sorry I could not roll these all together.

The language in this document causes concern:

Discharge planning

R9-10-209

Aftercare provider- I understand the "ask", but if patient have no one at home to assist with ADLs(not always needed) do we now have to document , no aftercare provider designed?

4a. This is simply an attempted call to the patient's family (aftercare provider) only if designated, to advise of discharge- correct? If the patient does not designate this role- no call is needed .

4b. 1 -2. This is confusing- case managers don't show patient how to dress their wound, give Lovenox or insulin (after care tasks) or review new medications- this is done by nursing.

4.5- ???? Classes and Sub classes of health care institutions in written form? We use Silver Vue, an electronic platform which allows patient/families choice in selecting post- acute placement and displays CMS ratings. We can also email the same information to representatives . We speak to the level of care needed based on medical acuity and PT/OT recommendation- there is no written documentation to share.

B 1 b- a list of medications administered – discharged patients always have a current list, time last administered , new medications and medications to stop called out. This should meet the criteria unless, they want a list of all medications administered during this stay? Statement is vague.

E 1A- after care provider – not part of the assessment in the ED , unless designee is on site.

E2 – care plan- the nursing care plans are sent but do not contain this information.? Different consult would reflect this information but not one POC

Debbie Johnston

Senior Vice President, Policy Development

Arizona Hospital and Healthcare Association

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Comment 6 on NPR

Gmail

Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

Fwd: Comments Re: Proposed Rulemaking 9 A.A.C. 10 Department of Health Services - Health Care Institutions; Licensing

1 message

Kathryn Mccanna <kathryn.mccanna@azdhs.gov> Tue, Jun 9, 2020 at 3:55 PM
To: Ruthann Smejkal <ruthann.smejkal@azdhs.gov>, Robert Lane <robert.lane@azdhs.gov>

---------- Forwarded message ---------
From: **Marie Isaacson** <marie@isaacsonlawaz.com>
Date: Tue, Jun 9, 2020 at 3:52 PM
Subject: RE: Comments Re: Proposed Rulemaking 9 A.A.C. 10 Department of Health Services - Health Care Institutions; Licensing
To: Kathryn.McCanna@azdhs.gov <Kathryn.McCanna@azdhs.gov>, Stephanie Elzenga <stephanie.elzenga@azdhs.gov>
Cc: Pam A. Koester - LeadingAge Arizona (pkoester@leadingageaz.org) <pkoester@leadingageaz.org>, Don Isaacson <don@isaacsonlawaz.com>

Ms. McCanna and Ms. Elzenga,

First, I wanted to thank DHS for the opportunity to participate in the oral proceedings today regarding the above referenced rules. It was very helpful to have the opportunity to communicate with you, Ms. McCanna, in person. It was also very helpful to hear the clarifying points shared by the presiding officer, Ms. Ruthann Smejkal, Rules Analyst. Based on the oral proceedings today, in particular the clarification provided by Ms. Smejkal, I am withdrawing my earlier comments submitted on Monday, June 1, 2020 at 3:57pm and substituting the comments below and the attached recommended changes.

Second, I would like to reiterate Arizona LeadingAge's full support of AARP's suggested rule changes. AARP's goal to provide information to care givers that have the responsibility to care for individuals discharged to home, aligns with Arizona LeadingAge's goal to ensure adequate care is provided, particularly to our most vulnerable population. With over 2,300 Assisted Living facilities, our members see first hand that without adequate information, some of our most frail citizens suffer.

Finally, attached is a draft that includes our requested revisions to the proposed rules.

In summary, our changes:

1. Adds requirement to provide COVID status of individual being discharged;
2. Add similar language regarding discharge orders for inpatient or transfer as were added to outpatient discharge orders;
3. Additional information regarding medications;
4. Further define the hospital personnel member who will answer questions after discharge, and

Specifically, the changes requested, outlined in the attached proposed rules, are:

1. R9-10-209.B.1.d. – Adds language that the COVID status, or any similar type pandemic causing a public health emergency, be provided for a patient being discharged as a transfer.

2. R9-10-209.B.2. – Request that DHS add language to address medications administered, including date, dosage and time administered. It also requests that discharge orders include any new medication prescribed, e-scribed or a written prescription and the location and phone number of the receiving pharmacy. This mirrors what is required in the outpatient discharge planning section R9-10-209.E. under the DHS proposed rulemaking. The same medication information is needed whether the discharge is from inpatient or outpatient.

   The change also requests that the name and contact information for a physician, RNP, RN, or PA that can respond to questions be provided.

3. R9-10-209.E.1.a, b and d – R9-10-209.F.1.a. provides necessary medication information for the safety of the patient/resident be included in the discharge order. Without this information there is no way of knowing when to administer medication creating risk for medical complications due to medication being administered too soon or not soon enough. R9-10-209.F.1.b. provides clarification that the new medication prescribed, may be through an e-script or provided in a written prescription and requires the location and phone number of the receiving pharmacy. It is impossible to know where the prescription is without this information. R9-10-209.F.1.d. provides the discharge order include a point of contact who can discuss transition of care issues for the safety of the patient.

4. R9-10-210.A.1.c. and d. – R9-10-210A.1.c. retains the language "shall" to add clarity that the information is a requirement. R9-10-210A.1.d. Adds specificity regarding the type of personnel member point of contact being provided; there must be the ability to communicate with someone knowledgeable to address health care questions.

5. R9-10-210.B.1.c. – Provides necessary medication information regarding date, dosage and time when the medication was administered for the safety of the patient. Without this information there is no way of knowing when to administer medication leaving the resident at risk for medical complications from taking medication too soon or not soon enough. This mirrors the other related sections of the rules regarding medication administration.

6. R9-10-210.B.1.d. – Adds specificity regarding the type of personnel member point of contact being provided; there must be the ability to communicate with someone knowledgeable to address health care concerns.

7. R9-10-211.1.c. –R9-10-211.1.c. provides specificity regarding the type of personnel member point of contact being provided; there must be the ability to communicate with someone knowledgeable to address health care questions.

8. R9-10-211.2. - Adds clarity regarding the information provided as discussed above, such as: medication dose and time received; any new medications whether prescribed, e-scribed or provided in a written script and the name of the receiving pharmacy, and requires insurance/Medicare information.

We look forward to continuing to work with you and appreciate the feedback provided. Please let us know if you have any questions. Thank you.

Marie

Marie Isaacson, Principal

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January Draft Hospital Discharge 011020 (1) mi (1) (1) June 9 2020.docx
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Attachment to Comment 6 on NPR

Suggested Revisions - Proposed Rules

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES

HEALTH CARE INSTITUTIONS: LICENSING

ARTICLE 2. HOSPITALS

Section

R9-10-201. Definitions

R9-10-208. Admission

R9-10-209. Discharge Planning; Discharge

R9-10-210. Transport

R9-10-211. Transfer

ARTICLE 2. HOSPITALS

R9-10-201. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following definitions apply in this Article unless otherwise specified:

1. "Adult" means an individual the hospital designates as an adult based on the hospital's criteria.
2. "Aftercare" means assistance provided to a patient by another individual in the patient's residence, which is not part of a health care institution, following care provided at a hospital, and may include:
   a. Assisting the patient with activities of daily living, and
   b. Following the discharge instructions provided by the hospital.
3. "Aftercare provider" means an individual who:
   a. May be a friend or relative of a patient or be the patient's representative,
   b. Is designated by the patient or the patient's representative to perform aftercare tasks, and
   c. Is not compensated for performing aftercare tasks for the patient.
4. "Care plan" means a documented guide for providing nursing services and rehabilitation services to a patient that includes measurable objectives and the methods for meeting the objectives.
5. "Continuing care nursery" means a nursery where medical services and nursing services are provided to a neonate who does not require intensive care services.
6. "Critically ill inpatient" means an inpatient whose severity of medical condition requires the nursing services of specially trained registered nurses for:
   a. Continuous monitoring and multi-system assessment,
   b. Complex and specialized rapid intervention, and
   c. Education of the inpatient or inpatient's representative.
7. "Device" has the same meaning as in A.R.S. § 32-1901.
8. "Diet" means food and drink provided to a patient.
9. "Diet manual" means a written compilation of diets.
10. "Dietary services" means providing food and drink to a patient according to an order.
11. "Diversion" means notification to an emergency medical services provider, as defined in A.R.S. § 36-2201, that a hospital is unable to receive a patient from an emergency medical services provider.

~~10.~~12. "Drug formulary" means a written list of medications available and authorized for use developed according to R9-10-218.

~~11.~~13. "Gynecological services" means medical services for the diagnosis, treatment, and management of conditions or diseases of the female reproductive organs or breasts.

~~12.~~14. "Hospital services" means medical services, nursing services, and health-related services provided in a hospital.

~~13.~~15. "Infection control risk assessment" means determining the probability for transmission of communicable diseases.

~~14.~~16. "Inpatient" means an individual who:

a. Is admitted to a hospital as an inpatient according to policies and procedures,

b. Is admitted to a hospital with the expectation that the individual will remain and receive hospital services for 24 consecutive hours or more, or

c. Receives hospital services for 24 consecutive hours or more.

~~15.~~17. "Intensive care services" means hospital services provided to a critically ill inpatient who requires the services of specially trained nursing and other personnel members as specified in policies and procedures.

~~16.~~18. "Medical staff regulations" means standards, approved by the medical staff, that govern the day-to-day conduct of the medical staff members.

~~17.~~19. "Multi-organized service unit" means an inpatient unit in a hospital where more than one organized service may be provided to a patient in the inpatient unit.

~~18.~~20. "Neonate" means an individual:

a. From birth until discharge following birth, or

b. Who is designated as a neonate by hospital criteria.

~~19.~~21. "Nurse anesthetist" means a registered nurse who meets the requirements of A.R.S. § 32-1601 and who has clinical privileges to administer anesthesia.

~~20.~~22. "Nurse executive" means a registered nurse accountable for the direction of nursing services provided in a hospital.

~~21.~~23. "Nursery" means an area in a hospital designated only for neonates.

~~22.~~24. "Nurse supervisor" means a registered nurse accountable for managing nursing services provided in an organized service in a hospital.

~~23.~~25. "Nutrition assessment" means a process for determining a patient's dietary needs using information contained in the patient's medical record.

~~24.~~26. "On duty" means that an individual is at work and performing assigned responsibilities.

~~25.~~27. "Organized service" means specific medical services, such as surgical services or emergency services, provided in an area of a hospital designated for the provision of those medical services.

~~26.~~28. "Outpatient" means an individual who:

a. Is admitted to a hospital with the expectation that the individual will receive hospital services for less than 24 consecutive hours; or

b. Except as provided in subsection (17) receives, hospital services for less than 24 consecutive hours.

~~27.~~29. "Pathology" means an examination of human tissue for the purpose of diagnosis or treatment of an illness or disease.

~~28.~~30. "Patient care" means hospital services provided to a patient by a personnel member or a medical staff member.

~~29.~~31. "Pediatric" means pertaining to an individual designated by a hospital as a child based on the hospital's criteria.

~~30.~~32. "Perinatal services" means medical services for the treatment and management of obstetrical patients and neonates.

~~31.~~33. "Post-anesthesia care unit" means a designated area for monitoring a patient following a medical procedure for which anesthesia was administered to the patient.

~~32.~~34. "Private duty staff" means an individual, excluding a personnel member, compensated by a patient or the patient's representative.

~~33.~~35. "Psychiatric services" means the diagnosis, treatment, and management of a mental disorder.

~~34.~~36. "Social services" means assistance, other than medical services or nursing services, provided by a personnel member to a patient to assist the patient to cope with concerns about the patient's illness or injury while in the hospital or the anticipated needs of the patient after discharge.

~~35.~~37. "Specialty" means a specific branch of medicine practiced by a licensed individual who has obtained education or qualifications in the specific branch in addition to the education or qualifications required for the individual's license.

~~36.~~38. "Surgical services" means medical services involving a surgical procedure.

~~37.~~39. "Transfusion" means the introduction of blood or blood products from one individual into the body of another individual.

~~38.~~40. "Unit" means a designated area of an organized service.

~~39.~~41. "Vital record" has the same meaning as in A.R.S. § 36-301.

~~40.~~42. "Well-baby bassinet" means a receptacle used for holding a neonate who does not require treatment and whose anticipated discharge is within 96 hours after birth.

R9-10-208. Admission

An administrator shall ensure that:

1. A patient is admitted as an inpatient on the order of a medical staff member;
2. An individual, authorized by policies and procedures, is available to accept a patient for admission;
3. Except in an emergency, informed consent is obtained from a patient or the patient's representative before or at the time of admission;
4. The informed consent obtained in subsection (3) or the lack of consent in an emergency is documented in the patient's medical record;
5. A physician or other medical staff member performs a medical history and physical examination on a patient within 30 calendar days before admission or within 48 hours after admission and documents the medical history and physical examination in the patient's medical record within 48 hours after admission; ~~and~~
6. If a physician or other medical staff member performs a medical history and physical examination on a patient before admission, the physician or the medical staff member enters an interval note into the patient's medical record at the time of admission~~.~~; and
7. A patient or the patient's representative is given an opportunity to:
   a. Designate an individual, who is willing to participate in discharge planning and ~~to provide aftercare,~~ act as the patient's aftercare provider;
   b. Provide contact information for the patient's aftercare provider; and
   c. Change the designated patient's aftercare provider before discharge.

R9-10-209. Discharge Planning; Discharge

A. For an inpatient, an administrator shall ensure that discharge planning:

1. Is completed before discharge occurs;
~~1.~~2. Identifies the specific needs of the patient after discharge, if applicable;
~~2.~~3. Includes the participation of the patient or ~~the~~ patient's representative and, if applicable, the patient's aftercare provider;
~~3. Is completed before discharge occurs;~~
4. If the patient is being discharged to the patient's residence, which is not part of a health care institution:

a. Includes at least one attempt, which is documented in the patient's medical record, to notify the patient's aftercare provider before the patient's discharge; and

b. Prepares the patient, the patient's representative, or the patient's aftercare provider, as applicable, to carry out the discharge instructions required in subsection (B)(3)(a), including:

i. Answering questions about the discharge instructions and aftercare; and

ii. Providing a demonstration of the aftercare tasks to the patient, the patient's representative, or the patient's aftercare provider, as applicable;

4.5. Except as provided in subsection (C), ~~Provides~~ provides the patient or the patient's representative with written information identifying classes or subclasses of health care institutions and the level of care that the health care institutions provide that may meet the patient's assessed and anticipated needs after discharge, if applicable; and

~~5.~~6. Is documented in the patient's medical record.

B. For an inpatient discharge or a transfer of an inpatient, an administrator shall ensure that:

1. There is a discharge summary that includes:

a. A description of the patient's medical condition and the medical services provided to the patient~~;~~, ~~and~~

b. A list of the medications administered to the patient, ~~and~~

~~b.~~c. The signature of the medical practitioner coordinating the patient's medical services; and

d. The COVID status, or any similar pandemic causing a public health emergency, of every discharged patient being transferred.

2. There is a documented discharge order for the patient by a medical practitioner coordinating the patient's medical services before discharge unless the patient leaves the hospital against a medical staff member's advice, and includes the following information:~~;~~

~~and~~ a. Medications administered to the patient, including date, dosage and time of administration,

b. Any new medication prescribed for the patient, e-scribed or written prescription and the location and phone number of the receiving pharmacy,

c. Any changes to the medications the patient had been taking before admission; and

d. The name and contact information for a physician, registered nurse practitioner,

Commented [MI1]: Provides A/L the ability to protect all other residents from highly infectious pandemic now and in the future.

Commented [MI2]: Add language to address medications administered, duplicating what is required by DHS in outpatient discharge planning R9-10-209.E, to an inpatient, when the medication was administered, the dosage and when last administered. It also requests that if there is information provided regarding any new medication prescribed, e-scribed or given in a written prescription that the location and phone number of the receiving pharmacy be provided. Again, this mirrors what is required in the outpatient discharge planning section R9-10-209.E. under the DHS proposed rule making. The same medication information is needed whether the discharge is from inpatient or outpatient.

The change also requests that the name and contact information for a physician, RNP, RN, or PA that can respond to questions be provided.

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registered nurse, or physician assistant of the sending hospital who can answer questions from the receiving health care institution; and

3. If the patient is not being transferred:

a. There are documented discharge instructions that include recommendations for additional medical services, nursing services, rehabilitation services, personal care services, or directed care services, as applicable, to meet the patient's assessed and anticipated needs after discharge; and

b. The patient or ~~the~~ patient's representative and the patient's aftercare provider, if designated, is provided with a copy of the discharge instructions.; and

4. If the patient is being transferred, the transfer complies with R9-10-211.

C. For a patient transferred to a hospital from another health care institution , an administrator shall ensure that the level of care provided by the health care institution from which the patient had been transferred is considered, as part of discharge planning, to determine whether:

1. The level of care may meet the patient's assessed and anticipated needs after discharge, and

2. The patient may return to the health care institution.

~~C.~~ **D.** Except as provided in subsection ~~(D)~~ (E), an administrator shall ensure that an outpatient is discharged according to policies and procedures.

~~D.~~**E.** For a discharge of an outpatient receiving emergency services, an administrator shall ensure that:

1. A discharge order is documented by a medical practitioner who provided medical services to the patient before the patient is discharged, unless the patient leaves against a medical staff member's advice, and includes the following information;: ~~and~~

a. Medications administered to the patient, including date, dosage and time of administration,

b. Any new medications prescribed for the patient, ~~and~~ e-scribed or written prescription and the location and phone number of the receiving pharmacy,

c. Any changes to the medications the patient had been taking before admission; and

d. The name and contact information for a physician, registered nurse practitioner, registered nurse, or physician assistant of the sending hospital who can answer questions from the receiving health care institution; and

2. Discharge instructions;

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Commented [MI3]: Provides necessary medication administration information for the safety of the patient. Without this information there is no way of knowing when to administer medication leaving the patient at risk for medical complications due to medication being administered too soon or not soon enough.

Commented [MI4]: Provides clarity that the prescription could be e-scribed or provided in a written prescription and requires the location and phone number of the receiving pharmacy. It is impossible to know what new medications were prescribed and where the prescription is without this information.

Commented [MI5]: Provides a specific point of contact when questions arise regarding transition of care issues for the safety of the patient.

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a. ~~are~~ Are documented and provided to the patient or ~~the~~ patient's representative and the patient's aftercare provider, if designated before the patient is discharged, unless the patient leaves the hospital against a medical staff member's advice; and

b. Include recommendations for additional medical services, nursing services, rehabilitation services, personal care services, or directed care services, as applicable, to meet the patient's assessed and anticipated needs after discharge.

R9-10-210. Transport

A. For a transport of a patient, the administrator of a sending hospital shall ensure that:

1. Policies and procedures are established, documented, and implemented that:
   a. Specify the process by which the sending hospital personnel members coordinate the transport and the medical services provided to a patient to protect the health and safety of the patient;
   b. Require an assessment of the patient by a registered nurse or a medical staff member before transporting the patient and after the patient's return;
   c. Specify the information in the sending hospital's patient medical record that is required to accompany the patient, which shall ~~shall~~ include ~~the~~ information related to the medical services, nursing services, rehabilitation services, personal care services, or directed care services ~~to be provided to~~ needed by the patient at the receiving health care institution;
   d. Specify how the sending hospital personnel members communicate patient medical record information that the sending hospital does not provide at the time of transport but is requested by the receiving health care institution, including the name and contact information for a ~~personnel member~~ physician, registered nurse practitioner, registered nurse, or physician assistant of the sending hospital who can answer questions from the receiving health care institution; and
   e. Specify how a medical staff member explains the risks and benefits of a transport to the patient or the patient's representative based on the:
      i. Patient's medical condition, and
      ii. Mode of transport; and
2. Documentation in the patient's medical record includes:
   a. Consent for transport by the patient or the patient's representative or why consent could not be obtained;
   b. The acceptance of the patient by and communication with an individual at the

Commented [MI6]: Maintaining the word "shall" adds clarity that this is a requirement.

Commented [MI7]: There must be the ability to communicate with someone knowledgeable to address health care questions.

receiving health care institution;

c. The date and the time of the transport to the receiving health care institution;

d. The date and time of the patient's return to the sending hospital, if applicable;

e. The mode of transportation; and

f. The type of personnel member or medical staff member assisting in the transport if an order requires that a patient be assisted during transport.

B. For a transport of a patient to a receiving hospital, the administrator of the receiving hospital shall ensure that:

1. Policies and procedures are established, documented, and implemented that:

a. Specify the process by which the receiving hospital personnel members coordinate the transport and the medical services provided to a patient to protect the health and safety of the patient;

b. Require an assessment of the patient by a registered nurse or a medical staff member upon arrival of the patient and before the patient is returned to the sending health care institution unless the receiving facility is a satellite facility, as established in A.R.S. § 36-422, and does not have a registered nurse or a medical staff member at the satellite facility;

c. Specify the information in the receiving hospital's patient medical record required to accompany the patient when the patient is returned to the sending health care institution, if applicable~~;~~ ~~and~~ including:

ia. Medications administered to the patient, including date, dosage and time of administration,

iib. Any new medications prescribed for the patient, and e-scribed or written prescription and the location and phone number of the receiving pharmacy, and

iiie. Any changes to the medications the patient had been taking before admission; and

d. Specify how the receiving hospital personnel members communicate patient medical record information to the sending health care institution that is not provided at the time of the patient's return, including the name and contact information for a ~~personnel member~~ physician, registered nurse practitioner, registered nurse, or physician assistant of the receiving hospital who can answer questions from the sending health care institution; and

2. Documentation in the patient's medical record includes:

Commented [MI8]: Provides necessary medication information for the safety of the patient. Without this information there is no way of knowing when to administer medication leaving the patient at risk for medical complications from taking medication too soon or not soon enough.

Commented [MI9]: Provides clarification that it is either a written script or e-script; also requires providing the location of the pharmacy and phone number. It is impossible to know where the prescription is without this information.

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Commented [MI10]: There must be the ability to communicate with someone knowledgeable to address health care concerns.

a. The date and time the patient arrived at the receiving hospital;
b. The medical services provided to the patient at the receiving hospital;
c. Any adverse reaction or negative outcome the patient experienced at the receiving hospital, if applicable;
d. The date and time the receiving hospital returned the patient to the sending health care institution, if applicable;
e. The mode of transportation to return the patient to the sending health care institution, if applicable; and
f. The type of personnel member or medical staff member assisting in the transport if an order requires that a patient be assisted during transport.

R9-10-211. Transfer

For a transfer of a patient, the administrator of a sending hospital shall ensure that:

1. Policies and procedures are established, documented, and implemented that:
   a. Specify the process by which the sending hospital personnel members coordinate the transfer and the medical services provided to a patient to protect the health and safety of the patient during the transfer, including, if applicable, discharge orders in R9-10-209(B)(2) or R9-10-209(E)(1) required for the patient by the receiving health care institution;
   b. Require an assessment of the patient by a registered nurse or a medical staff member of the sending hospital before the patient is transferred;
   c. Specify how the sending hospital personnel members communicate medical record information that is not provided at the time of the transfer, including the name and contact information for a ~~personnel member~~ physician, registered nurse practitioner, registered nurse, or physician assistant of the sending hospital who can answer questions from the receiving health care institution; and
   d. Specify how a medical staff member explains the risks and benefits of a transfer to the patient or the patient's representative based on the:
      i. Patient's medical condition, and
      ii. Mode of transfer;
2. One of the following accompanies the patient during transfer:
   a. A copy of the patient's medical record for the current inpatient admission; or
   b. All of the following for the current inpatient admission:
      i. A medical staff member's summary of medical services provided to the patient~~,~~;

Commented [MI11]: There must be the ability to communicate with someone knowledgeable to address health care questions.

ii. A care plan containing up-to-date information, including, as applicable, the patient's need for:

(1). Programs and services for a patient who is incapable of recognizing danger, summoning assistance, expressing need, or making basic care decisions;

(2) Assistance with activities of daily living that can be performed by persons without professional skills or professional training;

(3) The coordination or provision of intermittent nursing services; and

(4) The administration of medication, including date, dosage and time of administration.

iii. Consultation reports;;

iv. Laboratory and radiology reports;;

v. A record of medications administered to the patient for the seven calendar days before the date of transfer;;

vi. Any new medication prescribed for the patient, e-scribed or written prescription for the new medication and the location of the receiving pharmacy;

Commented [MI12]: Provides clarity; without the location of the pharmacy, the medication needed can't be accessed.

vii. Any change to the medications the patient had been taking before admission;

~~vi.~~ viii. Medical staff member's orders in effect at the time of transfer;; and

~~vii.~~ ix. Any known allergy; and

x. Insurance and/or Medicare information for the patient.

Commented [MI13]: Provides necessary information required to transition the patient.

3. Documentation in the patient's medical record includes:

a. Consent for transfer by the patient or the patient's representative, except in an emergency;

b. The acceptance of the patient by and communication with an individual at the receiving health care institution;

c. The date and the time of the transfer to the receiving health care institution;

d. The mode of transportation; and

e. The type of personnel member or medical staff member assisting in the transfer if an order requires that a patient be assisted during transfer.

Late Comment on NPR

Gmail

Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

Fwd: Comment Letter: Notice of Proposed Rulemaking: Hospital Discharges

1 message

Kathryn Mccanna <kathryn.mccanna@azdhs.gov> Wed, Jun 10, 2020 at 6:59 AM
To: Robert Lane <robert.lane@azdhs.gov>, Ruthann Smejkal <ruthann.smejkal@azdhs.gov>, Stephanie Elzenga <stephanie.elzenga@azdhs.gov>

---------- Forwarded message ---------
From: **Jennifer Carusetta** <jcarusetta@hsaaz.com>
Date: Tue, Jun 9, 2020 at 8:14 PM
Subject: Comment Letter: Notice of Proposed Rulemaking: Hospital Discharges
To: Kathryn Mccanna <kathryn.mccanna@azdhs.gov>

Hello:

Please find the enclosed comment letter on the Notice of Proposed Rulemaking: Hospital Discharges.

Thank you for your consideration.

Best Regards,

Jennifer

Jennifer A. Carusetta

Executive Director

Health System Alliance of Arizona

3200 N. Central Ave., Suite 1125

Phoenix, Arizona 85012

O: 602-296-5187

M: 602-430-6078

Health System Alliance of Arizona Logo (2)

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Kathryn McCanna, RN, BSN, CPHQ
Branch Chief, Health Care Institution Licensing
Division of Public Health Licensing
602-364-2841

Kathryn.McCanna@azdhs.gov

Discharge Planning Final Rulemaking 6-8-2020.pdf
113K

Attachment on Late Comment

Health System Alliance of Arizona

June 9, 2020

Dr. Cara Christ
Arizona Department of Health Services
150 N. 18th Avenue
Phoenix, Arizona 85007

Dear Dr. Christ:

On behalf of the Health System Alliance of Arizona (Alliance), an advocacy organization representing integrated health systems across the state, I am writing to offer our comments in response to the Notice of Proposed Rulemaking on Hospital Discharge Planning.

The members of the Alliance have prioritized the establishment of policies and procedures within their facilities to ensure that patients are discharged to a safe place and that caregivers are provided with clear information on how to best care for their loved one. In crafting the rulemaking that was drafted in August 2019, AARP worked collaboratively with the Alliance to ensure that these proposed rules were consistent with best practices and the policies that were already in place in hospitals across Arizona. We appreciated their willingness to include our feedback in the crafting of the underlying rule package and continue to support codification of these practices and policies into Department rule.

However, the Alliance cannot support the changes incorporated into to the rule promulgated on May 8, 2020. These additional requirements were proposed without comprehensive stakeholder engagement, are in several instances duplicative of existing regulatory requirements and pose an undue burden on an industry already strained from combatting COVID-19.

Specifically, the proposed changes outlined in require that a health care institution complete an assessment of a patient to determine the level of care that is required upon discharge and whether a patient may be able to return to the health care institution from which they originated. This provision of the proposed rule is duplicative of current rule, which already requires that patients be given information on the level of care available to meet assessed and anticipated needs post-discharge.

This proposal goes a step further to also require that health care institutions evaluate the level of care provided in the originating facility to determine whether the patient may return. This provision is unduly burdensome on hospitals who do not have resources or information necessary to conduct an evaluation of originating facilities to determine whether they can adequately meet patients' needs.

The proposed rule requires that a discharge order include detail of any medications administered to the patient, together with a list of any new medications prescribed post-discharge. Current rule requires that discharge summaries for patients being transferred or discharged include detail of any

"medical services provided to the patient," which would inherently include a list of medications administered to treat their condition. Further, R9-10-209 requires that discharge orders include "information from the patient's medical record, including orders that are in effect at the time of transfer…" This would include any medication orders in place at the time of discharge. Hospitals are already required to conduct assessments of patients prior to discharge and include information as part of the discharge summary that details the medical services provided to the patient and the orders in place to continue care post-discharge. The Department has the regulatory authority to take action against health care institutions that do not comply with these requirements. For this reason, we find the changes to the proposed rule to be unnecessarily duplicative and once again, burdensome.

As stated previously, we appreciate AARP's willingness to engage in a comprehensive stakeholder discussion and continue to support the provisions of the rule as drafted in August 2019. At the appropriate time, we would welcome the opportunity to engage with the proponents of the revisions to this draft rule to discuss how hospitals and assisted living facilities can better partner to ensure that patient discharges and transfers between their facilities can work in a more efficient manner for patients and their families. Unfortunately, we cannot support the proposed changes amended to the May 8th draft rule absent this discussion and without consideration of the considerable limitation on hospital resources during the current crisis.

We appreciate your consideration. Please do not hesitate to contact me if I can answer any questions.

Respectfully,

Jennifer A. Carusetta
Executive Director
Health System Alliance of Arizona

Comment on NSPR

Gmail

Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

Fwd: Hospital Discharge - Comments regarding Supplemental Rule Making

1 message

Kathryn Mccanna <kathryn.mccanna@azdhs.gov> Mon, Aug 10, 2020 at 1:46 PM
To: Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

---------- Forwarded message ---------
From: **Marie Isaacson** <marie@isaacsonlawaz.com>
Date: Mon, Aug 10, 2020 at 1:41 PM
Subject: Hospital Discharge - Comments regarding Supplemental Rule Making
To: Kathryn.McCanna@azdhs.gov <Kathryn.McCanna@azdhs.gov>
Cc: Robert Lane <robert.lane@azdhs.gov>, Pam A. Koester <pkoester@leadingageaz.org>, Don Isaacson <don@isaacsonlawaz.com>

Kathryn:

Attached is my letter on behalf of the Arizona LeadingAge summarizing my points today.

Thank you,

Marie

Marie Isaacson, Principal

Isaacson Law Firm, P.C.

3101 North Central Avenue, Suite 650

Phoenix, AZ 85012

Office: (602) 274-2200

Cell: (602) 750-5023

E-mail: marie@isaacsonlawaz.com

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Kathryn McCanna, RN, BSN, CPHQ
Branch Chief, Health Care Institution Licensing
Division of Public Health Licensing
602-364-2841
Kathryn.McCanna@azdhs.gov

August 10 2020 Comments re Hospital Discharge Supplemental Rule Making.pdf
1085K

Attachment on Comment on NSPR

ISAACSON LAW FIRM, P.C.

ATTORNEY AT LAW:
DONALD G. ISAACSON
PRINCIPAL:
MARIE F. ISAACSON

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3101 NORTH CENTRAL AVENUE
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August 10, 2020

Ms. Kathryn McCanna, Branch Chief
Arizona Department of Health Services
150 North 18th Avenue, Suite 450
Phoenix, Arizona 85007

Subject: Hospital Discharge – Supplemental Rule Making; August 10, 2020

Dear Ms. McCanna:

As a follow-up to today's oral proceeding, we are writing on behalf of our client, Arizona LeadingAge, in response to the Notice of Supplemental Proposed Rulemaking 26 A.A.R. 1357. Arizona LeadingAge is beyond disappointed that the Arizona Department of Health Services not only failed to include any suggested modifications to its proposed Hospital Discharge rules, but it eliminated the modest improvements to address hospital discharge to another health care institution.

The assisted living community started meeting with hospitals, AARP and the Arizona Department of Health Services in July, 2018 to address the detrimental outcomes to one of our most vulnerable populations, Arizona seniors. The purpose of the meetings was to come to an agreement on improving hospital discharges to senior care facilities. The life-threatening problems were articulated and discussed at each of these meetings. These meetings continued into 2020 and involved industry experts sharing first-hand life and death experiences resulting after seniors were discharged from hospitals to assisted living facilities. The culmination of these meetings resulted in the Arizona Department of Health Services (ADHS) suggesting they draft compromise language taking into consideration feedback from the hospital associations, AARP and the assisted living community. Arizona LeadingAge thought the ADHS language, while not capturing all the changes desired by the industry, was a fair compromise between the parties.

This compromise language was published on May 8, 2020, by the ADHS in a Notice of Proposed Rule Making amending its rules related to hospital discharge. The DHS provided the following explanation why the rules needed to be changed (emphasis added):

> ***In order to ensure public health, safety, and welfare,*** *Arizona Revised Statutes (A.R.S.) §§ 36-405 and 36-406* ***require the Arizona Department of Health Services (Department) to adopt rules*** *establishing* ***minimum standards*** *and requirements for construction, modification, and licensure of health care institutions.*
>
> . . .
>
> *The Department has become aware that the rules for hospitals* ***do not*** *appear to* ***adequately address*** *assistance provided to a patient by another individual in the patient's*

residence following care provided at a hospital. ***Nor are requirements*** *related to transfer or transport of a patient to another health care institution* ***after discharge sufficiently clear*** *to avoid issues at the receiving health care institution. After receiving an exception from the rulemaking moratorium pursuant to Executive Order 2019-01,* ***the Department is revising the rules*** *in Article 2* ***for the purpose of enhancing the existing discharge procedures at hospitals to address these issues****.*

. . .

Additionally, the DHS noted the consumer impact, in part, as:

. . .

The clarifications of requirements for discharge planning, discharge, transfers, and transports, as well as the addition of the requirement for a hospital to determine whether a patient can return to the health care institution from which the patient was transferred to the hospital, may impose minimal-to-moderate additional costs, depending on whether the hospital was already implementing these changes, and may ***provide a significant benefit*** *from making clearer the Department's expectations and from better patient care. However, since many of the requirements are related to standards that affect Medicare reimbursement, following these requirements may lead to improved Medicare reimbursement and possibly up to a* ***substantial benefit to the hospital****. The proposed rules may provide a minimal-to-moderate benefit to a health care institution to which a hospital transports or transfers a patient, depending on the number of discharged patients being transported or transferred to the health care institution and how difficult it currently is to obtain the needed information, due to spending less staff time obtaining this information, and a* ***significant benefit*** *from providing* ***better care to the discharged patient****. The Department anticipates that the change in the rules requiring a hospital to determine whether a patient can return to the health care institution from which the patient was transferred to the hospital may provide a substantial benefit to a health care institution from which a patient was sent to the hospital. The Department also believes that improved communication between health care institutions, indirectly required by the rule changes, may also provide a* ***significant benefit to both hospitals and other health care institutions.***

Arizona LeadingAge agrees with the Department's conclusions in developing the proposed rulemaking published on May 8, 2020. These changes are a first step in ensuring continuity of care as a senior is discharged from a hospital to another health care institution. The reasons for these changes still exist today and are as important to the health and safety of seniors, if not more important, in light of the pandemic.

Unfortunately, in the ADHS' Notice of Supplemental Proposed Rulemakings published July 10, 2020, **two years** after the initial discussions began with ADHS, hospitals, AARP and the assisted living community, the proposed rules were changed to address only hospital discharge to home. The Notice also stated that because there appears to be no consensus on the proposed changes related to hospital discharges to another health care institution, the Department removed those changes. The changes that were originally published by the ADHS was language the Department developed as a compromise after two years of meetings and discussions between assisted living, AARP and the hospital associations. As stated above, the Arizona LeadingAge supported and continues to support the proposed rulemaking drafted by the ADHS as a compromise between assisted living, AARP and the hospital associations published on May 8, 2020 and discussed in the oral proceeding on June 9, 2020.

Arizona LeadingAge strongly encourages the ADHS to, at a minimum, to move forward with the rules that were discussed at the oral proceeding on May 8, 2020. The additional changes suggested by Arizona LeadingAge at the oral proceeding on June 9, 2020 can continue to be reviewed to reach consensus. However, to remove the compromise language developed by the ADHS by removing any reference of discharge to another health care institution via transfer and transport is ignoring the health care needs of some of the most vulnerable citizens, our seniors. This is especially concerning considering the current pandemic.

Sincerely,

Marie Isaacson

MI/vlh

c: Pam Koester, Executive Director, AZLA
Robert Lane Chief, DHS, Office of Admin. Counsel
Don Isaacson

Health System Alliance of Arizona

June 9, 2020

Dr. Cara Christ
Arizona Department of Health Services
150 N. 18th Avenue
Phoenix, Arizona 85007

Dear Dr. Christ:

On behalf of the Health System Alliance of Arizona (Alliance), an advocacy organization representing integrated health systems across the state, I am writing to offer our comments in response to the Notice of Proposed Rulemaking on Hospital Discharge Planning.

The members of the Alliance have prioritized the establishment of policies and procedures within their facilities to ensure that patients are discharged to a safe place and that caregivers are provided with clear information on how to best care for their loved one. In crafting the rulemaking that was drafted in August 2019, AARP worked collaboratively with the Alliance to ensure that these proposed rules were consistent with best practices and the policies that were already in place in hospitals across Arizona. We appreciated their willingness to include our feedback in the crafting of the underlying rule package and continue to support codification of these practices and policies into Department rule.

However, the Alliance cannot support the changes incorporated into to the rule promulgated on May 8, 2020. These additional requirements were proposed without comprehensive stakeholder engagement, are in several instances duplicative of existing regulatory requirements and pose an undue burden on an industry already strained from combatting COVID-19.

Specifically, the proposed changes outlined in require that a health care institution complete an assessment of a patient to determine the level of care that is required upon discharge and whether a patient may be able to return to the health care institution from which they originated. This provision of the proposed rule is duplicative of current rule, which already requires that patients be given information on the level of care available to meet assessed and anticipated needs post-discharge.

This proposal goes a step further to also require that health care institutions evaluate the level of care provided in the originating facility to determine whether the patient may return. This provision is unduly burdensome on hospitals who do not have resources or information necessary to conduct an evaluation of originating facilities to determine whether they can adequately meet patients' needs.

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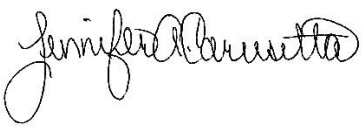
As stated previously, we appreciate AARP's willingness to engage in a comprehensive stakeholder discussion and continue to support the provisions of the rule as drafted in August 2019. At the appropriate time, we would welcome the opportunity to engage with the proponents of the revisions to this draft rule to discuss how hospitals and assisted living facilities can better partner to ensure that patient discharges and transfers between their facilities can work in a more efficient manner for patients and their families. Unfortunately, we cannot support the proposed changes amended to the May 8th draft rule absent this discussion and without consideration of the considerable limitation on hospital resources during the current crisis.

We appreciate your consideration. Please do not hesitate to contact me if I can answer any questions.

Respectfully,



Jennifer A. Carusetta
Executive Director
Health System Alliance of Arizona

i. Takes precautions, which may include the use of gloves and a facemask or other personal protection equipment, while providing services to the resident; and
ii. Removes and, if applicable, disposes of the personal protection equipment and washes the personnel member's hands with soap and water for at least 20 seconds or, if soap and water are not available, uses a hand sanitizer containing at least 60% alcohol immediately after providing services to the resident and before providing services to another resident;

d. Linens, dishes, utensils, and other items used by the resident are:
i. Kept separate from similar items used by a resident who does not have a fever or respiratory symptoms indicative of a communicable disease, and
ii. Disinfected or disposed of in a manner to reduce the chance for infection of another individual; and

e. Surfaces touched by the resident are disinfected before another individual touches the surface.

F. An administrator or manager, as applicable, shall ensure that door handles, tables, chair backs and arm rests, light switches, and other frequently touched surfaces are cleaned and disinfected, according to policies and procedures, with:
1. An alcohol solution containing at least 70% alcohol;
2. A bleach solution containing four teaspoons of bleach per quart of water; or
3. An EPA-approved household disinfectant specified in the list, which is incorporated by reference, and available at https://www.epa.gov/sites/production/files/2020-03/documents/sars-cov-2-list_03-03-2020.pdf, and does not include any later amendments or editions.

Historical Note
Amended effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). New Section made by emergency rulemaking at 26 A.A.R. 509, with an immediate effective date of March 16, 2020, for 180 days (Supp. 19-1).

R9-10-122. Repealed

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

R9-10-123. Repealed

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

R9-10-124. Repealed

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

ARTICLE 2. HOSPITALS

R9-10-201. Definitions
In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following definitions apply in this Article unless otherwise specified:
1. "Adult" means an individual the hospital designates as an adult based on the hospital's criteria.
2. "Care plan" means a documented guide for providing nursing services and rehabilitation services to a patient that includes measurable objectives and the methods for meeting the objectives.
3. "Continuing care nursery" means a nursery where medical services and nursing services are provided to a neonate who does not require intensive care services.
4. "Critically ill inpatient" means an inpatient whose severity of medical condition requires the nursing services of specially trained registered nurses for:
   a. Continuous monitoring and multi-system assessment,
   b. Complex and specialized rapid intervention, and
   c. Education of the inpatient or inpatient's representative.
5. "Device" has the same meaning as in A.R.S. § 32-1901.
6. "Diet" means food and drink provided to a patient.
7. "Diet manual" means a written compilation of diets.
8. "Dietary services" means providing food and drink to a patient according to an order.
9. "Diversion" means notification to an emergency medical services provider, as defined in A.R.S. § 36-2201, that a hospital is unable to receive a patient from an emergency medical services provider.
10. "Drug formulary" means a written list of medications available and authorized for use developed according to R9-10-218.
11. "Gynecological services" means medical services for the diagnosis, treatment, and management of conditions or diseases of the female reproductive organs or breasts.
12. "Hospital services" means medical services, nursing services, and health-related services provided in a hospital.
13. "Infection control risk assessment" means determining the probability for transmission of communicable diseases.
14. "Inpatient" means an individual who:
   a. Is admitted to a hospital as an inpatient according to policies and procedures,
   b. Is admitted to a hospital with the expectation that the individual will remain and receive hospital services for 24 consecutive hours or more, or
   c. Receives hospital services for 24 consecutive hours or more.
15. "Intensive care services" means hospital services provided to a critically ill inpatient who requires the services of specially trained nursing and other personnel members as specified in policies and procedures.
16. "Medical staff regulations" means standards, approved by the medical staff, that govern the day-to-day conduct of the medical staff members.
17. "Multi-organized service unit" means an inpatient unit in a hospital where more than one organized service may be provided to a patient in the inpatient unit.
18. "Neonate" means an individual:
   a. From birth until discharge following birth, or
   b. Who is designated as a neonate by hospital criteria.

19. "Nurse anesthetist" means a registered nurse who meets the requirements of A.R.S. § 32-1601 and who has clinical privileges to administer anesthesia.
20. "Nurse executive" means a registered nurse accountable for the direction of nursing services provided in a hospital.
21. "Nursery" means an area in a hospital designated only for neonates.
22. "Nurse supervisor" means a registered nurse accountable for managing nursing services provided in an organized service in a hospital.
23. "Nutrition assessment" means a process for determining a patient's dietary needs using information contained in the patient's medical record.
24. "On duty" means that an individual is at work and performing assigned responsibilities.
25. "Organized service" means specific medical services, such as surgical services or emergency services, provided in an area of a hospital designated for the provision of those medical services.
26. "Outpatient" means an individual who:
    a. Is admitted to a hospital with the expectation that the individual will receive hospital services for less than 24 consecutive hours; or
    b. Except as provided in subsection (17) receives, hospital services for less than 24 consecutive hours.
27. "Pathology" means an examination of human tissue for the purpose of diagnosis or treatment of an illness or disease.
28. "Patient care" means hospital services provided to a patient by a personnel member or a medical staff member.
29. "Pediatric" means pertaining to an individual designated by a hospital as a child based on the hospital's criteria.
30. "Perinatal services" means medical services for the treatment and management of obstetrical patients and neonates.
31. "Post-anesthesia care unit" means a designated area for monitoring a patient following a medical procedure for which anesthesia was administered to the patient.
32. "Private duty staff" means an individual, excluding a personnel member, compensated by a patient or the patient's representative.
33. "Psychiatric services" means the diagnosis, treatment, and management of a mental disorder.
34. "Social services" means assistance, other than medical services or nursing services, provided by a personnel member to a patient to assist the patient to cope with concerns about the patient's illness or injury while in the hospital or the anticipated needs of the patient after discharge.
35. "Specialty" means a specific branch of medicine practiced by a licensed individual who has obtained education or qualifications in the specific branch in addition to the education or qualifications required for the individual's license.
36. "Surgical services" means medical services involving a surgical procedure.
37. "Transfusion" means the introduction of blood or blood products from one individual into the body of another individual.
38. "Unit" means a designated area of an organized service.
39. "Vital record" has the same meaning as in A.R.S. § 36-301.
40. "Well-baby bassinet" means a receptacle used for holding a neonate who does not require treatment and whose anticipated discharge is within 96 hours after birth.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 4646, effective December 2, 2008 (Supp. 08-4). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-202. Supplemental Application, Notification, and Documentation Submission Requirements

A. In addition to the license application requirements in A.R.S. § 36-422 and Article 1 of this Chapter, an applicant for a hospital license shall include:
1. On the application the requested licensed capacity for the hospital, including:
    a. The number of inpatient beds for each organized service, not including well-baby bassinets; and
    b. If applicable, the number of inpatient beds for each multi-organized service unit;
2. On the application, if applicable, the requested licensed occupancy for providing behavioral health observation/stabilization services to:
    a. Individuals who are under 18 years of age, and
    b. Individuals 18 years of age and older; and
3. A list, in a Department-provided format, of medical staff specialties and subspecialties.

B. For a single group license authorized in A.R.S. § 36-422(F), in addition to the requirements in subsection (A), a governing authority applying for a license shall submit the following to the Department, in a Department-provided format, for each satellite facility under the single group license:
1. The name, address, e-mail address, and telephone number of the satellite facility;
2. The class or subclass of the satellite facility, according to R9-10-102;
3. The name and e-mail address of the administrator;
4. A list of services to be provided at the satellite facility; and
5. The hours of operation during which the satellite facility provides medical services, nursing services, behavioral health services, or health-related services.

C. For a single group license authorized in A.R.S. § 36-422(G), in addition to the requirements in subsection (A), a governing authority applying for a license shall submit the following to the Department in a Department-provided format for each accredited satellite facility under the single group license:
1. The name, address, e-mail address, and telephone number of the accredited satellite facility;
2. The class or subclass of the accredited satellite facility, according to R9-10-102;
3. The name and e-mail address of the administrator;
4. A list of services to be provided at the accredited satellite facility;
5. The hours of operation during which the accredited satellite facility provides medical services, nursing services, behavioral health services, or health-related services; and
6. A copy of the accredited satellite facility's current accreditation report.

D. A licensee with a single group license shall submit to the Department, with the relevant fees required in R9-10-106(D) and in a Department-provided format, the following, as applicable:

A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-207. Medical Staff

A. A governing authority shall ensure that:
1. The organized medical staff is directly accountable to the governing authority for the quality of care provided by a medical staff member to a patient in a hospital;
2. The medical staff bylaws and medical staff regulations are approved according to the medical staff bylaws and governing authority requirements;
3. A medical staff member complies with medical staff bylaws and medical staff regulations;
4. The medical staff of a general hospital or a special hospital includes at least two physicians who have clinical privileges to admit inpatients to the general hospital or special hospital;
5. The medical staff of a rural general hospital includes at least one physician who has clinical privileges to admit inpatients to the rural general hospital and one additional physician who serves on a committee according to subsection (A)(7)(c);
6. A medical staff member is available to direct patient care;
7. Medical staff bylaws or medical staff regulations are established, documented, and implemented for the process of:
   a. Conducting peer review according to A.R.S. Title 36, Chapter 4, Article 5;
   b. Appointing members to the medical staff, subject to approval by the governing authority;
   c. Establishing committees including identifying the purpose and organization of each committee;
   d. Appointing one or more medical staff members to a committee;
   e. Obtaining and documenting permission for an autopsy of a patient, performing an autopsy, and notifying, if applicable, the medical practitioner coordinating the patient's medical services when an autopsy is performed;
   f. Requiring that each inpatient has a medical practitioner who coordinates the inpatient's care;
   g. Defining the responsibilities of a medical staff member to provide medical services to the medical staff member's patient;
   h. Defining a medical staff member's responsibilities for the transport or transfer of a patient;
   i. Specifying requirements for oral, telephone, and electronic orders, including which orders require identification of the time of the order;
   j. Establishing a time-frame for a medical staff member to complete a patient's medical record;
   k. Establishing criteria for granting, denying, revoking, and suspending clinical privileges;
   l. Specifying pre-anesthesia and post-anesthesia responsibilities for medical staff members; and
   m. Approving the use of medication and devices under investigation by the U.S. Department of Health and Human Services, Food and Drug Administration including:
      i. Establishing criteria for patient selection;
      ii. Obtaining informed consent before administering the investigational medication or device; and
      iii. Documenting the administration of and, if applicable, the adverse reaction to an investigational medication or device; and
8. The organized medical staff reviews the medical staff bylaws and the medical staff regulations at least once every three years and updates the bylaws and regulations as needed.

B. An administrator shall ensure that:
1. A medical staff member provides evidence of freedom from infectious tuberculosis according to the requirements in R9-10-230(5);
2. A record for each medical staff member is established and maintained that includes:
   a. A completed application for clinical privileges;
   b. The dates and lengths of appointment and reappointment of clinical privileges;
   c. The specific clinical privileges granted to the medical staff member, including revision or revocation dates for each clinical privilege; and
   d. A verification of current Arizona health care professional active license according to A.R.S. Title 32; and
3. Except for documentation of peer review conducted according to A.R.S. § 36-445, a record under subsection (B)(2) is provided to the Department for review:
   a. As soon as possible, but not more than two hours after the time of the Department's request, if the individual is a current medical staff member; and
   b. Within 72 hours after the time of the Department's request if the individual is no longer a current medical staff member.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-208. Admission

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

Historical Note

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

effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Section R9-10-208 renumbered to R9-10-214; new Section R9-10-208 renumbered from R9-10-210 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-209. Discharge Planning; Discharge

A. For an inpatient, an administrator shall ensure that discharge planning:
1. Identifies the specific needs of the patient after discharge, if applicable;
2. Includes the participation of the patient or the patient's representative;
3. Is completed before discharge occurs;
4. Provides the patient or the patient's representative with written information identifying classes or subclasses of health care institutions and the level of care that the health care institutions provide that may meet the patient's assessed and anticipated needs after discharge, if applicable; and
5. Is documented in the patient's medical record.

B. For an inpatient discharge or a transfer of an inpatient, an administrator shall ensure that:
1. There is a discharge summary that includes:
   a. A description of the patient's medical condition and the medical services provided to the patient; and
   b. The signature of the medical practitioner coordinating the patient's medical services;
2. There is a documented discharge order for the patient by a medical practitioner coordinating the patient's medical services before discharge unless the patient leaves the hospital against a medical staff member's advice; and
3. If the patient is not being transferred:
   a. There are documented discharge instructions; and
   b. The patient or the patient's representative is provided with a copy of the discharge instructions.

C. Except as provided in subsection (D), an administrator shall ensure that an outpatient is discharged according to policies and procedures.

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

Historical Note

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

R9-10-210. Transport

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

B. For a transport of a patient to a receiving hospital, the administrator of the receiving hospital shall ensure that:
1. Policies and procedures are established, documented, and implemented that:
   a. Specify the process by which the receiving hospital personnel members coordinate the transport and the medical services provided to a patient to protect the health and safety of the patient;
   b. Require an assessment of the patient by a registered nurse or a medical staff member upon arrival of the patient and before the patient is returned to the sending health care institution unless the receiving facility is a satellite facility, as established in A.R.S. § 36-422, and does not have a registered nurse or a medical staff member at the satellite facility;
   c. Specify the information in the receiving hospital's patient medical record required to accompany the patient when the patient is returned to the sending health care institution, if applicable; and
   d. Specify how the receiving hospital personnel members communicate patient medical record information to the sending health care institution that is not provided at the time of the patient's return; and
2. Documentation in the patient's medical record includes:
   a. The date and time the patient arrived at the receiving hospital;
   b. The medical services provided to the patient at the receiving hospital;

Statutory Authority

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

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

1. Protect the health of the people of the state.

2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.

3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.

4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.

5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.

7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

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

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

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

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties

conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. 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.

36-405. Powers and duties of the director

A. The director shall adopt rules to establish minimum standards and requirements for the construction, modification and licensure of health care institutions necessary to ensure the public health, safety and welfare. The standards and requirements shall relate to the construction, equipment, sanitation, staffing for medical, nursing and personal care services, and recordkeeping pertaining to the administration of medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. The director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or those adopted by any recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

1. Classify and subclassify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care and standard of patient care required for the purposes of licensure. Classes of health care institutions may include hospitals, infirmaries, outpatient treatment centers, health screening services centers and residential care facilities. Whenever the director reasonably deems distinctions in rules and standards to be appropriate among different classes or subclasses of health care institutions, the director may make such distinctions.

2. Prescribe standards for determining a health care institution's substantial compliance with licensure requirements.

3. Prescribe the criteria for the licensure inspection process.

4. Prescribe standards for the selection of health care-related demonstration projects.

5. Establish nonrefundable application and licensing fees for health care institutions, including a grace period and a fee for the late payment of licensing fees, and fees for architectural plans and specifications reviews.

6. Establish a process for the department to notify a licensee of the licensee's licensing fee due date.

7. Establish a process for a licensee to request a different licensing fee due date, including any limits on the number of requests by the licensee.

C. The director, by rule, shall adopt licensing provisions that facilitate the colocation and integration of outpatient treatment centers that provide medical, nursing and health-related services with behavioral health services consistent with article 3.1 of this chapter.

D. Ninety percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

E. Subsection B, paragraph 5 of this section does not apply to a health care institution operated by a state agency pursuant to state or federal law or to adult foster care residential settings.

36-406. Powers and duties of the department

In addition to its other powers and duties:

1. The department shall:

(a) Administer and enforce this chapter and the rules, regulations and standards adopted pursuant thereto.

(b) Review, and may approve, plans and specifications for construction or modification or additions to health care institutions regulated by this chapter.

(c) Have access to books, records, accounts and any other information of any health care institution reasonably necessary for the purposes of this chapter.

(d) Require as a condition of licensure that nursing care institutions and assisted living facilities make vaccinations for influenza and pneumonia available to residents on site on a yearly basis. The department shall prescribe the manner by which the institutions and facilities shall document compliance with this subdivision, including documenting residents who refuse to be immunized. The department shall not impose a violation on a licensee for not making a vaccination available if there is a shortage of that vaccination in this state as determined by the director.

2. The department may:

(a) Make or cause to be made inspections consistent with standard medical practice of every part of the premises of health care institutions which are subject to the provisions of this chapter as well as those which apply for or hold a license required by this chapter.

(b) Make studies and investigations of conditions and problems in health care institutions, or any class or subclass thereof, as they relate to compliance with this chapter and rules, regulations and standards adopted pursuant thereto.

(c) Develop manuals and guides relating to any of the several aspects of physical facilities and operations of health care institutions or any class or subclass thereof for distribution to the governing authorities of health care institutions and to the general public.

Cited Definitions

32-1601. Definitions

In this chapter, unless the context otherwise requires:

1. "Absolute discharge from the sentence" means completion of any sentence, including imprisonment, probation, parole, community supervision or any form of court supervision.

2. "Appropriate health care professional" means a licensed health care professional whose scope of practice, education, experience, training and accreditation are appropriate for the situation or condition of the patient who is the subject of a consultation or referral.

3. "Approval" means that a regulated training or educational program to prepare persons for licensure, certification or registration has met standards established by the board.

4. "Board" means the Arizona state board of nursing.

5. "Certified nurse midwife" means a registered nurse who:

(a) Is certified by the board.

(b) Has completed a nurse midwife education program approved or recognized by the board and educational requirements prescribed by the board by rule.

(c) Holds a national certification as a certified nurse midwife from a national certifying body recognized by the board.

(d) Has an expanded scope of practice in the provision of health care services for women from adolescence to beyond menopause, including antepartum, intrapartum, postpartum, reproductive, gynecologic and primary care, for normal newborns during the first twenty-eight days of life and for men for the treatment of sexually transmitted diseases. The expanded scope of practice under this subdivision includes:

(i) Assessing patients, synthesizing and analyzing data and understanding and applying principles of health care at an advanced level.

(ii) Managing the physical and psychosocial health care of patients.

(iii) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem and selecting, implementing and evaluating appropriate treatment.

(iv) Making independent decisions in solving complex patient care problems.

(v) Diagnosing, performing diagnostic and therapeutic procedures and prescribing, administering and dispensing therapeutic measures, including legend drugs, medical devices and controlled substances, within the scope of the certified nurse midwife practice after meeting requirements established by the board.

(vi) Recognizing the limits of the nurse's knowledge and experience by consulting with or referring patients to other appropriate health care professionals if a situation or condition occurs that is beyond the knowledge and experience of the nurse or if the referral will protect the health and welfare of the patient.

(vii) Delegating to a medical assistant pursuant to section 32-1456.

(viii) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a certified nurse midwife.

6. "Certified nursing assistant" means a person who is registered on the registry of nursing assistants pursuant to this chapter to provide or assist in the delivery of nursing or nursing-related services under the supervision and direction of a licensed nursing staff member. Certified nursing assistant does not include a person who:

(a) Is a licensed health care professional.

(b) Volunteers to provide nursing assistant services without monetary compensation.

(c) Is a licensed nursing assistant.

7. "Certified registered nurse" means a registered nurse who has been certified by a national nursing credentialing agency recognized by the board.

8. "Certified registered nurse anesthetist" means a registered nurse who meets the requirements of section 32-1634.03 and who practices pursuant to the requirements of section 32-1634.04.

9. "Clinical nurse specialist" means a registered nurse who:

(a) Is certified by the board as a clinical nurse specialist.

(b) Holds a graduate degree with a major in nursing and completes educational requirements as prescribed by the board by rule.

(c) Is nationally certified as a clinical nurse specialist or, if certification is not available, provides proof of competence to the board.

(d) Has an expanded scope of practice based on advanced education in a clinical nursing specialty that includes:

(i) Assessing clients, synthesizing and analyzing data and understanding and applying nursing principles at an advanced level.

(ii) Managing directly and indirectly a client's physical and psychosocial health status.

(iii) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem and selecting appropriate nursing interventions.

(iv) Developing, planning and guiding programs of care for populations of patients.

(v) Making independent nursing decisions to solve complex client care problems.

(vi) Using research skills and acquiring and applying critical new knowledge and technologies to nursing practice.

(vii) Prescribing and dispensing durable medical equipment.

(viii) Consulting with or referring a client to other health care providers based on assessment of the client's health status and needs.

(ix) Facilitating collaboration with other disciplines to attain the desired client outcome across the continuum of care.

(x) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a clinical nurse specialist.

(xi) Prescribing, ordering and dispensing pharmacological agents subject to the requirements and limits specified in section 32-1651.

10. "Conditional license" or "conditional approval" means a license or approval that specifies the conditions under which the regulated party is allowed to practice or to operate and that is prescribed by the board pursuant to section 32-1644 or 32-1663.

11. "Delegation" means transferring to a competent individual the authority to perform a selected nursing task in a designated situation in which the nurse making the delegation retains accountability for the delegation.

12. "Disciplinary action" means a regulatory sanction of a license, certificate or approval pursuant to this chapter in any combination of the following:

(a) A civil penalty for each violation of this chapter, not to exceed $1,000 for each violation.

(b) Restitution made to an aggrieved party.

(c) A decree of censure.

(d) A conditional license or a conditional approval that fixed a period and terms of probation.

(e) Limited licensure.

(f) Suspension of a license, a certificate or an approval.

(g) Voluntary surrender of a license, a certificate or an approval.

(h) Revocation of a license, a certificate or an approval.

13. "Health care institution" has the same meaning prescribed in section 36-401.

14. "Licensed nursing assistant" means a person who is licensed pursuant to this chapter to provide or assist in the delivery of nursing or nursing-related services under the supervision and direction of a licensed nursing staff member. Licensed nursing assistant does not include a person who:

(a) Is a licensed health care professional.

(b) Volunteers to provide nursing assistant services without monetary compensation.

(c) Is a certified nursing assistant.

15. "Licensee" means a person who is licensed pursuant to this chapter or in a party state as defined in section 32-1668.

16. "Limited license" means a license that restricts the scope or setting of a licensee's practice.

17. "Medication order" means a written or verbal communication given by a certified registered nurse anesthetist to a health care professional to administer a drug or medication, including controlled substances.

18. "Practical nurse" means a person who holds a practical nurse license issued pursuant to this chapter or pursuant to a multistate compact privilege and who practices practical nursing as defined in this section.

19. "Practical nursing" includes the following activities that are performed under the supervision of a physician or a registered nurse:

(a) Contributing to the assessment of the health status of individuals and groups.

(b) Participating in the development and modification of the strategy of care.

(c) Implementing aspects of the strategy of care within the nurse's scope of practice.

(d) Maintaining safe and effective nursing care that is rendered directly or indirectly.

(e) Participating in the evaluation of responses to interventions.

(f) Delegating nursing activities within the scope of practice of a practical nurse.

(g) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a practical nurse.

20. "Presence" means within the same health care institution or office as specified in section 32-1634.04, subsection A, and available as necessary.

21. "Registered nurse" or "professional nurse" means a person who practices registered nursing and who holds a registered nurse license issued pursuant to this chapter or pursuant to a multistate compact privilege.

22. "Registered nurse practitioner" means a registered nurse who:

(a) Is certified by the board.

(b) Has completed a nurse practitioner education program approved or recognized by the board and educational requirements prescribed by the board by rule.

(c) If applying for certification after July 1, 2004, holds national certification as a nurse practitioner from a national certifying body recognized by the board.

(d) Has an expanded scope of practice within a specialty area that includes:

(i) Assessing clients, synthesizing and analyzing data and understanding and applying principles of health care at an advanced level.

(ii) Managing the physical and psychosocial health status of patients.

(iii) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem and selecting, implementing and evaluating appropriate treatment.

(iv) Making independent decisions in solving complex patient care problems.

(v) Diagnosing, performing diagnostic and therapeutic procedures, and prescribing, administering and dispensing therapeutic measures, including legend drugs, medical devices and controlled substances within the scope of registered nurse practitioner practice on meeting the requirements established by the board.

(vi) Recognizing the limits of the nurse's knowledge and experience by consulting with or referring patients to other appropriate health care professionals if a situation or condition occurs that is beyond the knowledge and experience of the nurse or if the referral will protect the health and welfare of the patient.

(vii) Delegating to a medical assistant pursuant to section 32-1456.

(viii) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a nurse practitioner.

23. "Registered nursing" includes the following:

(a) Diagnosing and treating human responses to actual or potential health problems.

(b) Assisting individuals and groups to maintain or attain optimal health by implementing a strategy of care to accomplish defined goals and evaluating responses to care and treatment.

(c) Assessing the health status of individuals and groups.

(d) Establishing a nursing diagnosis.

(e) Establishing goals to meet identified health care needs.

(f) Prescribing nursing interventions to implement a strategy of care.

(g) Delegating nursing interventions to others who are qualified to do so.

(h) Providing for the maintenance of safe and effective nursing care that is rendered directly or indirectly.

(i) Evaluating responses to interventions.

(j) Teaching nursing knowledge and skills.

(k) Managing and supervising the practice of nursing.

(l) Consulting and coordinating with other health care professionals in the management of health care.

(m) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a registered nurse.

24. "Registry of nursing assistants" means the nursing assistants registry maintained by the board pursuant to the omnibus budget reconciliation act of 1987 (P.L. 100-203; 101 Stat. 1330), as amended by the medicare catastrophic coverage act of 1988 (P.L. 100-360; 102 Stat. 683).

25. "Regulated party" means any person or entity that is licensed, certified, registered, recognized or approved pursuant to this chapter.

26. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

(a) Committing fraud or deceit in obtaining, attempting to obtain or renewing a license or a certificate issued pursuant to this chapter.

(b) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(c) Aiding or abetting in a criminal abortion or attempting, agreeing or offering to procure or assist in a criminal abortion.

(d) Any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public.

(e) Being mentally incompetent or physically unsafe to a degree that is or might be harmful or dangerous to the health of a patient or the public.

(f) Having a license, certificate, permit or registration to practice a health care profession denied, suspended, conditioned, limited or revoked in another jurisdiction and not reinstated by that jurisdiction.

(g) Wilfully or repeatedly violating a provision of this chapter or a rule adopted pursuant to this chapter.

(h) Committing an act that deceives, defrauds or harms the public.

(i) Failing to comply with a stipulated agreement, consent agreement or board order.

(j) Violating this chapter or a rule that is adopted by the board pursuant to this chapter.

(k) Failing to report to the board any evidence that a registered or practical nurse or a nursing assistant is or may be:

(i) Incompetent to practice.

(ii) Guilty of unprofessional conduct.

(iii) Mentally or physically unable to safely practice nursing or to perform nursing-related duties. A nurse who is providing therapeutic counseling for a nurse who is in a drug rehabilitation program is required to report that nurse only if the nurse providing therapeutic counseling has personal knowledge that patient safety is being jeopardized.

(l) Failing to self-report a conviction for a felony or undesignated offense within ten days after the conviction.

(m) Cheating or assisting another to cheat on a licensure or certification examination.

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.

36-301. Definitions

In this chapter, unless the context otherwise requires:

1. "Administrative order" means a written decision issued by an administrative law judge or quasi-judicial entity.

2. "Amend" means to make a change, other than a correction, to a registered certificate by adding, deleting or substituting information on that certificate.

3. "Birth" or "live birth" means the complete expulsion or extraction of a product of human conception from its mother, irrespective of the duration of the pregnancy, that shows evidence of life, with or without a cut umbilical cord or an attached placenta, such as breathing, heartbeat, umbilical cord pulsation or definite voluntary muscle movement after expulsion or extraction of the product of human conception.

4. "Certificate" means a record that documents a birth or death.

5. "Certified copy" means a written reproduction of a registered certificate that a local registrar, a deputy local registrar or the state registrar has authenticated as a true and exact written reproduction of a registered certificate.

6. "Correction" means a change made to a registered certificate because of a typographical error, including misspelling and missing or transposed letters or numbers.

7. "Court order" means a written decision issued by:

(a) The superior court, an appellate court or the supreme court or an equivalent court in another state.

(b) A commissioner or judicial hearing officer of the superior court.

(c) A judge of a tribal court in this state.

8. "Current care" means that a health care provider has examined, treated or provided care for a person for a chronic or acute condition within eighteen months preceding that person's death. Current care does not

include services provided in connection with a single event of emergency or urgent care. For the purposes of this paragraph, "treated" includes prescribing medication.

9. "Custody" means legal authority to act on behalf of a child.

10. "Department" means the department of health services.

11. "Electronic" means technology that has electrical, digital, magnetic, wireless, optical or electromagnetic capabilities or technology with similar capabilities.

12. "Evidentiary document" means written information used to prove the fact for which it is presented.

13. "Family member" means:

(a) A person's spouse, natural or adopted offspring, father, mother, grandparent, grandchild to any degree, brother, sister, aunt, uncle or first or second cousin.

(b) The natural or adopted offspring, father, mother, grandparent, grandchild to any degree, brother, sister, aunt, uncle or first or second cousin of the person's spouse.

14. "Fetal death" means the cessation of life before the complete expulsion or extraction of a product of human conception from its mother that is evidenced by the absence of breathing, heartbeat, umbilical cord pulsation or definite voluntary muscle movement after expulsion or extraction.

15. "Final disposition" means the interment, cremation, removal from this state or other disposition of human remains.

16. "Foundling" means:

(a) A newborn infant left with a safe haven provider pursuant to section 13-3623.01.

(b) A child whose father and mother cannot be determined.

17. "Funeral establishment" has the same meaning prescribed in section 32-1301.

18. "Health care institution" has the same meaning prescribed in section 36-401.

19. "Health care provider" means:

(a) A physician licensed pursuant to title 32, chapter 13 or 17.

(b) A doctor of naturopathic medicine licensed pursuant to title 32, chapter 14.

(c) A midwife licensed pursuant to chapter 6, article 7 of this title.

(d) A nurse midwife certified pursuant to title 32, chapter 15.

(e) A nurse practitioner licensed and certified pursuant to title 32, chapter 15.

(f) A physician assistant licensed pursuant to title 32, chapter 25.

(g) A health care provider who is licensed or certified by another state or jurisdiction of the United States and who works in a federal health care facility.

20. "Human remains" means a lifeless human body or parts of a human body that permit a reasonable inference that death occurred.

21. "Issue" means:

(a) To provide a copy of a registered certificate.

(b) An action taken by a court of competent jurisdiction, administrative law judge or quasi-judicial entity.

22. "Legal age" means a person who is at least eighteen years of age or who is emancipated by a court order.

23. "Medical certification of death" means the opinion of the health care provider who signs the certificate of probable or presumed cause of death that complies with rules adopted by the state registrar of vital records and that is based on any of the following that are reasonably available:

(a) Personal examination.

(b) Medical history.

(c) Medical records.

(d) Other reasonable forms of evidence.

24. "Medical examiner" means a medical examiner or alternate medical examiner as defined in section 11-591.

25. "Name" means a designation that identifies a person, including a first name, middle name, last name or suffix.

26. "Natural causes" means those causes that are due solely or nearly entirely to disease or the aging process.

27. "Presumptive death" means a determination by a court that a death has occurred or is presumed to have occurred but the human remains have not been located or recovered.

28. "Register" means to assign an official state number and to incorporate into the state registrar's official records.

29. "Responsible person" means a person listed in section 36-831.

30. "Seal" means to bar from access.

31. "Submit" means to present, physically or electronically, a certificate, evidentiary document or form provided for in this chapter to a local registrar, a deputy local registrar or the state registrar.

32. "System of public health statistics" means the processes and procedures for:

(a) Tabulating, analyzing and publishing public health information derived from vital records data and other sources authorized pursuant to section 36-125.05 or section 36-132, subsection A, paragraph 3.

(b) Performing other activities related to public health information.

33. "System of vital records" means the statewide processes and procedures for:

(a) Electronically or physically collecting, creating, registering, maintaining, copying and preserving vital records.

(b) Preparing and issuing certified and noncertified copies of vital records.

(c) Performing other activities related to vital records.

34. "Vital record" means a registered birth certificate or a registered death certificate.

36-2201. Definitions

In this chapter, unless the context otherwise requires:

1. "Administrative medical direction" means supervision of emergency medical care technicians by a base hospital medical director, administrative medical director or basic life support medical director. For the purposes of this paragraph, "administrative medical director" means a physician who is licensed pursuant to title 32, chapter 13 or 17 and who provides direction within the emergency medical services and trauma system.

2. "Advanced emergency medical technician" means a person who has been trained in an advanced emergency medical technician program certified by the director or in an equivalent training program and who is certified by the director to render services pursuant to section 36-2205.

3. "Advanced life support" means the level of assessment and care identified in the scope of practice approved by the director for the advanced emergency medical technician, emergency medical technician I-99 and paramedic.

4. "Advanced life support base hospital" means a health care institution that offers general medical and surgical services, that is certified by the director as an advanced life support base hospital and that is affiliated by written agreement with a licensed ambulance service, municipal rescue service, fire department, fire

district or health services district for medical direction, evaluation and control of emergency medical care technicians.

5. "Ambulance" means any publicly or privately owned surface, water or air vehicle, including a helicopter, that contains a stretcher and necessary medical equipment and supplies pursuant to section 36-2202 and that is especially designed and constructed or modified and equipped to be used, maintained or operated primarily for the transportation of individuals who are sick, injured or wounded or who require medical monitoring or aid. Ambulance does not include a surface vehicle that is owned and operated by a private sole proprietor, partnership, private corporation or municipal corporation for the emergency transportation and in-transit care of its employees or a vehicle that is operated to accommodate an incapacitated person or person with a disability who does not require medical monitoring, care or treatment during transport and that is not advertised as having medical equipment and supplies or ambulance attendants.

6. "Ambulance attendant" means any of the following:

(a) An emergency medical technician, an advanced emergency medical technician, an emergency medical technician I-99 or a paramedic whose primary responsibility is the care of patients in an ambulance and who meets the standards and criteria adopted pursuant to section 36-2204.

(b) An emergency medical responder who is employed by an ambulance service operating under section 36-2202 and whose primary responsibility is the driving of an ambulance.

(c) A physician who is licensed pursuant to title 32, chapter 13 or 17.

(d) A professional nurse who is licensed pursuant to title 32, chapter 15 and who meets the state board of nursing criteria to care for patients in the prehospital care system.

(e) A professional nurse who is licensed pursuant to title 32, chapter 15 and whose primary responsibility is the care of patients in an ambulance during an interfacility transport.

7. "Ambulance service" means a person who owns and operates one or more ambulances.

8. "Basic life support" means the level of assessment and care identified in the scope of practice approved by the director for the emergency medical responder and emergency medical technician.

9. "Bureau" means the bureau of emergency medical services and trauma system in the department.

10. "Centralized medical direction communications center" means a facility that is housed within a hospital, medical center or trauma center or a freestanding communication center that meets the following criteria:

(a) Has the ability to communicate with ambulance services and emergency medical services providers rendering patient care outside of the hospital setting via radio and telephone.

(b) Is staffed twenty-four hours a day seven days a week by at least a physician licensed pursuant to title 32, chapter 13 or 17.

11. "Certificate of necessity" means a certificate that is issued to an ambulance service by the department and that describes the following:

(a) Service area.

(b) Level of service.

(c) Type of service.

(d) Hours of operation.

(e) Effective date.

(f) Expiration date.

(g) Legal name and address of the ambulance service.

(h) Any limiting or special provisions the director prescribes.

12. "Council" means the emergency medical services council.

13. "Department" means the department of health services.

14. "Director" means the director of the department of health services.

15. "Emergency medical care technician" means an individual who has been certified by the department as an emergency medical technician, an advanced emergency medical technician, an emergency medical technician I-99 or a paramedic.

16. "Emergency medical responder" as an ambulance attendant means a person who has been trained in an emergency medical responder program certified by the director or in an equivalent training program and who is certified by the director to render services pursuant to section 36-2205.

17. "Emergency medical services" means those services required following an accident or an emergency medical situation:

(a) For on-site emergency medical care.

(b) For the transportation of the sick or injured by a licensed ground or air ambulance.

(c) In the use of emergency communications media.

(d) In the use of emergency receiving facilities.

(e) In administering initial care and preliminary treatment procedures by emergency medical care technicians.

18. "Emergency medical services provider" means any governmental entity, quasi-governmental entity or corporation whether public or private that renders emergency medical services in this state.

19. "Emergency medical technician" means a person who has been trained in an emergency medical technician program certified by the director or in an equivalent training program and who is certified by the director as qualified to render services pursuant to section 36-2205.

20. "Emergency receiving facility" means a licensed health care institution that offers emergency medical services, is staffed twenty-four hours a day and has a physician on call.

21. "Fit and proper" means that the director determines that an applicant for a certificate of necessity or a certificate holder has the expertise, integrity, fiscal competence and resources to provide ambulance service in the service area.

22. "Medical record" means any patient record, including clinical records, prehospital care records, medical reports, laboratory reports and statements, any file, film, record or report or oral statements relating to diagnostic findings, treatment or outcome of patients, whether written, electronic or recorded, and any information from which a patient or the patient's family might be identified.

23. "National certification organization" means a national organization that tests and certifies the ability of an emergency medical care technician and whose tests are based on national education standards.

24. "National education standards" means the emergency medical services education standards of the United States department of transportation or other similar emergency medical services education standards developed by that department or its successor agency.

25. "Paramedic" means a person who has been trained in a paramedic program certified by the director or in an equivalent training program and who is certified by the director to render services pursuant to section 36-2205.

26. "Physician" means any person licensed pursuant to title 32, chapter 13 or 17.

27. "Stretcher van" means a vehicle that contains a stretcher and that is operated to accommodate an incapacitated person or person with a disability who does not require medical monitoring, aid, care or treatment during transport.

28. "Suboperation station" means a physical facility or location at which an ambulance service conducts operations for the dispatch of ambulances and personnel and that may be staffed twenty-four hours a day or less as determined by system use.

29. "Trauma center" means any acute care hospital that provides in-house twenty-four hour daily dedicated trauma surgical services that is designated pursuant to section 36-2225.

30. "Trauma registry" means data collected by the department on trauma patients and on the incidence, causes, severity, outcomes and operation of a trauma system and its components.

31. "Trauma system" means an integrated and organized arrangement of health care resources having the specific capability to perform triage, transport and provide care.

32. "Validated testing procedure" means a testing procedure that is inclusive of practical skills, or an attestation of practical skills proficiency on a form developed by the department by the educational training program, identified pursuant to section 36-2204, paragraph 2, that is certified as valid by an organization capable of determining testing procedure and testing content validity and that is recommended by the medical direction commission and the emergency medical services council before the director's approval.

33. "Wheelchair van" means a vehicle that contains or that is designed and constructed or modified to contain a wheelchair and that is operated to accommodate an incapacitated person or person with a disability who does not require medical monitoring, aid, care or treatment during transport.

NOTE: ***This rulemaking was previously considered at the September 1, 2020 Council Meeting, where the Council voted to table consideration of the rulemaking to the September 29, 2020 Study Session and October 6, 2020 Council Meeting. The final materials that follow are the same as were provided to the Council Members at the August 25, 2020 Study Session and September 1, 2020 Council Meeting.***

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 7, Article 13, License and Registration Fees

Amend: R9-7-1302, R9-7-1303, R9-7-1304, R9-7-1306

Repeal: R9-7-1307, Table 1

New Section: Table 13.1, Table 13.2

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: September 1, 2020

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

FROM: Council Staff

DATE: **August 10, 2020**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES (R20-0905)**
Title 9, Chapter 7, Article 13, License and Registration Fees

Amend: R9-7-1302, R9-7-1303, R9-7-1304, R9-7-1306

Repeal: R9-7-1307, Table 1

New Section: Table 13.1, Table 13.2

Summary:

This regular rulemaking from the Department of Health Services (Department) relates to rules in Title 9, Chapter 7, Article 13, regarding license and registration fees for radiation control. In this rulemaking, the Department seeks to increase the fees it charges in connection with its responsibility over the control of ionizing and non-ionizing radiation. The Department assumed responsibility for regulating the use of ionizing and non-ionizing radiation pursuant to recent statutory changes (Laws 2017, Ch. 313, and Laws 2018, Ch. 234). Since assuming this responsibility, the Department discovered that the existing fees are insufficient to cover the Department's cost in carrying out this function.

The Department received an exemption from the rulemaking moratorium on April 4, 2019 to conduct this rulemaking to increase the fees and make other changes to the rules to clarify requirements.

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?**

Yes. In this rulemaking, the Department proposes to increase fees.

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 Department states that it did not review or rely on any study in conducting this rulemaking. However, the Department states that it did review the fees that the U.S. Nuclear Regulatory Commission and other states charge, according to their respective websites.

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

As of December 31, 2019 the Department issued 353 licenses to persons who use, store, or dispose of source of radiation and 7,812 registrations to entities with a total of 20,982 devices that are sources of radiation, for a total of 8,165 licenses or registrations issued. Under the fees in the current rules, the Department receives revenue of approximately $1,700,000.

The Department assumed responsibility for the control of ionizing radiation and regulation over those using, storing, or disposing of sources of radiation in 2017. Since then, the Department's expenses have consistently exceeded the revenue received. The fee increases proposed in this rulemaking are projected to generate nearly $4,000,000 in revenue, which the Department says would be sufficient to cover the shortfall and allow the Department to continue to protect public health.

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's current revenue shortfall requires it to either increase fees or reduce regulatory activities. Such reduction in regulatory activity could include not inspecting facilities or investigating complaints in a timely manner, not being able to detect unsafe environmental conditions, and taking much more time to resolve problems with applications and to issue licenses or registrations. The Department believes this reduction in regulatory oversight may result in harm to the health and safety of the public, as well as causing a burden on the regulated community, businesses that contract with regulated entities, employees of a regulated entity or a business contracting with a regulated entity, patients and their families, and the general public. The fees specified in the new rules

would be sufficient to cover the shortfall and allow the Department to continue to protect public health. They are also in line with the fees charged in other states.

The Department determined that there are no less intrusive or less costly alternatives for achieving the purpose of the rule.

6. What are the economic impacts on stakeholders?

The Department identifies stakeholders as the Department; licensees or registrants who use, store, or dispose of sources of radiation; businesses that contract with licensees or registrants to perform activities covered under the rules in Chapter 7; employees of licensees or registrants or entities that contract with licensees or registrants; patients and their families; and the general public.

The Department believes that the increase in licensing costs caused by the new fees may result in a licensee incurring a minimal-to-substantial burden, depending on the type of license or licenses the licensee receives. The Department anticipates that one hospital with 85 registered X-ray machines may incur a substantial burden from the increase of the registration fee from $125 to $200 per device. Fewer than 40 registrants are expected to incur a moderate burden from the increased fees, while the Department believes that all registrants would incur a minimal burden from the fee increases in the new rules. The Department expects licensees and registrants to receive a significant benefit from improvements in the data system to be used for receiving and processing applications and communicating with licensees and registrants and from increased number of well-trained surveyors, which may result in shorter processing times for applications and amendments, as well as improved communication and answers to questions.

Businesses that contract with licensees or registrants to perform activities covered under these rules may incur up to a moderate increase in contracting costs if a licensee or registrant passes along a portion of the fee increase to a business with which it contracts. However, because the fee increases will allow the Department to continue to provide adequate oversight of sources of radiation in Arizona, the Department believes that these businesses may also receive a significant benefit from the oversight in ensuring the safe use of sources of radiation.

The Department anticipates that employees of a licensee or registrant or an entity may receive a significant benefit from the new rules due to the continued oversight in ensuring the safe uses of sources of radiation and providing safer work environments.

Patients who receive diagnostic or therapeutic procedures at facilities licensed pursuant to the rules may also receive a significant benefit from increased safety due to the Department's continued oversight. If a facility passes any increased costs on to patients, these patients could incur a minimal burden from the increased fees

The Department believes that the health and safety of the general public are protected by continued oversight by the Department of ionizing or non-ionizing radiation, and that the general public may receive a significant benefit from the fee changes.

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

The Department states that it made minor technical changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking, as described in Item 10 of the Preamble. Upon review, Council staff agrees. These changes do not result in rules that are "substantially different" under 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 two written comments on this rulemaking. The first comment was from the Health System Alliance of Arizona (HSAA) in opposition to the proposed fee increases. The second comment was from the Arizona Hospital and Healthcare Association (AzHHA) also in opposition to the proposed fee increases. The Department adequately responded to both comments. Copies of the comments received are included for the Council's review.

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

Under A.R.S. Title 30, Chapter 4, Article 2, as amended by Laws 2017, Ch. 313, the Department is authorized to issue licenses and registrations for sources of ionizing radiation and those persons using these sources. As the Department indicates, the rules refer to both general and specific permits. The general permits are for certain levels of radioactive material and the specific permits are issued by rule for quantities and uses that are specific to the user and their training or scope of practice.

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 Department states that the only corresponding federal law is 10 CFR 170. The Department states that the rules are not more stringent than corresponding federal law.

11. Conclusion

In this regular rulemaking, the Department seeks to increase the fees it charges in connection with its role in regulating the use of ionizing and non-ionizing radiation. It proposes to increase the fees to address a revenue shortfall that it discovered upon assuming responsibility for these rules pursuant to recent statutory changes. Council staff finds that the Department's justification is adequate and that the Department submitted a

thorough Economic, Small Business, and Consumer Impact Statement (EIS). The Department is requesting a standard 60-day delayed effective date for this rulemaking. Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

July 20, 2020

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 7, Article 13, Regular Rulemaking

Dear Ms. Sornsin:

1. The close of record date: July 13, 2020

2. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 7, Article 13, does not relate to a five-year-review report.

3. Whether the rulemaking establishes a new fee and, if so, the statute authorizing the fee:
The rulemaking does not establish a new fee.

4. Whether the rulemaking contains a fee increase:
The rulemaking does contain a fee increase.

5. Whether an immediate effective date is requested pursuant to A.R.S. 41-1032:
No, the Department is requesting the normal 60-day delay after approval for the effective date for the rules.

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

The Department certifies that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.

The following documents are enclosed:

a. Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of the rule;

b. An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055; and
c. General and specific statutes authorizing the rules.

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

Sincerely,

Robert Lane
Director's Designee

RL:rms

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 7. DEPARTMENT OF HEALTH SERVICES

RADIATION CONTROL

PREAMBLE

1.	Article, Part, or Section Affected (as applicable)	Rulemaking Action
	R9-7-1302	Amend
	R9-7-1303	Amend
	R9-7-1304	Amend
	R9-7-1306	Amend
	Table 13.1	New Section
	R9-7-1307	Repeal
	Table 1	Repeal
	Table 13.2	New Section

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

Authorizing Statutes: A.R.S. §§ 30-654(B)(5) and 36-136(G)

Implementing Statutes: A.R.S. §§ 30-654, 30-656, 30-671, 30-672, 30-686, and 30-721

3. The effective date of the rules:

The Arizona Department of Health Services (Department) requests an effective date at the normal 60 days after approval.

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

Notice of Rulemaking Docket Opening: 26 A.A.R. 762, April 24, 2020

Notice of Proposed Rulemaking: 26 A.A.R. 1157, June 12, 2020

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

Name: Brian D. Goretzki, Chief, Bureau of Radiation Control

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E-mail: Brian.Goretzki@azdhs.gov
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Name: Robert Lane, Office Chief
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Office of Administrative Counsel and Rules
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6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

Arizona Revised Statutes (A.R.S.) § 30-654(B)(5) requires rulemaking deemed necessary to administer A.R.S. Title 30, Chapter 4, Control of Ionizing Radiation. Laws 2017, Ch. 313, and Laws 2018, Ch. 234, made the Arizona Department of Health Services (Department) responsible for administering A.R.S. Title 30, Chapter 4, and specified the duties and authority of the Department. To clarify that the Department had assumed responsibility for regulating the use and users of ionizing and non-ionizing radiation, the Department recodified the rules related to radiation control that had been in Arizona Administrative Code (A.A.C.) Title12, Chapter 1, into A.A.C. Title 36, Chapter 7, only making changes to refer to the Department or for cross-references. However, upon assuming responsibility for the control of ionizing and non-ionizing radiation, the Department discovered that the fees specified in the rules were insufficient to cover the expenses incurred by the Department in carrying out this function. Therefore, after receiving an exception from the rulemaking moratorium established by Executive Order 2018-02, the Department is now revising the rules in 9 A.A.C. 7, Article 13, to increase fees to cover the short-fall and making other corresponding changes to the rules to clarify requirements. The Department anticipates these changes will ensure sufficient funding for the Department to continue regulating the use and users of ionizing radiation in an efficient manner to protect the health and safety of Arizona's citizens. The new rules will conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

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

The Department did not review or rely on any study for this rulemaking. However, the Department did review the fees charged by the U.S. Nuclear Regulatory Commission and by other states, as shown on their websites.

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

The Department anticipates that the rulemaking, which is increasing fees that have remained the same for over 10 years, may affect the Department; licensees or registrants who use, store, or dispose of sources of radiation; businesses that contract with licensees or registrants to perform activities covered under the rules in Chapter 7; employees of licensees or registrants or entities that contract with licensees or registrants; patients and their families; and the general public. Annual costs/revenues changes are designated as minimal when more than $0 and $2,000 or less, moderate when between $2,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification.

As of December 31, 2019, the Department has issued 353 licenses to persons who use, store, or dispose of sources of radiation and 7,812 registrations to entities with a total of 20,982 devices that are sources of radiation, for a total of 8,165 licenses or registrations issued. Under the fees in the current rules, the Department receives revenue of approximately $1,700,000. Of this amount, $300,000 is deposited into the state general fund according to A.R.S. § 30-654(C). Of the remaining $1,400,000, 90% (about $1,260,000) is deposited into the health services licensing fund, established according to A.R.S. § 36-414, for use by the Department, and another 10% (about $140,000) into the state general fund according to A.R.S. § 30-654(C).

Since assuming responsibility for the control of ionizing radiation and regulation over those using, storing, or disposing of sources of radiation in 2017, the Department's expenses have consistently been more than the revenue received, and this shortfall has reached the point where the Department has to increase fees or reduce regulatory activities. Such reduction in regulatory activity could include not inspecting facilities or investigating complaints in a timely manner, not being able to detect unsafe environmental conditions, and taking much more time to resolve problems with applications and to issue licenses or registrations. The Department believes this reduction in regulatory oversight may result in harm to the health and safety of the public, as well as causing a burden on the regulated community, businesses that contract with regulated entities,

employees of a regulated entity or a business contracting with a regulated entity, patients and their families, and the general public. The fees specified in the new rules would be sufficient to cover the shortfall and allow the Department to continue to protect public health. They are also in line with the fees charged by other states. Therefore, the Department would receive a substantial benefit from the fee increase.

The Department licenses a wide variety of entities, including industrial businesses, academic institutions, medical/veterinary facilities, laboratories, and governmental entities, and these may range from a large national or international corporation to a small company. The Department believes that the increase in licensing costs caused by the new fees may result in a licensee incurring a minimal-to-substantial burden, depending on the type of license or licenses the licensee receives. The Department issues registrations to entities that use devices that are sources of radiation, including X-ray devices, particle accelerators, tanning devices, class 3b or class 4 lasers, or radiofrequency devices. Some fees are based on the type of facility, while others are based on the number of devices. The Department anticipates that one hospital with 85 registered X-ray machines may incur a substantial burden from the increase of the registration fee from $125 to $200 per device. Fewer than 40 other registrants are expected to incur a moderate burden from the increased fees, while the Department believes that all other registrants would incur a minimal burden from the fee increases in the new rules. The Department expects licensees and registrants to receive a significant benefit from improvements in the data system to be used for receiving and processing applications and communicating with licensees and registrants and from increased numbers of well-trained surveyors, which may result in shorter processing times for applications and amendments, as well as improved communication and answers to questions.

Businesses that contract with licensees or registrants to perform activities covered under the rules in 9 A.A.C. 7 may incur up to a moderate increase in contracting costs if a licensee or registrant passes along a portion of the fee increase to a business with which it contracts. However, because the fee increases will allow the Department to continue to provide adequate oversight of sources of radiation in Arizona, the Department believes that these businesses may also receive a significant benefit from the oversight in ensuring the safe use of sources of radiation. Continued oversight by the Department may improve compliance and provide a safer work environment for an employee of a licensee or registrant or an entity employing a licensee or registrant. Therefore, the Department anticipates that such an employee may receive a significant benefit from the new rules. Patients who receive diagnostic or therapeutic procedures at facilities licensed under the rules in 9 A.A.C. 7 or with equipment registered under the rules and their families may also receive a significant benefit from increased safety due to the Department's

continued oversight. If a facility passes any increased costs on to patients, these patients could incur a minimal burden from the increased fees. Similarly, the Department believes that the health and safety of the general public are protected by continued oversight by the Department of ionizing or non-ionizing radiation, and that the general public may receive a significant benefit from the fee changes.

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

A typographical error in Table 13.2 was corrected so the same fees as specified in Table 1 of the current rules were displayed in the second column of the Table, rather than the first column being duplicated. The Department also clarified that the fee listed in Table 13.1 for category F12 is per facility, rather than per device. No other changes were made to the rules between the proposed rulemaking and the final rulemaking.

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

Two written comments were received about the rulemaking during the public comment period and are summarized below, together with the Department's responses. The Department held an oral proceeding for the proposed rules on July 13, 2020, which no stakeholder/member of the public attended or participated in telephonically.

Comment	Department's Response
A comment was received from the Health System Alliance of Arizona (HSAA), "an advocacy organization representing integrated health systems across the state." While recognizing that the fee increases that are part of the rulemaking are being made "to align license and registration fees to the cost of administering the Department's Radiation Control Program" and that these fees have not been increased since 2008, HSAA does not support the fee increases. The comment stated that hospitals will incur losses due to COVID-19 and requests that the implementation of the fee increases be delayed while additional discussions take place.	The Department thanks the commenters for recognizing the Department's need for the additional funding to enable the continued regulation of sources of radiation and their users. While the Department sympathizes with the health care industry and is doing all it can to mitigate the expenses being incurred due to COVID-19, such as funding 26 nurses to relieve the stress on hospital personnel, the Department cannot delay the implementation of the fee increase, which will average about $6,200 for a hospital. These fees are paid on an annual basis and are due by January 1 each year, with penalties imposed if not paid by April. Between 30 and 40% of licensees and registrants pay the fees before January 1. By delaying the effective date even to January 1, any licensee or registrant paying the fee for 2021 before the effective date would be expected to pay the current fee, and the revenue generated would not cover expenses. The Department recognized the shortfall between revenue and expenses shortly after assuming authority over this regulatory activity in 2017 and has tried since then to improve efficiency and decrease costs. The
A comment was received from the Arizona Hospital and Healthcare Association (AzHHA) representing "more than 80 hospital, healthcare, and affiliated health system members." AzHHA recognized that the fees "support an indispensable public safety function," have not been increased "for over a decade," and "are currently insufficient to cover the department's expenses in regulating	

the use and users of radiation in the state." However, AzHHA stated that "any fee increase on hospitals and healthcare providers constitutes a hardship" and requests that "ADHS defer the imposition of the proposed radiation control fee increases that affect hospitals and other health care providers."	Department has already delayed the fee increase by a year, while continuing to work to minimize expenses so the fee increase could be as small as possible. The Department cannot afford to cover another year of the shortfall and does not plan to change the rule or the planned effective date, with a normal 60-day delay, based on the comments.

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:

According to A.R.S. Title 30, Chapter 4, Article 2, as amended by Laws 2017, Ch. 313, the Department is authorized to issue licenses and registrations for sources of ionizing radiation and those persons using these sources. This licensing and registration must be compatible with requirements in the Agreement. The rules refer to permits both general and specific. The general permit applies to certain levels of radioactive material, and specific permits are issued by rule for quantities and uses that are specific to the user and their training or scope of practice.

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

The rules are not more stringent than 10 CFR 170, the only applicable federal law.

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

No business competitiveness analysis was received by the Department.

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

Not applicable

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

Not applicable

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 7. RADIATION CONTROL

ARTICLE 13. LICENSE AND REGISTRATION FEES

Section

R9-7-1302. License and Registration Categories

R9-7-1303. Fee for Initial License and Initial Registration

R9-7-1304. Annual Fees for Licenses and Registrations

R9-7-1306. ~~Table of~~ Application Fees and Annual Fees

Table 13.1. Table of Fees

R9-7-1307. ~~Special License Fees~~ Repealed

Table 1. ~~Small Entity Fees[1]~~ Repealed

Table 13.2. Small Entity Fees

ARTICLE 13. LICENSE AND REGISTRATION FEES

R9-7-1302. License and Registration Categories

A. Category A licenses are those specific licenses ~~which~~ that authorize a school, college, university, or other teaching facility to possess and use radioactive materials for instructional or research purposes.

1. A broad academic class A license is any category A license ~~which~~ that meets the specifications of R9-7-310(A)(1).
2. A broad academic class B license is any category A license other than a broad academic class A license ~~which~~ that meets the specifications of R9-7-310(A)(2).
3. A broad academic class C license is any category A license other than a broad academic class A or B license ~~which~~ that meets the specifications of R9-7-310(A)(3).
4. A limited academic license is any category A license ~~which~~ that authorizes only those radioisotopes, forms, and quantities individually specified in the license.

B. Category B licenses are those specific or general licenses ~~which~~ that authorize the application of radioactive material or the radiation from it to a human being for medical diagnostic, therapeutic, or research purposes, or the use of radioactive material in medical laboratory testing. Except for a type B6, general medical license, the Department shall not combine a category B license with a license of any other category.

1. A broad medical license is any category B license ~~which~~ that meets the specifications of R9-7-310(A)(1) and meets the requirements of 9 A.A.C. 7, Article 7. A broad medical license may authorize any medical use other than teletherapy.
2. A medical materials class A license is any specific category B license other than a broad medical license, ~~which~~ that authorizes the use of radiopharmaceuticals and sealed sources containing radioactive materials for a therapeutic purpose in quantities ~~which~~ that require hospitalization of the patient for radiation safety purposes. The license may authorize other radioactive materials and other medical uses, except teletherapy.
3. A medical materials class B license is any specific category B license ~~which~~ that authorizes the diagnostic or therapeutic use, other than teletherapy, of radioactive materials only in limited quantities such that the patient need not be hospitalized for radiation safety purposes.
4. A medical materials class C license is any specific category B license ~~which~~ that authorizes possession of specified radioisotopes only in the form of sealed sources for treatment of the eye or skin or for use in diagnostic medical imaging devices.

5. A medical teletherapy license is a specific category B license ~~which~~ that solely authorizes radioisotopes in the form of multi-curie sealed sources for use in external beam therapy. The Department shall not combine a medical teletherapy license with any other type of category B license.

6. A general medical license is ~~a registration of~~ one that authorizes the use of radioactive material pursuant to R9-7-306(D) or R9-7-306(E). A general medical license may be combined into a broad medical, medical materials class A, or medical materials class B license.

C. Category C licenses are those specific or general licenses ~~authorizing~~ that authorize the use of radioactive materials in any activity other than those authorized by a category A, B, or D license. Except as specifically authorized in this Section, the Department shall not combine a category C license with any other type of license.

1. A broad industrial class A license is any category C license ~~which~~ that meets the specifications of R9-7-310(A)(1). The Department may combine a broad industrial class A license with any other category C license except industrial radiography, open field irradiator, or well logging licenses.

2. A broad industrial class B license is any category C license other than a broad industrial class A license ~~which~~ that meets the specifications of R9-7-310(A)(2). The Department may combine a broad industrial class B license with any other category C license except industrial radiography, open field irradiator, or well logging licenses.

3. A broad industrial class C license is any category C license other than a broad industrial class A or B license ~~which~~ that meets the specifications of R9-7-310(A)(3). The Department may combine a broad industrial class C license with any other category C license except industrial radiography, open field irradiator, or well logging licenses.

4. A limited industrial license is a specific category C license ~~authorizing~~ that authorizes the possession of the radioactive materials authorized in R9-7-305(A), or R9-7-306(A), (C), or (F) for uses authorized in those subsections, but in quantities greater than authorized by those subsections.

5. A portable gauge license is a specific category C license ~~which~~ that authorizes radioactive materials in the form of sealed sources for use in measuring or gauging devices designed and manufactured to be transported to the location of use. The Department may combine a portable gauge license with any broad scope industrial license or a fixed gauge class A license.

6. A fixed gauge class A license is a specific category C license ~~which~~ that authorizes the possession of 50 or more measuring or gauging devices containing radioactive materials, where each device is permanently mounted for use at a single location.
7. A fixed gauge class B license is a specific category C license ~~which~~ that authorizes the possession of 1 through 49 measuring or gauging devices containing radioactive materials, where each device is permanently mounted for use at a single location.
8. A leak detector license is a specific category C license ~~which~~ that authorizes the use of radioisotopes in the form of a gas to test hermetic seals on electronic packages.
9. A gas chromatograph license is a specific category C license ~~which~~ that authorizes the use of radioactive materials as ionization sources in gas chromatography or electron capture devices.
10. A general industrial license ~~means a registration of~~ is one that authorizes the use of a material, source, or device generally licensed pursuant to R9-7-305 or R9-7-306, except R9-7-305(B), R9-7-306(D), or R9-7-306(E).
11. An industrial radiography class A license is a specific category C license ~~which~~ that authorizes industrial radiography using sealed radioisotope sources at specific facilities identified in the license conditions or at temporary field job sites.
12. An industrial radiography class B license is a specific category C license ~~which~~ that authorizes industrial radiography using sealed radioisotope sources only at specific facilities identified in the license conditions.
13. An open field irradiator license is a specific category C license ~~authorizing~~ that authorizes the use of radioisotopes in the form of sealed sources not permanently mounted within a shielding container, for irradiation of materials.
14. A self-shielded irradiator license is a specific category C license ~~authorizing~~ that authorizes the use of radioisotopes in the form of sealed sources for irradiation of materials in a shielding device from which the sources are not removed during irradiation. The Department may combine a self-shielded irradiator license with any broad license.
15. A well logging license is a specific category C license ~~which~~ that authorizes the use of radioactive material in sealed or unsealed sources for wireline services or field tracer studies.
16. A research and development license is a specific category C license ~~which~~ that authorizes a licensee to utilize radioactive material in unsealed and sealed form for industrial,

scientific, or biomedical research, not including administration of radiation or radioactive material to human beings.

17. A laboratory license is a specific category C license ~~which~~ that authorizes a licensee to perform specific in-vitro or in-vivo medical or veterinary testing, while possessing quantities of radioactive material greater than the general license quantities authorized in R9-7-306.

D. Category D licenses are the following specific or general radioactive material licenses. Except for type D4, general industrial; type D5, depleted uranium; type D8 and D9, health physics; and type D14, additional facilities licenses, the Department shall not combine a category D license with any other license.

1. A distribution license is one ~~which~~ that authorizes the commercial distribution of radioactive materials or radioisotopes in products to persons holding an appropriate general or specific license. The Department shall ensure that a distribution license does not:
   a. Authorize distribution of radiopharmaceuticals or distribution to persons exempt from regulatory control, or
   b. Authorize any other use of the radioactive material. An appropriate category C license is required for possession of radioisotopes and their incorporation into products.
2. A nuclear pharmacy license is one ~~which~~ that authorizes the preparation, compounding, packaging, or dispensing of radiopharmaceuticals for use by other licensees.
3. A nuclear laundry license is one ~~authorizing~~ that authorizes the collection and cleaning of items contaminated with radioactive materials.
4. A general industrial gauging device license is ~~a registration~~ one that authorizes the use of a gauging device in accordance with R9-7-306(A). The Department may combine a general industrial gauging device license with a ~~Class~~ class A, B, or C broad industrial, limited industrial, portable gauge, or ~~Class~~ class A or B fixed gauge license.
5. A general depleted uranium ~~general~~ license is ~~a registration of~~ one that authorizes the use of the general license authorized pursuant to R9-7-305(C) or the use of depleted uranium as a concentrated mass or as shielding for another radiation source within a device or machine. The Department may combine a general depleted uranium ~~general~~ license with a medical teletherapy; ~~Class~~ class A, B, or C broad industrial; portable gauge; ~~Class~~ class A or B fixed gauge; ~~Class~~ class A or B industrial radiography; or self-shielded irradiator

license. For ~~registration~~ licensing purposes, an applicant shall follow the ~~registration instructions~~ requirements in R9-7-305(C).

6. A veterinary medicine license is one ~~which~~ that authorizes the use of radioactive materials for specific applications in veterinary medicine as authorized in the license.
7. A general veterinary medicine license is ~~a registration of~~ one that authorizes the use of the general license authorized in R9-7-306(E) in veterinary medicine.
8. A health physics class A license is one ~~which~~ that authorizes the use of radioactive materials for performing instrument calibrations, processing leak test or environmental samples, or providing radiation dosimetry services.
9. A health physics class B license is one ~~which~~ that authorizes only the collection, possession, and transfer of radioactive materials in the form of leak test samples for processing by others.
10. A secondary uranium recovery license is one ~~which~~ that authorizes the extraction of natural uranium or thorium from an ore stream or tailing ~~which~~ that is being or has been processed primarily for the extraction of another mineral. The Department shall not combine a secondary uranium recovery license with any other license.
11. A low-level, radioactive waste disposal facility license is a license that is issued for a "disposal facility," as that term is used in R9-7-439 and R9-7-442, ~~which~~ that has a closure or long-term care plan and is constructed and operated according to the requirements in 10 CFR 61, revised January 1, 2015, incorporated by reference, ~~and~~ available under R9-7-101~~. This incorporated material contains~~ and containing no future editions or amendments.
12. A waste processor class A license is one ~~authorizing~~ that authorizes the incineration, compaction, repackaging, or any other treatment or processing of low-level radioactive waste prior to transfer to another person authorized to receive or dispose of the waste. The Department shall not combine a waste processor class A license with any other license.
13. A waste processor class B license is one ~~which~~ that authorizes a waste broker to receive prepackaged, low-level radioactive waste from other licensees; combine the waste into shipments; and transfer the waste without treating or processing the waste in any manner and without repackaging except to place damaged or leaking packages into overpacks. The Department shall not combine a waste processor class B license with any other license.

14. An additional ~~facility~~ storage and use site license is an endorsement, by license condition to an existing specific license, authorizing one or more additional separate facilities where radioactive material may be stored or used for a period exceeding six months.
15. A possession-only license is a license of any other category ~~which~~ that authorizes only the possession in storage, but no use of, the authorized materials. A license ~~which~~ that has been suspended as an enforcement action is not considered a possession-only license.
16. A reciprocal license is ~~the registration of~~ the general license authorized by R9-7-320. This license is subject to a special fee as provided by ~~R9-7-1307~~ R9-7-1306(C) but is exempt from annual fees.
17. Reserved
18. An "unclassified" radioactive material license is one ~~authorizing~~ that authorizes radioisotopes, physical or chemical forms, possession limits, or uses not included in any other type of license specified in this Section.
19. A NORM commercial disposal site license is one that authorizes the receipt of waste material contaminated with naturally occurring radioactive material from other licensees for permanent disposal, provided the concentration of the radioactive material does not exceed 74kBq (2,000 picocuries)/gram.

E. Category E registrations are those that register the possession of x-ray machine(s) under 9 A.A.C. 7, Article 2. The Department shall not combine ~~Category~~ category E registrations with any other registration.

1. An X-ray machine class A registration is one authorizing the possession of X-ray machines in a hospital or other facility offering inpatient care.
2. An X-ray machine class B registration is one authorizing the possession of X-ray machines in a medical, osteopathic, or chiropractic office or clinic not offering inpatient care; or the possession of X-ray machines in a school, college, university, or other teaching facility.
3. An X-ray machine class C registration is one authorizing the possession of X-ray machines in dental, podiatry, ~~and~~ or veterinarian offices or clinics.
4. An industrial radiation machine registration is one authorizing the possession of X-ray machines, or the possession of particle accelerators not capable of producing a high radiation area, in a nonmedical facility.
5. An accelerator facility registration is one authorizing the possession and operation of one or more particle accelerators of any kind capable of accelerating any particle and producing a high radiation area.

6. ~~A~~ An "other" ionizing radiation machine~~, "other,"~~ registration is one authorizing possession or use of an ionizing radiation machine not included in any other category specified in subsection (E).

F. Category F registrations are those that register ~~nonionizing~~ non-ionizing radiation producing sources regulated under 9 A.A.C. 7, Article 14. The Department shall not combine ~~Category~~ category F registrations with any other registration categories that have a difference in fee per unit.

1. A tanning registration authorizes the commercial operation of ~~any number of~~ one or more tanning booths, beds, cabinets, or other devices in a single establishment.
2. A Class A laser registration authorizes the operation of one to 10 laser devices subject to R9-7-1433.
3. A Class B laser registration authorizes the operation of 11 to 49 laser devices subject to R9-7-1433.
4. A Class C laser registration authorizes operation of 50 or more laser devices subject to R9-7-1433.
5. A laser light show or laser demonstration registration authorizes the operation of a laser device subject to R9-7-1441.
6. A medical laser registration authorizes the operation of one or more laser devices subject to R9-7-1440.
7. A Class II surgical device registration authorizes the operation of one or more Class II surgical devices subject to R9-7-1438. A device is designated as a Class II surgical device by the USFDA and is labeled as such by the manufacturer.
8. A ~~medical~~ cosmetic radiofrequency device registration authorizes the operation of one or more medical radiofrequency devices for non-ionizing cosmetic procedures.
9. A class A industrial radiofrequency device registration authorizes the operation of one to five radiofrequency ~~heat sealers or industrial microwave ovens~~ devices.
10. A class B industrial radiofrequency device registration authorizes the operation of six to 20 radiofrequency ~~heat sealers or industrial microwave ovens~~ devices.
11. A class C industrial radiofrequency device registration authorizes the operation more than 20 radiofrequency ~~heat sealers or industrial microwave ovens~~ devices.
12. A ~~class A~~ medical radiofrequency device registration authorizes the operation of one or ~~two~~ more medical radiofrequency ~~diathermy or electrocoagulation units not used in non-ionizing cosmetic~~ devices for non-ionizing, non-cosmetic procedures.

~~13. A class B medical radiofrequency device registration authorizes the operation of three to nine radiofrequency diathermy or electrocoagulation units not used in non-ionizing cosmetic procedures.~~

~~14. A class C medical radiofrequency device registration authorizes the operation of 10 to 19 radiofrequency diathermy or electrocoagulation units not used in non-ionizing cosmetic procedures.~~

~~15. A class D medical radiofrequency device registration authorizes the operation of 20 or more radiofrequency diathermy or electrocoagulation units not used in non-ionizing cosmetic procedures.~~

~~16.~~13. An "other" ~~nonionizing~~ non-ionizing radiation device registration authorizes the operation of a ~~nonionizing~~ non-ionizing radiation device or other device not included in any other category specified in subsection (F).

R9-7-1303. Fee for Initial License and Initial Registration

An applicant shall remit for a new license or new registration the appropriate fee as prescribed in R9-7-1306 and Table 13.1.

R9-7-1304. Annual Fees for Licenses and Registrations

A. Each license or registration issued by the Department shall identify the category by a letter and number corresponding to the appropriate subsection of R9-7-1302 or the category and type listed in ~~R9-7-1306~~ Table 13.1.

B. Except for ~~types D16 and D17~~ as specified in R9-7-1306(C), (D), and (E), each licensee or registrant shall submit payment of the annual fee in the amount prescribed in ~~R9-7-1306(A)~~ Table 13.1 on or before January 1 of each year. This single annual fee will cover any and all renewals, amendments, and regular inspections of the license during the forthcoming calendar year.

C. If a licensee or registrant fails to pay the annual fee by January 1, the license is not current.

D. If a licensee or registrant fails to pay the annual fee by April 1, the Department shall apply administrative sanction provisions of ~~9 A.A.C. 7,~~ Article 12 of this Chapter.

E. A licensee who is required to pay an annual fee under this Article may qualify as a small entity and pay the reduced annual fee in Table 13.2 if the licensee has the following characteristics:

1. For a business not engaged in manufacturing or a not-for-profit organization, having a three-year average of gross annual receipts of $6.5 million or less;
2. For an entity engaged in manufacturing, having an annual average of no more than 500 employees;
3. For a government jurisdiction, not including publicly supported educational institutions, having no more than 50,000 residents in the jurisdiction;

4. For a publicly supported educational institution, having no more than 50,000 faculty, staff, and students; and

5. For an educational institution that is not publicly supported, having no more than 500 faculty and staff.

F. A licensee who seeks to establish status as a small entity for the purpose of paying an annual fee in Table 13.2, rather than the annual fee in Table 13.1, shall file with the Department a certification statement annually on Department Form 333, accessed through the Department website at https://azdhs.gov/documents/licensing/radiation-regulatory/forms/ram-small-entity-form.pdf, for each license under which the licensee is billed.

G. If a licensee qualifies as a small entity and provides the Department with ~~proper~~ the certification required in subsection (F) ~~along with its annual fee payment~~, the licensee may pay the applicable reduced annual ~~fees as~~ fee shown in Table ~~1 to this Article~~ 13.2. Failure to file a small entity certification, according to subsection (F), in a timely manner may result in ~~the denial of any refund~~ the licensee being required to pay the applicable fee in Table 13.1.

R9-7-1306. ~~Table of~~ Application Fees and Annual Fees

A. The application fee ~~and~~ or annual fee for each category and type ~~are~~ is shown in Table ~~13-1~~ 13.1.

~~**Table 13-1**~~

~~**Category**~~	~~**Type**~~	~~**Annual Fee**~~
~~A1~~	~~Broad academic Class A~~	~~$5,800~~
~~A2~~	~~Broad academic Class B~~	~~$5,800~~
~~A3~~	~~Broad academic Class C~~	~~$5,800~~
~~A4~~	~~Limited academic~~	~~$1,000~~
~~B1~~	~~Broad medical~~	~~$11,000~~
~~B2~~	~~Medical materials class A~~	~~$1,900~~
~~B3~~	~~Medical materials class B~~	~~$1,900~~
~~B4~~	~~Medical materials class C~~	~~$1,900~~
~~B5~~	~~Medical teletherapy~~	~~$5,200~~
~~B6~~	~~General medical~~	~~$250~~
~~C1~~	~~Broad industrial class A~~	~~$11,400~~
~~C2~~	~~Broad industrial class B~~	~~$11,400~~
~~C3~~	~~Broad industrial class C~~	~~$3,200~~
~~C4~~	~~Limited industrial~~	~~$700~~
~~C5~~	~~Portable gauge~~	~~$1,000~~
~~C6~~	~~Fixed gauge class A~~	~~$1,000~~

~~C7~~	~~Fixed gauge class B~~	~~$1,000~~
~~C8~~	~~Leak detector~~	~~$1,330~~
~~C9~~	~~Gas chromatograph~~	~~$1,000~~
~~C10~~	~~General industrial~~	~~No Fee~~
~~C11~~	~~Industrial Radiography class A~~	~~$5,500~~
~~C12~~	~~Industrial Radiography class B~~	~~$5,500~~
~~C13~~	~~Open field irradiator~~	~~$3,000~~
~~C14~~	~~Shelf-shielded irradiator~~	~~$1,500~~
~~C15~~	~~Well logging~~	~~$2,000~~
~~C16~~	~~Research and development~~	~~$2,100~~
~~C17~~	~~Laboratory~~	~~$1,000~~
~~D1~~	~~Distribution~~	~~$2,600~~
~~D2~~	~~Nuclear Pharmacy~~	~~$4,600~~
~~D3~~	~~Nuclear laundry~~	~~$10,300~~
~~D4~~	~~General industrial (with fee)~~	~~$300~~
~~D5~~	~~General depleted uranium~~	~~$200~~
~~D6~~	~~Veterinary medicine~~	~~$1,000~~
~~D7~~	~~General veterinary medicine~~	~~$200~~
~~D8~~	~~Health physics class A~~	~~$3,200~~
~~D9~~	~~Health physics class B~~	~~$1,000~~
~~D10~~	~~Secondary uranium recovery~~	~~$5,100~~
~~D11~~	~~Low-level radioactive waste disposal site~~	~~(3)~~
~~D12~~	~~Waste processor class A~~	~~$4,600~~
~~D13~~	~~Waste processor class B~~	~~$3,600~~
~~D14~~	~~Additional storage and use site~~	~~(1)~~
~~D15~~	~~Possession only~~	~~(2)~~
~~D16~~	~~Reciprocal~~	~~(3)~~
~~D17~~	~~Reserved~~	
~~D18~~	~~Unclassified~~	~~Full Cost~~
~~D19~~	~~NORM commercial disposal site~~	~~$600,000~~
~~E1~~	~~X-ray machine class A (per tube)~~	~~$75~~
~~E2~~	~~X-ray machine class B (per tube)~~	~~$51~~
~~E3~~	~~X-ray machine class C (per tube)~~	~~$42~~

~~E4~~	~~Industrial radiation machine (per device)~~	~~$42~~
~~E5~~	~~Accelerator facility~~	~~$750~~
~~E6~~	~~Other ionizing radiation machine~~	~~Full cost~~
~~F1~~	~~Tanning device (per device)~~	~~$28~~
~~F2~~	~~Class A (1 to 10 laser devices)~~	~~$175~~
~~F3~~	~~Class B (11 to 49 laser devices)~~	~~$408~~
~~F4~~	~~Class C (50 or more laser devices)~~	~~$699~~
~~F5~~	~~Laser light show or laser demonstration~~	~~$408~~
~~F6~~	~~Medical laser (per laser device)~~	~~$47~~
~~F7~~	~~Class II surgical (per device)~~	~~$47~~
~~F8~~	~~Medical RF surgical and cosmetic (per device)~~	~~$47~~
~~F9~~	~~Class A industrial (1 to 5 radiofrequency devices)~~	~~$70~~
~~F10~~	~~Class B industrial (6 to 20 radiofrequency devices)~~	~~$210~~
~~F11~~	~~Class C industrial (more than 20 radiofrequency devices)~~	~~$349~~
~~F12~~	~~Class A medical (1 or 2 non-cosmetic radiofrequency devices) (per device)~~	~~$0~~
~~F13~~	~~Class B medical (3 to 9 non-cosmetic radiofrequency devices) (per device)~~	~~$0~~
~~F14~~	~~Class C medical (10 to 19 non-cosmetic radiofrequency devices) (per device)~~	~~$0~~
~~F15~~	~~Class D medical (20 or more non-cosmetic radiofrequency devices) (per device)~~	~~$0~~
~~F16~~	~~Other nonionizing radiation device or other device~~	~~Full Cost~~

~~Notes:~~

~~(1) An additional 30% of the annual base fee is added to the annual base fee for each additional site.~~

~~(2) The fee is 50% of the annual base fee for the category under which the radioactive material will be stored.~~

~~(3) See R9-7-1307.~~

B. The fee for a category D11 license, for a low-level radioactive waste disposal site, is $6,000,000 for years one through five. Based on data gathered during the first five years, the Department shall set a reasonable fee after consideration of the following factors:

1. Unrecovered costs that the Department may charge under A.R.S. § 30-654(B)(18), and

2. Actual costs incurred by the Department in regulating the licensee.

C. The fee for a category D16 license, providing reciprocal recognition under R9-7-320 of a radioactive materials license issued by the NRC or another Agreement state, is half of the annual fee for an Arizona license of the appropriate category and type. If there is no Arizona license of the appropriate category and type, the Department shall assess the "Full Cost" fee according to subsection (D) or (E), as applicable. The fee is due and payable at the time reciprocity is requested, and the general license does not become current until the fee is paid.

~~**B.**~~**D.** ~~The application fee for a licensee or registrant is the annual fee as shown in R9-7-1306.~~ "Full Cost" for an application fee is based on professional personnel time for preparation, travel, onsite inspection, any reports, review of findings, and preparation of the license or registration or denial charged at $99 per hour and mileage charged at 44.5¢ per mile. The Department shall assess the licensee or registrant 90% of the estimated full cost of issuing the license or registration. The Department will assess for any remaining costs when it is prepared to issue the license, registration, denial, or if Department costs for the requested activity exceed $10,000.

~~**C.**~~**E.** ~~The annual fee for a licensee or registrant for which the scheduled fee is~~ "Full Cost" for an annual fee is based on professional personnel time for preparation, travel, onsite inspection, preparation of reports, review of findings, and preparation for any inspections or completion of any amendments to the license, registration or denials charged at $99 per hour and mileage charged at 44.5¢ per mile for the preceding 12 months.

Table 13.1. Table of Fees

Category	Type	Application/Annual Fee
A1	Broad academic class A	$10,000
A2	Broad academic class B	$10,000
A3	Broad academic class C	$10,000
A4	Limited academic	$2,500
B1	Broad medical	$20,000
B2	Medical materials class A	$4,000
B3	Medical materials class B	$4,000
B4	Medical materials class C	$4,000
B5	Medical teletherapy	$8,000
B6	General medical	$500
C1	Broad industrial class A	$20,000
C2	Broad industrial class B	$20,000
C3	Broad industrial class C	$6,000
C4	Limited industrial	$1,500

C5	Portable gauge	$2,000
C6	Fixed gauge class A	$2,000
C7	Fixed gauge class B	$2,000
C8	Leak detector	$2,000
C9	Gas chromatograph	$2,000
C10	General industrial	$300
C11	Industrial radiography class A	$10,000
C12	Industrial radiography class B	$10,000
C13	Open field irradiator	$10,000
C14	Shelf-shielded irradiator	$5,000
C15	Well logging	$5,000
C16	Research and development	$5,000
C17	Laboratory	$3,000
D1	Distribution	$5,000
D2	Nuclear pharmacy	$10,000
D3	Nuclear laundry	$25,000
D4	General industrial gauging device	$500
D5	General depleted uranium	$200
D6	Veterinary medicine	$2,000
D7	General veterinary medicine	$500
D8	Health physics class A	$5,000
D9	Health physics class B	$3,000
D10	Secondary uranium recovery	$8,000
D11	Low-level radioactive waste disposal facility	According to R9-7-1306(B)
D12	Waste processor class A	$10,000
D13	Waste processor class B	$8,000
D14	Additional storage and use site	30% of the applicable fee for each additional site
D15	Possession-only	50% of the applicable fee for the category under which storage will occur
D16	Reciprocal	According to R9-7-1306(C)
D17	Reserved	
D18	Unclassified radioactive material	Full Cost, according to R9-7-1306(D) or (E)
D19	NORM commercial disposal site	$600,000
E1	X-ray machine class A (per tube)	$200
E2	X-ray machine class B (per tube)	$150
E3	X-ray machine class C (per tube)	$100
E4	Industrial radiation machine (per device)	$100
E5	Accelerator facility	$2,500
E6	Other ionizing radiation machine	Full Cost, according to R9-7-1306(D) or (E)

F1	Tanning device (per device)	$50
F2	Class A laser (1 to 10 laser devices)	$300
F3	Class B laser (11 to 49 laser devices)	$600
F4	Class C laser (50 or more laser devices)	$1,000
F5	Laser light show or laser demonstration	$500
F6	Medical laser (per laser device)	$100
F7	Class II surgical device (per device)	$100
F8	Cosmetic radiofrequency device (per device)	$100
F9	Class A industrial (1 to 5 radiofrequency devices)	$150
F10	Class B industrial (6 to 20 radiofrequency devices)	$350
F11	Class C industrial (more than 20 radiofrequency devices)	$600
F12	Medical radiofrequency (one or more device)	$100
F13	Other non-ionizing radiation device	Full Cost, according to R9-7-1306(D) or (E)

R9-7-1307. ~~Special License Fees~~ Repealed

~~**A.** The fee for a Type D16 license providing reciprocal recognition under R9-7-320 of a radioactive materials license issued by the U.S. NRC or another state is half of the annual fee for an Arizona license of the appropriate type. The fee is due and payable at the time reciprocity is requested, and the general license does not become current until the fee is paid.~~

~~**B.** For a low-level radioactive waste disposal site the initial application fee is $6,000,000. The annual fee for the second through fifth years is $6,000,000. The Department shall promulgate a new fee rule for years subsequent to year five. Based on data gathered during the first five years, the Department shall set a reasonable fee after consideration of the following factors:~~

~~1. Unrecovered costs which the Department may charge under A.R.S. § 30-654(B)(18).~~

~~2. Actual costs incurred by the Department.~~

Table 1. ~~Small Entity Fees~~[1] Repealed

~~Small Businesses Not Engaged in Manufacturing and Small Not-for-profit Organizations (Gross Annual Receipts, three-year average):~~

~~>$6.5 million~~	~~Pay the fee listed in R9-7-1306~~
~~$350,000 to $6.5 million~~	~~$2,200~~
~~<$350,000~~	~~$500~~

~~Manufacturing Entities that Have an Annual Average of 500 Employees or Less:~~

~~>500 employees~~	~~Pay the fee listed in R9-7-1306~~
~~35 to 500 employees~~	~~$2,200~~
~~<35 employees~~	~~$500~~

~~Small Government Jurisdictions (including publicly supported educational institutions) (Population in Jurisdiction):~~

~~>50,000~~	~~Pay the fee listed in R9-7-1306~~
~~20,000 to 50,000~~	~~$2,200~~
~~<20,000~~	~~$500~~

~~Educational Institutions that Are Not State or Publicly Supported, and Have 500 Employees or Less:~~

~~>500 employees~~	~~Pay the fee listed in R9-7-1306~~
~~35 to 500 employees~~	~~$2,200~~
~~<35 employees~~	~~$500~~

~~[+]A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under R9-7-1304 as shown in R9-7-1306 must file a certification statement with the Department each year. The licensee must file the required certification on Department Form 333 for each license under which it was billed. Department Form 333 can be accessed through the Department website at http://www.azdhs.gov/licensing/radiation-regulatory/index.php. For licensees who cannot access the Department website, Department Form 333 may be obtained by writing to the Department or by telephoning the Department at (602) 255-4845.~~

Table 13.2. Small Entity Fees

Licensee qualifying as a small entity under R9-7-1304(E)(1)	
Gross Annual Receipts	Fee
$350,000 to $6.5 million	$2,200
<$350,000	$500
Licensee qualifying as a small entity under R9-7-1304(E)(2)	
Number of Employees	Fee
35 to 500 employees	$2,200
<35 employees	$500
Licensee qualifying as a small entity under R9-7-1304(E)(3)	
Number of Residents	Fee
20,000 to 50,000	$2,200

<20,000	$500
Licensee qualifying as a small entity under R9-7-1304(E)(4)	
Number of Faculty, Staff, and Students	Fee
20,000 to 50,000	$2,200
<20,000	$500
Licensee qualifying as a small entity under R9-7-1304(E)(5)	
Number of Faculty and Staff	Fee
35 to 500 employees	$2,200
<35 employees	$500

July 13, 2020

Dr. Cara M. Christ, M.D., M.S.
Director
Arizona Department of Health Services
150 North 18th Avenue
Phoenix, Arizona 85007

RE: Notice of Proposed Rulemaking: Radiation Control Fees

Dear Dr. Christ:

On behalf of the Arizona Hospital and Healthcare Association (AzHHA) and our more than 80 hospital, healthcare, and affiliated health system members, thank you for the opportunity to offer comments on the Arizona Department of Health Services' (ADHS) Notice of Proposed Rulemaking: Radiation Control Fees (Notice of Rulemaking Docket Opening: 26 A.A.R. 762, April 24, 2020). AzHHA represents general acute care, rural, specialty, post-acute care, federal, tribal, and public hospitals, as well as affiliated healthcare partners. Our members are united with the common goals of improving healthcare delivery, access, and quality of care throughout the state. We submit these comments in furtherance of these goals.

AzHHA recognizes that the radiation control fees support an indispensable public safety function. We understand that fees have not been increased for over a decade and that the fees are currently insufficient to cover the department's expenses in regulating the use and users of radiation in the state. While we remain respectful of those facts, at this juncture, any fee increase on hospitals and healthcare providers constitutes a hardship.

AzHHA's national partner, the American Hospital Association, has estimated that hospitals' total losses in 2020 will approximate $323 billion due to COVID-19. These losses do not account for currently increasing case rates in certain states, like Arizona, or potential subsequent surges of the pandemic later in the year. Arizona's hospitals are under a great deal of financial strain due to this public health emergency and will be for the foreseeable future. In particular, the pandemic is proving to be a very serious threat to the financial viability of rural hospitals, which were already operating on razor thin margins. Put plainly, hospitals are in dire need of financial assistance and are unable to absorb any additional losses at this time.

Consequently, AzHHA must respectfully request that ADHS defer the imposition of the proposed radiation control fee increases that affect hospitals and other health care providers. We would welcome the opportunity to engage with ADHS regarding alternative approaches to ensuring the financial solvency of the radiation control program.

We greatly value the partnership between ADHS and the states' hospitals, and we look forward to continuing to work with you to achieve our shared goals of promoting the health of Arizonans and ensuring that all have access to optimal health care during this public health emergency.

Thank you for your consideration, and we look forward to hearing from you.

Sincerely,

Ann-Marie Alameddin
President and Chief Executive Officer
Arizona Hospital and Healthcare Association

Health System Alliance of Arizona

July 13, 2020

Dr. Cara Christ
Arizona Department of Health Services
150 N. 18th Avenue
Phoenix, Arizona 85007

Dear Dr. Christ:

On behalf of the Health System Alliance of Arizona (Alliance), an advocacy organization representing integrated health systems across the state, I am writing to offer our comments in response to the Notice of Proposed Rulemaking: Radiation Control Fees.

The members of the Alliance support the continued mission of the Department, to protect and promote public health in Arizona, and the important role it plays in inspecting and monitoring safety standards in health care facilities. We understand that the goal of this rulemaking is to align license and registration fees to the cost of administering the Department's Radiation Control Program. We also understand that these fees have not been adjusted since 2008. Unfortunately, as proposed, this rule represents a significant fee increase that will place an undue burden on the hospital industry during a financial crisis. For this reason, we cannot support this proposed rule as promulgated.

As noted, the fee increases proposed in this rulemaking are significant. The burden of paying most of these fees will fall on the hospital industry, which has been devastated by the COVID-19 pandemic. In fact, a recent American Hospital Association report has forecasted that by the end of this year, hospitals and hospital systems across this country will incur more than $300 billion in losses due to COVID-19. Of this, only a fraction will be recovered through CARES Act and other federal crisis dollars. It will take years for our industry to recover financially from this crisis and we will rely on the partnership of our private and public counterparts throughout this recovery process.

We remain very respectful of the financial constraints facing the Department and would respectfully request that implementation of the provisions in the rule impacting hospitals be delayed. This will allow the opportunity for the Department and hospitals to engage in a dialogue about alternative approaches to this rulemaking that would ensure long-term solvency for the Radiation Control Program, while also minimizing impacts to the healthcare industry during the present crisis.

We appreciate your consideration and look forward to the continued discussion. Please do not hesitate to contact me if I can answer any questions.

Respectfully,

Jennifer A. Carusetta
Executive Director
Health System Alliance of Arizona

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Rules-Related Activities Since 2017

- The Arizona Department of Health Services (Department) succeeded to the authority for the regulation of sources of radiation and the persons owning, using, storing, or servicing them through Laws 2017, Ch. 313, and Laws 2018, Ch. 234, replacing the Arizona Radiation Regulatory Agency (ARRA).
- Upon assuming this authority, the number of rules for which the Department was responsible jumped by 423.
- The Department was unfamiliar with the Programs under ARRA and its statutes and rules and needed to better understand the Program and its implementation before making any changes.
- Initial efforts made to understand the Program focused on implementation issues, and changes were gradually made to improve the effectiveness and efficiency of the Program.
- In the meantime, the Department has been gradually reviewing and noting where possible changes could be made to the Program's rules.
    - The ARRA rules were composed of two Chapters in A.A.C. Title 12.
        - 17 Articles in Chapter 1, Radiation Regulatory Agency
        - Six Articles in Chapter 2, Medical Radiologic Technology Board of Examiners
    - The Department reviewed the rules in 12 A.A.C. 2 in a five-year review report that was approved by the Council in December 2018.
        - Two rulemakings have been completed for these rules.
        - These rules have been remade in 9 A.A.C. 16, Article 6, to make requirements consistent with statutes, enforceable, clearer, more concise, and easier to understand.
    - The Department recodified the rules in 12 A.A.C. 1, into 9 A.A.C. 7.
    - The Department has been reviewing the much more complex and technical rules in Chapter 7 as they came due.
        - The five-year-review reports for six Articles have been approved by the Council, with the same plan of action for all but one.
        - The five-year-review report for the last Article is scheduled to be submitted by December 2021.
        - Three more five-year-review reports for Articles in Chapter 7 have been submitted to the Council, the one under current consideration and two to be considered at future Council meetings.
        - Another five-year review- report will be submitted to the Council later this year.
        - The remaining 10 five-year-review reports are due in 2021.
        - Because the rules in the Chapter are likely to need major reorganization, as well as wording changes within Articles, the Department's plan for the rules in Chapter 7 is to determine what changes are needed, how topics fit together, what rules must be verbatim from NRC requirements, and how changes will be made; and to develop a timeline once all the Articles have been reviewed.
- Since succeeding to the authority for regulating radiation in Arizona, the Department has undertaken numerous other rule-related actions, including:

    2017 – 24 five-year-review reports; 6 regular rulemakings; 4 exempt or emergency rulemakings

    2018 – 21 five-year-review reports; 5 regular rulemakings; 12 expedited rulemakings, including one for Radiation Control; 3 exempt or emergency rulemakings

    2019 – 21 five-year-review reports; 9 regular rulemakings; 8 expedited rulemakings, including one for Radiation Control and one for Certification of Radiation Technicians; 1 exempt rulemaking

    2020 so far – 2 regular rulemakings, including one for Certification of Radiation Technicians; 8 expedited rulemakings, including one for Radiation Control; 2 emergency rulemakings (COVID-19); 2 exempt rulemakings

TITLE 9. HEALTH SERVICES

CHAPTER 7. DEPARTMENT OF HEALTH SERVICES
RADIATIONCONTROL
ARTICLE 13. LICENSE AND REGISTRATION FEES

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
JULY 2020

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 7. DEPARTMENT OF HEALH SERVICES

RADIATION CONTROL

1. An identification of the rulemaking

Arizona Revised Statutes (A.R.S.) § 30-654 requires the Arizona Department of Health Services (Department) to adopt rules deemed necessary to administer A.R.S. Title 30, Chapter 4, Control of Ionizing Radiation, and to prescribe by rule fees to be charged to categories of licensees and registrants of radiation sources. The fees cover costs associated with processing an application for licensing or registration, for renewal or amendment of the license or registration, and for monitoring and inspecting the licensee's or registrant's activities and facilities. Upon assuming responsibility for oversight of ionizing or non-ionizing radiation in Arizona, under Laws 2017, Ch. 313, and Laws 2018, Ch. 234, the Department discovered that the fees specified in the current rules, which have been in effect since 2008, were insufficient to cover the expenses incurred by the Department in carrying out these functions. Therefore, after receiving an exception from the rulemaking moratorium established by Executive Order 2018-02, the Department is increasing fees in 9 A.A.C. 7, Article 13, to cover the shortfall and making other corresponding or clarifying changes to the rules. The Department anticipates these changes will ensure sufficient funding for the Department to continue regulating the use, storage, and disposal of sources of radiation in an efficient manner to protect the health and safety of Arizona's citizens.

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

- The Department
- Licensees or registrants who use, store, or dispose of sources of radiation
- Businesses that contract with licensees or registrants to perform activities covered under the rules in Chapter 7
- Employees of licensees or registrants
- Patients and their families
- General public

3. Cost/Benefit Analysis

This analysis includes costs and benefits associated with the increase in license and registration fees for the use, storage, and disposal of sources of radiation under the rules in 9 A.A.C. 7. The current fees, as shown in Attachment A, had been established in the rules in 12 A.A.C. 1 for over 10 years, before Laws 2017, Ch. 313, and Laws 2018, Ch. 234, made the Department responsible for

implementing and enforcing these rules and the rules were recodified into 9 A.A.C. 7 without any changes to fees. The Department is increasing the fees to meet the expenses incurred by the Department when it assumed responsibility for regulating sources of radiation, as shown in Attachments A and B. Annual cost/revenue changes are designated as minimal when $2,000 or less, moderate when between $2,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification. A summary of the economic impact of the rules is given in the Table below, while the economic impact is explained more fully in the paragraphs following the Table.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
A. State and Local Government Agencies			
Department	Increasing fees Having rules that are clearer and easier to understand	None Minimal	Substantial Minimal
Public colleges, universities, and other teaching facilities that are licensees or registrants	Increasing fees Having rules that are clearer and easier to understand	Minimal-to-moderate None	None Significant
Cities, municipalities, or other agencies that are licensees or registrants s	Increasing fees Having rules that are clearer and easier to understand	Minimal None	None Significant
Court buildings, correctional facilities, airports, and other facilities using X-ray devices	Increasing fees Having rules that are clearer and easier to understand	Minimal None	None Significant
B. Privately Owned Businesses			
Businesses that are licensees or registrants	Increasing fees Having rules that are clearer and easier to understand	Minimal-to-moderate None	None-to-substantial Significant
Businesses that contract with licensees or registrants	Increasing fees Ensuring the safe use of sources of radiation	Minimal-to-moderate None	None Significant
C. Consumers			
Employees of licensees or registrants or of those businesses contracting with a licensee or registrant	Having rules that are clearer and easier to understand Ensuring the safe use of sources of radiation	None None	Significant Significant
Patients and their families	Ensuring the safe use of sources of radiation	None-to-minimal	Significant
General public	Ensuring the safe use of sources of radiation	None	Significant

- **The Department**

The Department licenses persons who use, store, or dispose of sources of radiation under an Agreement negotiated between Arizona and the U.S. Atomic Energy Commission (now the U.S. Nuclear Regulatory Commission (NRC)) in 1967. Under the terms of the Agreement, Arizona is required to have, implement, and enforce rules consistent with requirements of the NRC. The Department, pursuant to A.R.S. §§ 30-654 and 30-656, has been delegated the authority to act on behalf of the State in carrying out the terms of the Agreement. If the Department does not comply with the terms of the Agreement in any material way, Arizona may be in jeopardy of losing its authority (primacy) to regulate sources of radiation. If Arizona were to lose primacy, any business that uses, stores, or disposes of specific sources of radiation in Arizona would need to obtain a license through the NRC. As shown in Attachment C, the cost for obtaining a license from the NRC is much higher than the new fees being adopted through this rulemaking. The Department also registers equipment or devices that are sources of radiation.

As of December 31, 2019, the Department has issued 353 licenses to persons who use, store, or dispose of sources of radiation and 7,812 registrations to entities with a total of 20,982 devices that are sources of radiation, for a total of 8,165 licenses or registrations issued. The current fees for these licenses and registrations are shown in Attachment A, along with the number of such licenses/ registrations for each type of license/registration in CY 2019. The types of licenses issued are described in R9-7-1302(A) through (D), while the types of registrations issued are described in R9-7-1302(E) and (F). For some types of licenses, the fee depends on factors that vary greatly, so no fee is listed in the rules. Instead, the fee for a license is based on some other factor. For example, the fee associated with the license authorizing a licensee to store and use radioactive material at an additional site is based on the fee for the licensee's primary site, and the fee for possession only, without use, is based on what would be assessed to a licensee that was also using the radioactive material. The fee for a reciprocal license for a person licensed by the NRC or another Agreement state is based on the fee that would be charged if the Department issued the primary license. The three-year average of revenue from reciprocal licenses is approximately $45,600 per year, while the three-year average revenue generated from licensing additional sites is approximately $77,200. The Department currently has issued no licenses for possession only.

While most fees are being increased through this rulemaking, some are not. These include the fee for a general depleted uranium license, of which there is one licensee, and the fee for a license as a disposal site, of which none are in Arizona. The Department would also not expect to receive additional revenue from a licensee assessed at "Full cost." Currently, there is only one licensee assessed at "Full cost," and that licensee pays approximately $1,000 in fees per year. The Department is also not increasing the amount that a small entity would pay, since the new Table 13.2 clarifies fees

without changing the amounts from those in Table 1 in the current rules. The number of licensees using the small-entity fees varies from year to year, averaging about 30 per year, and this use causes a reduction in the amount of revenue received by the Department each year between $100,000 and $125,000. With the fee increase, the use of this fee reduction mechanism could increase, which could result in a revenue reduction of between $150,000 and $250,000 per year.

As shown in Attachment A, the current fees should have generated approximately $1,688,600 for CY 2019. Fees from reciprocal licenses, licensing additional sites, and "Full cost" licenses totaled approximately $123,800, while the use of small entity fees reduced the expected revenue by approximately $112,500 to approximately $1,700,000. Of this amount, $300,000 would have been deposited into the state general fund according to A.R.S. § 30-654(C). Of the remaining $1,400,000, 90% (about $1,260,000) would have been deposited into the health services licensing fund, established according to A.R.S. § 36-414, for use by the Department, and another 10% (about $140,000) would have been deposited into the state general fund according to A.R.S. § 30-654(C). On top of this fee revenue, the Department receives $220,000 through a grant from the U.S. Food and Drug Administration (FDA) to ensure that mammography facilities in Arizona meet minimum national quality standards to ensure safe, reliable, and accurate mammography.

As shown in Attachment C, Arizona's current fees for licenses are much lower than the fees in neighboring states, and the new fees are in line with or lower than these fees. As shown in Attachment D, Arizona's current registration fees for X-ray equipment or devices are in line with or lower than the fees in neighboring states. Not many states regulate nonionizing-radiation-producing equipment and devices, such as tanning beds, lasers, and radiofrequency devices, with some of those only regulating one type. When compared with the fees assessed by those states, the new fees, as shown in Attachment D, are in line with or lower than these fees.

The Department expects to receive approximately $3,877,500 in fee revenue, plus about another $240,000 from reciprocal licenses, licensing additional sites, and "Full cost" licenses. With the fee increases, the Department does not know whether additional licensees will seek to establish status as a small entity for the purpose of paying reduced fees. If no additional licensees pay the small entity fee, rather than the applicable fee in Table 13.1, the Department anticipates revenue to be reduced by approximately $175,000 due to the use of small-entity fees, although this amount could increase if additional licensees qualify as small-entities and pay the reduced fee. Thus, total revenue under the new fees is expected to be approximately $3,900,000. Again, approximately $660,000 ($300,000 + $360,000) from this amount would be transferred to the general fund under A.R.S. § 30-654(C), leaving between $3,200,000 and $3,300,000 in funds with which to run the Program. In addition to the fee revenue, the Department expects to receive about $220,000 through the FDA grant to ensure that mammography facilities in Arizona meet minimum national quality standards.

Since assuming responsibility for oversight of ionizing or non-ionizing radiation in Arizona and the regulation of persons who use, store, or dispose of sources of radiation and of these sources of radiation, the Department's expenses have consistently been more than the revenue received, despite efforts to reduce costs through streamlining processes to make them more effective. These processes included beginning to accept online payments of annual fees and initiating some electronic records for X-ray and non-ionizing devices. As shown in Attachment B, the Department incurred expenses of $2,754,716 in SFY 2020, and had to cover a shortfall of approximately $1,274,765 using other resources. For example, personnel paid through other licensing programs were reassigned to carry out duties associated with the oversight of ionizing or non-ionizing radiation; supplies bought with funds from other licensing programs were used for carrying out activities covered under A.R.S. Title 30, Chapter 4, and 9 A.A.C. 7; and the Department did not collect from the Program the $470,742 of indirect fees assessed to cover Department-wide expenses. Except for the purchase on one piece of critical equipment, the Department also had to postpone the purchase of replacements for outdated or inoperable equipment to monitor for the presence of radioactivity, some of which is over 30 years old. This situation cannot continue indefinitely, and has reached the point where the Department has to increase fees or reduce regulatory activities, which could include not conducting inspections or investigating complaints in a timely manner, being unable to adequately detect the presence of radioactivity or dispose of radioactive waste, and spending more time processing applications. The Department believes this reduction in regulatory oversight may result in harm to the health and safety of the public, as well as causing a burden on the regulated community. With the fee increase described in Attachment A, the Department anticipates generating approximately $2,200,000 in additional fees each year, of which the Department would receive approximately $2,000,000, which should be sufficient to cover the shortfall, make needed improvements to the data system, make other purchases that had been deferred due to lack of funding, and allow the Department to continue to protect public health. Therefore, the Department would receive a substantial benefit from the fee increase.

The Department intends to use the funds as described in Attachment B. With the approximately $1,536,000 plus $650,000(ERE) budgeted for personnel, the Department plans to use the additional $400,000 to fill three existing positions left vacant due to insufficient funding, reallocate the funding for the salaries of other existing personnel to better reflect their duties, and cover other personnel costs, with no new FTEs being requested. The personnel members filling the unfilled existing positions would be Health Physicists, two functioning as surveyors and one as the Health Physics Laboratory Manager. The full-time duties of the surveyors would be to conduct inspections of facilities using or storing equipment or devices emitting ionizing radiation or facilities using devices producing non-ionizing radiation, to address concerns in an Auditor General's report from September 29, 2015, and manage enforcement. The anticipated cost for the surveyors, including ERE, would be

approximately $75,000 each. The duties of the Health Physics Laboratory Manager include conducting, directing, and supervising the analysis of samples collected during inspections or to monitor for the presence of radioactivity in consumer products or the environment. The anticipated cost for the Health Physics Laboratory Manager, including ERE, would be approximately $95,000. Therefore, the anticipated increase in expenses for these personnel would be approximately $245,000**,** including ERE. Additional funding for surveying facilities is also being budgeted.

Other funds would be allocated to cover costs that had to be postponed due to the funding shortage. The Department anticipates needing approximately $40,000 annually to pay for disposal of radioactive waste, which has been building up due to insufficient funding for disposal. Some of this waste is generated from Department activities throughout the year, while the rest would be collected as part of the Department's response to public health and safety incidents. Another approximately $8,000 in additional funding is needed to purchase radiation detection equipment and personnel protective equipment for staff, as well as radioactive standards and computers. When responsibility for oversight of ionizing or non-ionizing radiation in Arizona rested with the Arizona Radiation Regulatory Agency, licenses and registrations had been recorded in an obsolete database, and paper applications were used. There was no way to contact regulated persons electronically. Since then, the Department has begun transitioning to more up-to-date recordkeeping methods. However, funding constraints have limited progress. The Department anticipates using approximately $90,000 for software development, enhancement, and maintenance to allow for electronic submission of applications and more effective methods to communicate with regulated persons, including the introduction of e-mail contact.

The Department plans to use $20,000 for staff training, which includes the small amount that had been expended under the current budget. The training would encompass how to license/register and inspect all types of users of ionizing and non-ionizing radiation, and could include training in the safety aspects of industrial radiography, environmental monitoring for radioactivity, irradiator technology, root cause/incident investigation, brachytherapy and gamma knife, diagnostic and nuclear medicine, residual radiation, air sampling for radioactive materials, and visual sampling. In addition, staff require training on survey/investigation tools used nationally, such as MILDOS, used when performing routine radiological impact and compliance evaluations for various uranium recovery operations; the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) and the Multi-Agency Radiation Survey and Assessment of Materials and Equipment (MARSAME) manual, which provide technical information on survey approaches; and the Mammography Quality Standards Act (MQSA), which specifies uniform quality standards for mammography facilities across the country. The latter is necessary to allow the Department to perform activities required in the FDA grant.

When the Department inspects a facility, monitors the decommissioning of a site, or investigates an incident, samples may be collected, which have to be analyzed to determine what is happening and whether health and safety are being protected. The Department also tests air, water, soil, milk, and vegetation for the presence of radioactivity. The Department maintains a radiologic laboratory to perform this testing. Much of the analytic equipment used for testing is very outdated, with some more than 30 years old, and needs replacement. Since the cost of each piece of analytic equipment is likely to be in excess of $50,000, the Department plans to use an average of approximately $100,000 per year to purchase analytic equipment that is more modern, accurate, and precise to protect health and safety.

As part of this rulemaking, the Department is also making changes to clarify the current rules to improve readability and make the rules more understandable. These changes include moving requirements for special license fees, now in R9-7-1307(A) and (B), into the Section describing application fees and annual fees as R9-7-1306(C) and (B), respectively; including information currently in "Notes" for the Table in R9-7-1306(A) into Table 13.1; and consolidating information about small entity fees into R9-7-1302. The Department believes that these changes may reduce confusion on the part of the regulated community and reduce the time spent by staff in answering questions about the rules. Therefore, although the Department may initially incur minimal costs to explain the changes to the new rules, the Department anticipates that these changes may also provide a minimal benefit to the Department.

- **Licensees and registrants who use, store, and/or dispose of sources of radiation, including public and private entities and individuals**

As shown in Attachment A and in R9-7-1302(A), (B), (C) and (D), the Department licenses a wide variety of entities. Licensees include industrial businesses, academic institutions, medical/veterinary facilities, laboratories, and governmental entities, and may range from a large national or international corporation to a small company. Some licenses are very specific and cannot be combined with any other licenses, while other types of licenses can be combined together, with the licensee only paying the highest fee associated with the license types that were combined. However, if a single licensee holds several licenses that cannot be combined, rather than or as well as others that can be combined, the licensee would pay the total of the fees for each specific license, in addition to the highest fee for the combined licenses, if applicable. Thus, a licensee could incur a higher increase in licensing costs than would be predicted by analyzing the cost increase for individual categories of licenses.

Of the 353 licenses issued by the Department in CY 2019 to persons who use, store, or dispose of sources of radiation, two were to facilities with broad industrial class A or B licenses (under R9-7-1302(C)(1) and (2)) and four were to facilities with broad medical licenses (under R9-7-1302(B)(1)). These licensees pay the highest current fees of $11,400 and $11,000, respectively, and under the new

fees would both pay fees of $20,000. Thus, they will have the largest fee increases of $8,600 and $9,000, respectively. Together with 181 other licensees, these licensees are expected to incur a moderate cost burden due to the new rules. There are no entities currently licensed as a nuclear laundry (under R9-7-1302(D)(3)), a licensee of which would incur a substantial increase of $14,700 if such a license were issued. Therefore, the Department anticipates that every other licensee will incur a minimal cost increase due to the new rules. The Department believes that cities, municipalities, or other agencies that are licensees, including those using portable gauges to measure moisture and compaction levels in soil and asphalt density in paving mixes, would be among those having a minimal increase in costs.

A licensee would be required to obtain a license from the NRC if Arizona lost primacy due to the inability to adequately regulate sources of radiation. As shown in Attachment C, the fees charged by the NRC are significantly higher than the new fees being made through this rulemaking. For example, the new fee for a broad medical license is $21, 900 less than a licensee would pay the NRC for the same license. A licensee with an industrial radiography license would pay $20,200 more than the new fee for a license from the NRC, while a license under R9-7-1302(B)(5) costs $18,100 more from the NRC. Therefore, the Department believes that the rulemaking, through allowing the Department to retain primacy, may provide up to a substantial benefit to a licensee who would otherwise need to obtain a license through the NRC.

The Department issued 7,812 registrations to entities that use a total of 20,982 devices that are sources of radiation, including X-ray devices, particle accelerators, tanning devices, class 3b or class 4 lasers, or radiofrequency devices, as shown in Attachment A. These fees are assessed separately from any licensing fees. Of fees for registrations, the largest single increase is for particle accelerator facilities, for which requirements are specified in 9 A.A.C.7, Article 9. The Department has issued 68 registrations for particle accelerator facilities (under R9-7-1302(E)(5)), for which the current fee is $750 and the new fee is $2,500. Thus, each of these facilities would be expected to incur a minimal cost increase of $1,750 due to the new fees.

Hospitals and other health care institutions providing inpatient services currently pay $75 to register an X-ray machine tube. Under the new rules, the fee increases to $200 per tube, for an increase of $125 per tube. Based on registrations as of December 31, 2019, one large hospital, which has 85 X-ray machine tubes would incur a substantial increase in fees of $10,625, while 36 registrants would incur a moderate increase and 46 would incur a minimal increase. Other health care institutions and private offices, as well academic institutions, will pay an increased fee of $150 per tube, up from $51 under the current rules. Of these, two are expected to incur a moderate cost increase of $2,673 and $2,178, respectively, based on the number of X-ray machine tubes currently registered. The Department anticipates that the rest of the 1,836 registrants under R9-7-1302(E)(2) would incur a

minimal cost increase, with 1,190 incurring a cost increase of less than $100 and another 416 paying less than $500 more. Dental, podiatry, and veterinary offices currently pay a $42 registration fee for X-ray machines and will pay $100 under the new rules, an increase of $58. Under the new rules, all 3,249 registrants would incur a minimal cost increase, with the greatest being a $1,160 increase for a large facility with 20 X-ray machine tubes. Court buildings, correctional facilities, airports, and other facilities using X-ray devices will also pay $100 under the new rules, an increase of $58 from the current $42 fee. Of 431 such registrants, all are expected to incur a minimal fee increase.

The Department also registers devices producing nonionizing radiation, with requirements for the users of these devices in Article 14 of the Chapter. A total of 1,035 tanning devices are registered to 191 facilities, which currently pay $28 per tanning device. Under the new rules, a registrant would pay a $50 fee, an increase of $22. The Department believes that all these registrants would incur a minimal fee increase. Users of class 3b or class 4 lasers are also required to register with the Department. Requirements related to health and safety are tiered, based on the number of lasers a registrant has, as are fees. The fees for these registrants are currently $175, $408, and $699 and would increase to $300, $600, and $1,000, respectively. Therefore, the Department anticipates that these registrants would incur a minimal increase in costs due to the rulemaking, as would users of medical lasers and Class II surgical devices.

Radiofrequency devices produce electromagnetic waves that are used for a variety of purposes in industrial and agricultural applications and for medical and cosmetic procedures. These may range from using the thermal energy of the nonionizing radiation in a very targeted manner to destroy cancer cells, deaden nerves to relieve pain through microneedling, remove scar tissue, treat acne, or tighten skin. In other uses, radiofrequency devices can destroy microorganisms in food-processing industries, control insects in agricultural products, act as industrial microwave ovens or dryers, or produce high temperatures in metals for arc-welding applications. The Department currently charges registration fees, as specified in R9-7-1306(A), to users of radiofrequency devices under R9-7-1302(F)(8) through (11), but not to users of medical radiofrequency devices under R9-7-1302(F)(12) through (15).

Industrial users of radiofrequency devices registered under R9-7-1302(F)(9) through (11) currently pay a fee per facility, based on the number of devices and would continue to do so, with facilities having one to five devices paying $80 more than the current fee, those having six to 20 devices paying $140 more, and those large facilities with more than 20 devices paying $251 more. The Table in R9-7-1306 shows that a registrant of a “Medical RF surgical and cosmetic” device under R9-7-1302(F)(8) currently pays a fee of $47 per device, in contrast with a “Class A medical,” “Class B medical,” “Class C medical,” or “Class D medical” device, for which no fee is paid by a registrant. The descriptions of these types of registrations may cause confusion on the part of the reader, so the Department has revised the descriptions and combined types of registrations, as shown in R9-7-1302(F) and Table 13.1

Now, a radiofrequency device used for cosmetic purposes would more clearly be registered under R9-7-1302(F)(8), and a facility using radiofrequency devices for medical procedures, regardless of their number, would register under R9-7-1302(F)(12). The operator of a radiofrequency device used for cosmetic purposes would almost always be a medical assistant, cosmetologist, or aesthetician with limited training, who would be subject to more review by the Department to ensure that training was adequate and appropriate to the procedures to be performed. Under the new rules, a registrant of a radiofrequency device used for cosmetic purposes would pay a fee of $100 per device, an increase of $53 per device over the current fee. Because a radiofrequency device for medical procedures will always be used by a health professional who is subject to less Department review of operator credentialing requirements and no fee had been assessed under the current rules, a registrant under R9-7-1302(F)(12) would now pay a facility fee of $100. Thus, the Department believes that all registrants of radiofrequency devices would incur a minimal cost increase due to the new rules.

Because the changes to the rules help improve their clarity, the Department believes that those regulated under the rules may find them easier to understand and comply with. In addition, the fee increases will allow the Department to institute more up-to-date systems for receiving and processing applications and communicating with licensees and registrants. The increased revenue will also allow the Department to hire and train surveyors to reduce the time to process applications or amendments or to get questions answered. Therefore, those regulated under the rules may see a shorter processing time for applications and amendments, as well as improved communication and answers to questions. Therefore, the Department believes that the new rules may provide a significant benefit to regulated entities.

- **Businesses that contract with licensees or registrants to perform activities covered under the rules in 9 A.A.C. 7**

  Because there are so many different types of entities licensed or registered under these rules, and so many different types of devices registered, a wide variety of businesses may contract with a licensee or registrant to perform activities covered under the rules in Chapter 7. It is possible that a licensee or registrant may pass along a portion of the fee increase to a business with which it contracts, to offset the increase. If that were to occur, the Department anticipates that the business could incur up to a moderate increase in contracting costs. However, because the fee increases will allow the Department to continue to provide adequate oversight of sources of radiation in Arizona, the Department believes that these businesses may also receive a significant benefit from the oversight in ensuring the safe use of sources of radiation.

- **Employees of licensees or registrants or entities that contract with regulated entities**

  An employee of a licensee or registrant would likely be the first to experience harm if the licensee or registrant had not instituted adequate protections or was not following the requirements in the rules.

An employee of a business that contracts with a licensee or registrant to provide services regulated under the rules in Chapter 7 may also be harmed if the contractor were not complying with the rules in the Chapter. By clarifying rule requirements, this rulemaking may enable a licensee or registrant to better comply with requirements. The oversight by the Department, which the new fees will allow to continue, may improve compliance and provide a safer work environment for an employee of a licensee or registrant or of an entity that contracts with a regulated entity. Therefore, the Department anticipates that such an employee may receive a significant benefit from the new rules.

- **Patients and their families**

  Every day, thousands of patients in Arizona receive diagnostic or therapeutic procedures at facilities licensed under the rules in 9 A.A.C. 7 or with equipment registered under the rules. These patients rely on the oversight provided by the Department to ensure that the facility applying ionizing or non-ionizing radiation has adequate administrative controls in place to ensure safe operation. These may include ensuring that the equipment is operating according to manufacturer's specifications, that personnel are well-trained, and that the facility is adhering to the general premise of using radiation "As Low As Reasonably Achievable." By enabling the Department to continue providing adequate oversight over facilities licensed or registered under the rules in 9 A.A.C. 7, the Department anticipates that the fee increase may provide a significant benefit to a patient. It is possible that a facility may pass through any increased cost incurred by them as increased fees for services provided at the facility, but the Department believes these fee increases would be at most minimal.

- **General public**

  Similarly, the Department believes that the health and safety of the general public are protected by continued oversight by the Department of ionizing or non-ionizing radiation in Arizona and the regulation of persons who use, store, or dispose of sources of radiation and of these sources of radiation under the rules in 9 A.A.C. 7. Therefore, the Department expects that the general public may receive a significant benefit from the fee changes due to knowing that adequate regulation is continuing.

4. A general description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking

Public and private employment in the State of Arizona is not expected to be affected due to the changes in the rules.

5. A statement of the probable impact of the rules on small business

a. Identification of the small businesses subject to the rules

Small businesses that may be affected by the rule changes include small businesses that use, store, or dispose of sources of radiation, as described in paragraph 3.

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

The Department is unaware of any additional cost associated with this rulemaking that is not already covered by the current rules or described in paragraph 3.

c. A description of the methods that the agency may use to reduce the impact on small businesses

The Department already has in place a mechanism by which small entities may pay reduced fees, as specified in R9-7-1304. These fees are not being increased as part of the rulemaking, and the Department does not know of any additional methods to reduce the impact on small businesses.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rules

There are minimal, if any, costs to the public from these rules, as described in paragraph 3.

6. A statement of the probable effect on state revenues

Since 10% of the increased revenue generated by the fee increase would be deposited into the general fund according to A.R.S. § 30-654, the Department anticipates that the general fund would receive approximately an extra $220,000 per year due to the fee increase.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking

There are no less intrusive or less costly alternatives for achieving the purpose of the rule.

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

The data upon which these estimates were based comes from financial systems maintained by state governmental agencies, are subject to audit, and are, therefore, considered acceptable data.

Attachment A Fees in Chapter 7

Type of License/Registration	Current Fee	Number	Current Revenue	New Fee	Anticipated New Revenue
Broad academic class A	$5,800	2	$11,600	$10,000	$20,000
Broad academic class B	$5,800	0	$0	$10,000	$0
Broad academic class C	$5,800	0	$0	$10,000	$0
Limited academic	$1,000	3	$3,000	$2,500	$7,500
Broad medical	$11,000	4	$44,000	$20,000	$80,000
Medical materials class A	$1,900	37	$70,300	$4,000	$148,000
Medical materials class B	$1,900	122	$231,800	$4,000	$488,000
Medical materials class C	$1,900	0	$0	$4,000	$0
Medical teletherapy	$5,200	1	$5,200	$8,000	$8,000
General medical	$250	3	$750	$500	$1,500
Broad industrial class A	$11,400	2	$22,800	$20,000	$40,000
Broad industrial class B	$11,400	0	$0	$20,000	$0
Broad industrial class C	$3,200	0	$0	$6,000	$0
Limited industrial	$700	22	$15,400	$1,500	$33,000
Portable gauge	$1,000	83	$83,000	$2,000	$166,000
Fixed gauge class A	$1,000	11	$11,000	$2,000	$22,000
Fixed gauge class B	$1,000	10	$10,000	$2,000	$20,000
Leak detector	$1,330	1	$1,330	$2,000	$2,000
Gas chromatograph	$1,000	0	$0	$2,000	$0
General industrial	$100	19	$1,900	$300	$5,700
Industrial radiography class A	$5,500	4	$22,000	$10,000	$40,000
Industrial radiography class B	$5,500	0	$0	$10,000	$0
Open field irradiator	$3,000	0	$0	$10,000	$0
Shelf-shielded irradiator	$1,500	1	$1,500	$5,000	$5,000
Well logging	$2,000	2	$4,000	$5,000	$10,000
Research and development	$2,100	2	$4,200	$5,000	$10,000
Laboratory	$1,000	1	$1,000	$3,000	$3,000
Distribution	$2,600	4	$10,400	$5,000	$20,000
Nuclear pharmacy	$4,600	5	$23,000	$10,000	$50,000
Nuclear laundry	$10,300	0	$0	$25,000	$0
General industrial gauging device	$300	0	$0	$500	$0
General depleted uranium	$200	1	$200	$200	$200
Veterinary medicine	$1,000	8	$8,000	$2,000	$16,000
General veterinary medicine	$200	0	$0	$500	$0
Health physics class A	$3,200	4	$12,800	$5,000	$20,000
Health physics class B	$1,000	0	$0	$3,000	$0
Secondary uranium recovery	$5,100	0	$0	$8,000	$0
Low-level radioactive waste disposal facility	$6,000,000	0	$0	$6,000,000	$0
Waste processor class A	$4,600	0	$0	$10,000	$0
Waste processor class B	$3,600	0	$0	$8,000	$0
Additional storage and use site (each additional site)	30% of base	This changes from year to year. It is calculated based on if a licensee has more than one use site as of January 1. They are required to pay the fee during the year if they add an additional site to their license.			
Possession-only	50% of base				

Attachment A Fees in Chapter 7

Reciprocal	50% of annual	This changes from year to year based upon if companies come into the state to do work. They have to apply for reciprocity.			
Reserved					
Unclassified radioactive material	Full Cost ($99 per hour plus 44.5 cents per mile)	1	This changes from year to year and is calculated as specified in R9-7-1306.		
NORM commercial disposal site	$600,000	0	$0	$600,000	$0
X-ray machine class A (per tube)	$75	1,527	$114,525	$200	$305,400
X-ray machine class B (per tube)	$51	3,065	$156,315	$150	$459,750
X-ray machine class C (per tube)	$42	11,452	$480,984	$100	$1,145,200
Industrial radiation machine (per device)	$42	964	$40,488	$100	$96,400
Accelerator facility	$750	68	$51,000	$2,500	$170,000
Other ionizing radiation machine	Full Cost ($99 per hour plus 44.5 cents per mile)	0	If any person were licensed/registered under this type, the fee would change from year to year and be calculated as specified in R9-7-1306.		
Tanning device (per device)	$28	1,035	$28,980	$50	$51,750
Class A laser (1 to 10 laser devices)	$175	91	$15,925	$300	$27,300
Class B laser (11 to 49 laser devices)	$408	41	$16,728	$600	$24,600
Class C laser (50 or more laser devices)	$699	19	$13,281	$1,000	$19,000
Laser light show or laser demonstration	$408	24	$9,792	$500	$12,000
Medical laser (per laser device)	$47	1,685	$79,195	$100	$168,500
Class II surgical device (per device)	$47	1,514	$71,158	$100	$151,400
Cosmetic radiofrequency device (per device)	$47	54	$2,538	$100	$5,400
Class A industrial (1 to 5 radiofrequency devices)	$70	12	$840	$150	$1,800
Class B industrial (6 to 20 radiofrequency devices)	$210	20	$4,200	$350	$7,000
Class C industrial (more than 20 radiofrequency devices)	$349	10	$3,490	$600	$6,000
Medical radiofrequency device (one or more)	$0	103	$0	$100	$10,300
Other non-ionizing radiation device	Full Cost ($99 per hour plus 44.5 cents per mile)	0	If any person were licensed/registered under this type, the fee would change from year to year and be calculated as specified in R9-7-1306.		
		Fee Revenue	**$1,688,619**	**(+ other revenue)**	**$3,877,500**

Additional revenue from: Reciprocal licenses	**$45,633**		**$90,000**
Licensing of additional sites	**$77,193**		**$150,000**
Full cost	**$1,000**		**$1,000**
Subtotal Current Revenue	**$1,812,445**	**Subtotal New Revenue**	**$4,118,500**
Small-entity fee reduction (Avg):	**$112,500**	**Small-entity fee reduction (Projected):**	**$175,000**
Total Current Revenue	**$1,699,945**	**Total Revenue**	**$3,943,500**
A.R.S. 30-654(C) Specific Transfer Out	**$300,000**	**Transfer Out**	**$300,000**
Remaining Current Revenue	**$1,399,945**	**Remaining New Revenue**	**$3,643,500**
90% of Remaining (Program Revenue)	**$1,259,951**	**90% of Remaining**	**$3,279,150**
Shortfall Amount (From Attachement B)	**$1,274,765**	**Program Revenue, including Grant Funding**	**$3,499,150**

	SFT 2020 EXPENDITURES	NEW BUDGETED AMOUNT	DIFFERENCE	USES OF EXTRA FUNDING	
Personal Services	$1,256,727	$1,536,464	$279,737	2 surveyors + Lab manager; reallocate funds for other staff	$2,186,388
Employee Related Expenditure	$525,336	$649,924	$124,588		$566,274
Professional & Outside Service	$1,375	$95,000	$93,625	Computer system development and maintaintenance	
Travel In-State	$28,077	$50,000	$21,923	Additional surveying	
Travel Out-of-State	$3,888	$20,000	$16,112	Staff training to keep up expertise and certification	
Other Operating Expenditures	$380,281	$420,000	$39,719	Waste disposal	
Capital Equipment	$56,120	$100,000	$43,880	Replace laboratory equipment	
Non-Capital Equipment	$32,170	$40,000	$7,830	Purchase computers, radiation detection equipment, PPE	
Transfers Out *	$470,742	$566,274	$95,532	Indirect	
TOTAL	**$2,754,716**	**$3,477,662**	**$722,946**		$722,946
Shortfall	**$1,274,765**				

*** Amount of indirect funding that was assessed, regardless of whether transferred or not**

Attachment B Fees in Chapter 7

Attachment C

	Arizona (Current)	Arizona (Proposed)	NRC	California1	Nevada	Texas	Colorado	New Mexico2	Washington
Broad academic Class A	$5,800.00	$10,000.00	$15,300.00	$37,290.00	$8,800.00	$23,810.00	$15,690.00	$17,300.00	$36,288.00
Broad academic Class B	$5,800.00	$10,000.00	$15,300.00	$20,622.00	$8,800.00	$23,800.00	$15,690.00	$17,300.00	$16,773.00
Broad academic Class C	$5,800.00	$10,000.00	$15,300.00	$13,036.00	$8,800.00	$23,800.00	$15,690.00	$17,300.00	$13,478.00
Limited academic	$1,000.00	$2,500.00	$14,900.00	$4,502.00	$1,320.00		$7,145.00		
Broad medical	$11,000.00	$20,000.00	$41,900.00	$37,290.00	$13,851.00	$23,800.00	$35,350.00	$13,560.00	$36,288.00
Medical materials class A	$1,900.00	$4,000.00	$15,300.00	$7,347.00	$5,051.00	$8,950.00	$7,910.00	$3,815.00	$9,126.00
Medical materials class B	$1,900.00	$4,000.00	$15,300.00	$4,502.00	$5,051.00	$4,060.00	$7,910.00	$3,815.00	$6,608.00
Medical materials class C	$1,900.00	$4,000.00	$15,300.00	$3,554.00	$5,051.00	$3,410.00	$7,910.00	$3,815.00	$1,474.00
Medical teletherapy	$5,200.00	$8,000.00	$26,100.00	$11,140.00	$5,051.00	$9,910.00	$18,890.00	$10,075.00	$3,032.00
General medical	$250.00	$500.00				$3,410.00			
Broad industrial class A	$11,400.00	$20,000.00	$25,300.00	$37,290.00	$23,800.00	$9,410.00	$33,785.00	$17,300.00	$36,288.00
Broad industrial class B	$11,400.00	$20,000.00	$25,300.00	$20,622.00	$23,800.00	$8,160.00	$33,785.00	$17,300.00	$16,773.00
Broad industrial class C	$3,200.00	$6,000.00	$15,300.00	$13,036.00	$23,800.00	$4,230.00	$33,785.00	$4,140.00	$13,478.00
Limited industrial	$700.00	$1,500.00	$2,900.00	$4,502.00	$1,760.00	$1,410.00	$9,070.00		
Portable gauge	$1,000.00	$2,000.00	$10,000.00	$2,606.00	$1,320.00	$3,240.00	$4,740.00	$2,240.00	$1,511.00
Fixed gauge class A	$1,000.00	$2,000.00	$10,000.00	$2,606.00	$1,100.00	$3,410.00	$4,740.00	$2,240.00	$1,647.00
Fixed gauge class B	$1,000.00	$2,000.00	$10,000.00	$2,606.00	$1,100.00	$3,410.00	$4,740.00	$2,240.00	$1,647.00
Leak detector	$1,330.00	$2,000.00	$2,900.00	$2,606.00	$1,760.00	$2,130.00	$4,740.00	$2,240.00	$1,038.00
Gas chromatograph	$1,000.00	$2,000.00	$10,000.00	$2,606.00	$496.00	$2,130.00	$4,740.00	$2,240.00	$1,038.00
General industrial	$100.00	$300.00	$2,900.00	$500.00	$1,000.00				
Industrial Radiography class A	$5,500.00	$10,000.00	$30,200.00	$11,140.00	$5,500.00	$17,870.00	$17,650.00	$9,630.00	$14,311.00
Industrial Radiography class B	$5,500.00	$10,000.00	$30,200.00	$11,140.00	$5,500.00	$8,490.00	$17,650.00		$10,675.00
Open field irradiator	$3,000.00	$10,000.00	$88,000.00	$11,140.00		$28,900.00	$29,080.00	$9,695.00	$15,298.00
Shelf-shielded irradiator	$1,500.00	$5,000.00	$11,900.00	$9,243.00	$1,650.00	$4,690.00	$5,305.00	$2,260.00	$2,878.00
Well logging	$2,000.00	$5,000.00	$14,600.00	$5,451.00	$3,300.00	$5,920.00	$13,485.00	$6,530.00	$7,010.00
Research and development	$2,100.00	$4,000.00	$14,900.00	$7,347.00	$1,320.00	$5,970.00	$7,145.00	$3,230.00	
Laboratory	$1,000.00	$3,000.00	$2,900.00	$2,606.00	$1,760.00	$1,800.00	$4,740.00		$7,300.00
Distribution	$2,600.00	$5,000.00	$11,600.00		$2,200.00	$4,230.00	$5,215.00		$13,713.00
Nuclear Pharmacy	$4,600.00	$10,000.00	$17,800.00	$11,140.00	$6,600.00	$8,160.00	$17,210.00	$10,270.00	$10,721.00
Nuclear laundry	$10,300.00	$25,000.00	$35,200.00	$11,140.00			$24,410.00	$12,410.00	$18,284.00
General industrial	$300.00	$500.00	$3,100.00		$1,000.00	$2,980.00			$912.00
General depleted uranium	$200.00	$200.00	$2,900.00		$1,000.00	$2,980.00			
Veterinary medicine	$1,000.00	$2,000.00	$10,000.00	$3,554.00	$1,760.00	$2,980.00	$7,910.00		$4,605.00
General veterinary medicine	$200.00	$300.00	$10,000.00		$1,760.00	$2,980.00	$4,740.00		
Health physics class A	$3,200.00	$5,000.00	$10,000.00	$7,347.00	$2,200.00	$4,410.00	$4,740.00	$3,420.00	$2,583.00
Health physics class B	$1,000.00	$3,000.00	$10,000.00	$3,554.00	$1,760.00	$1,950.00	$4,740.00		$2,583.00
Secondary uranium recovery	$5,100.00	$8,000.00	$49,200.00						
Low-level radioactive waste disposal site	$6,000,000.00	$6,000,000.00							
Waste processor class A	$4,600.00	$10,000.00	$18,400.00		$2,200.00	$9,650.00	$14,275.00	$7,480.00	$18,720.00 + actual
Waste processor class B	$3,600.00	$8,000.00	$10,500.00		$2,200.00	$9,650.00	$11,865.00	$5,530.00	$18,721.00 + actual

Note 1: California license fees are based on maximum requested possession activity and number of use locations, not license type. Dollar amounts listed in table are based on average activity possessed by those license types in Arizona.

Attachment C

Note 2: New Mexico charges a fee for each category type that a licensee possesses. For example, this means that a medical licensee could be charged multiple fees if they possess each type of radiaoctive material(i.e. diagnostic, therapy, irradiator, etc.)

Type of License/Registration

X-ray tube		Current Fee	New Fee	California	Nevada	Texas	Utah	Colorado
X-ray machine class A (per tube)	Hospital	$75	$200	$319	$500	$940-$1,910	$145	$170
X-ray machine class B (per tube)	Medical, non-hospital	$51	$150	$319	$150	$600	$140	$170
	Educational			$256	$150	$600	$105	$170
	Dental			$118	$150	$420	$45	$170
X-ray machine class C (per tube) , ,	Veterinary	$42	$100	$256	$150	$420	$105	$170
	Podiatry			$256	$150	$420	$105	$170
Industrial radiation machine (per device)		$42	$100	$256	$200	$290-$1,910	$105	$170

Laser or Radiofrequency device	Current Fee	New Fee	Maine	Oregon	Texas1	Illinois	New York
Tanning device (per device)	$28	$50	$50/facility + $20/tanning bed	$150/tanning bed	$230-400	-	-
Class A (1 to 10 laser devices)	$175	$250	-	-	$230-600	$50/laser	$600/laser (3-years)
Class B (11 to 49 laser devices)	$408	$500	-	-	$230-600	$50/laser	$600/laser (3-years)
Class C (50 or more laser devices)	$699	$750	-	-	$230-600	$50/laser	$600/laser (3-years)
Laser light show or laser demonstration	$408	$500	-	-	$230-600	$50/laser	$600/laser (3-years)
Medical laser (per laser device)	$47	$100	-	-	$230-600	$50/laser	$600/laser (3-years)
Class II surgical (per device)	$47	$100	-	-	$230-600	-	-
Medical RF surgical and cosmetic (per device)	$47	$100	-	-	$230-400	-	-
Class A industrial (1 to 5 radiofrequency devices)	$70	$100	-	-	$230-400	-	-
Class B industrial (6 to 20 radiofrequency devices)	$210	$250	-	-	$230-400	-	-
Class C industrial (more than 20 radiofrequency devices)	$349	$500	-	-	$230-400	-	-
Class A medical (1 or 2 non-cosmetic radiofrequency devices) (per facili	$0	$100	-	-	$230-400	-	-
Class B medical (3 to 9 non-cosmetic radiofrequency devices) (per facili	$0	$100	-	-	$230-400	-	-
Class C medical (10 to 19 non-cosmetic radiofrequency devices) (per facility)	$0	$100	-	-	$230-400	-	-
Class D medical (20 or more non-cosmetic radiofrequency devices) (per facility)	$0	$100	-	-	$230-400	-	-

Note 1. $230/facility for human, research, academic, and veterinary purposes; $400/facility for industrial, services, and entertainment

D13	365	90	455
D14	90	30	120
D15	40	20	60
D16	20	10	30
D17	40	20	60
D18	90	30	120
D19	365	120	485
E1	40	20	60
E2	40	20	60
E3	40	20	60
E4	40	20	60
E5	90	30	120
E6	90	30	120
F1	40	20	60
F2	40	20	60
F3	40	20	60
F4	40	20	60
F5	20	10	30
F6	40	20	60
F7	40	20	60
F8	40	20	60
F9	40	20	60
F10	40	20	60
F11	40	20	60
F12	40	20	60
F13	40	20	60
F14	40	20	60
F15	40	20	60
F16	90	30	120

Footnote: “administrative completeness review time-frame”; “substantive review time-frame,” and “overall time-frame” are defined in A.R.S. § 41-1072.

Historical Note

New Article 12, Table 1, recodified from 12 A.A.C. 1, Article 12, Table 1 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

ARTICLE 13. LICENSE AND REGISTRATION FEES

R9-7-1301. Definition

“Combined” means the Department has granted authorized activities contained in two or more license types in a single license document, requiring the payment of a single license fee for the more expensive license of the planned combination.

Historical Note

New Section R9-7-1301 recodified from R12-1-1301 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-1302. License and Registration Categories

A. Category A licenses are those specific licenses which authorize a school, college, university, or other teaching facility to possess and use radioactive materials for instructional or research purposes.

1. A broad academic class A license is any category A license which meets the specifications of R9-7-310(A)(1).
2. A broad academic class B license is any category A license other than a broad academic class A license which meets the specifications of R9-7-310(A)(2).
3. A broad academic class C license is any category A license other than a broad academic class A or B license which meets the specifications of R9-7-310(A)(3).
4. A limited academic license is any category A license which authorizes only those radioisotopes, forms, and quantities individually specified in the license.

B. Category B licenses are those specific or general licenses which authorize the application of radioactive material or the radiation from it to a human being for medical diagnostic, therapeutic, or research purposes, or the use of radioactive material in medical laboratory testing. Except for a type B6, general medical license, the Department shall not combine a category B license with a license of any other category.

1. A broad medical license is any category B license which meets the specifications of R9-7-310(A)(1) and meets the requirements of 9 A.A.C. 7, Article 7. A broad medical license may authorize any medical use other than teletherapy.
2. A medical materials class A license is any specific category B license other than a broad medical license, which authorizes the use of radiopharmaceuticals and sealed sources containing radioactive materials for a therapeutic purpose in quantities which require hospitalization of the

patient for radiation safety purposes. The license may authorize other radioactive materials and other medical uses, except teletherapy.

3. A medical materials class B license is any specific category B license which authorizes the diagnostic or therapeutic use, other than teletherapy, of radioactive materials only in limited quantities such that the patient need not be hospitalized for radiation safety purposes.
4. A medical materials class C license is any specific category B license which authorizes possession of specified radioisotopes only in the form of sealed sources for treatment of the eye or skin or for use in diagnostic medical imaging devices.
5. A medical teletherapy license is a specific category B license which solely authorizes radioisotopes in the form of multi-curie sealed sources for use in external beam therapy. The Department shall not combine a medical teletherapy license with any other type of category B license.
6. A general medical license is a registration of the use of radioactive material pursuant to R9-7-306(D) or R9-7-306(E). A general medical license may be combined into a broad medical, medical materials class A, or medical materials class B license.

C. Category C licenses are those specific or general licenses authorizing the use of radioactive materials in any activity other than those authorized by a category A, B, or D license. Except as specifically authorized in this Section, the Department shall not combine a category C license with any other type of license.

1. A broad industrial class A license is any category C license which meets the specifications of R9-7-310(A)(1). The Department may combine a broad industrial class A license with any other category C license except industrial radiography, open field irradiator, or well logging licenses.
2. A broad industrial class B license is any category C license other than a broad industrial class A license which meets the specifications of R9-7-310(A)(2). The Department may combine a broad industrial class B license with any other category C license except industrial radiography, open field irradiator, or well logging licenses.
3. A broad industrial class C license is any category C license other than a broad industrial class A or B license which meets the specifications of R9-7-310(A)(3). The Department may combine a broad industrial class C license with any other category C license except industrial radiography, open field irradiator, or well logging licenses.
4. A limited industrial license is a specific category C license authorizing the possession of the radioactive materials authorized in R9-7-305(A), or R9-7-306(A), (C), or (F) for uses authorized in those subsections, but in quantities greater than authorized by those subsections.
5. A portable gauge license is a specific category C license which authorizes radioactive materials in the form of sealed sources for use in measuring or gauging devices designed and manufactured to be transported to the location of use. The Department may combine a portable gauge license with any broad scope industrial license or a fixed gauge class A license.
6. A fixed gauge class A license is a specific category C license which authorizes the possession of 50 or more measuring or gauging devices containing radioactive materials, where each device is permanently mounted for use at a single location.
7. A fixed gauge class B license is a specific category C license which authorizes the possession of 1 through 49 measuring or gauging devices containing radioactive materials, where each device is permanently mounted for use at a single location.
8. A leak detector license is a specific category C license which authorizes the use of radioisotopes in the form of a gas to test hermetic seals on electronic packages.
9. A gas chromatograph license is a specific category C license which authorizes the use of radioactive materials as ionization sources in gas chromatography or electron capture devices.
10. A general industrial license means a registration of the use of a material, source, or device generally licensed pursuant to R9-7-305 or R9-7-306, except R9-7-305(B), R9-7-306(D), or R9-7-306(E).
11. An industrial radiography class A license is a specific category C license which authorizes industrial radiography using sealed radioisotope sources at specific facilities identified in the license conditions or at temporary field job sites.
12. An industrial radiography class B license is a specific category C license which authorizes industrial radiography using sealed radioisotope sources only at specific facilities identified in the license conditions.
13. An open field irradiator license is a specific category C license authorizing the use of radioisotopes in the form of sealed sources not permanently mounted within a shielding container, for irradiation of materials.
14. A self-shielded irradiator license is a specific category C license authorizing the use of radioisotopes in the form of sealed sources for irradiation of materials in a shielding device from which the sources are not removed during irradiation. The Department may combine a self-shielded irradiator license with any broad license.
15. A well logging license is a specific category C license which authorizes the use of radioactive material in sealed or unsealed sources for wireline services or field tracer studies.
16. A research and development license is a specific category C license which authorizes a licensee to utilize radioactive material in unsealed and sealed form for industrial, scientific, or biomedical research, not including administration of radiation or radioactive material to human beings.
17. A laboratory license is a specific category C license which authorizes a licensee to perform specific in-vitro or in-vivo medical or veterinary testing, while possessing quantities of radioactive material greater than the general license quantities authorized in R9-7-306.

D. Category D licenses are the following specific radioactive material licenses. Except for type D4, general industrial; type D5, depleted uranium; type D8 and D9, health physics; and type D14, additional facilities licenses, the Department shall not combine a category D license with any other license.

1. A distribution license is one which authorizes the commercial distribution of radioactive materials or radioisotopes in products to persons holding an appropriate general or specific license. The Department shall ensure that a distribution license does not:
   a. Authorize distribution of radiopharmaceuticals or distribution to persons exempt from regulatory control, or
   b. Authorize any other use of the radioactive material. An appropriate category C license is required for

possession of radioisotopes and their incorporation into products.

2. A nuclear pharmacy license is one which authorizes the preparation, compounding, packaging, or dispensing of radiopharmaceuticals for use by other licensees.
3. A nuclear laundry license is one authorizing the collection and cleaning of items contaminated with radioactive materials.
4. A general industrial license is a registration of a gauging device in accordance with R9-7-306(A). The Department may combine a general industrial license with a Class A, B, or C broad industrial, limited industrial, portable gauge, or Class A or B fixed gauge license.
5. A depleted uranium general license is a registration of the use of the general license authorized pursuant to R9-7-305(C) or the use of depleted uranium as a concentrated mass or as shielding for another radiation source within a device or machine. The Department may combine a depleted uranium general license with a medical teletherapy; Class A, B, or C broad industrial; portable gauge; Class A or B fixed gauge; Class A or B industrial radiography; or self-shielded irradiator license. For registration purposes an applicant shall follow the registration instructions in R9-7-305(C).
6. A veterinary medicine license is one which authorizes the use of radioactive materials for specific applications in veterinary medicine as authorized in the license.
7. A general veterinary medicine license is a registration of the use of the general license authorized in R9-7-306(E) in veterinary medicine.
8. A health physics class A license is one which authorizes the use of radioactive materials for performing instrument calibrations, processing leak test or environmental samples, or providing radiation dosimetry services.
9. A health physics class B license is one which authorizes only the collection, possession, and transfer of radioactive materials in the form of leak test samples for processing by others.
10. A secondary uranium recovery license is one which authorizes the extraction of natural uranium or thorium from an ore stream or tailing which is being or has been processed primarily for the extraction of another mineral. The Department shall not combine a secondary uranium recovery license with any other license.
11. A low-level, radioactive waste disposal facility license is a license that is issued for a "disposal facility," as that term is used in R9-7-439 and R9-7-442, which has a closure or long-term care plan and is constructed and operated according to the requirements in 10 CFR 61, revised January 1, 2015, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.
12. A waste processor class A license is one authorizing the incineration, compaction, repackaging, or any other treatment or processing of low-level radioactive waste prior to transfer to another person authorized to receive or dispose of the waste. The Department shall not combine a waste processor class A license with any other license.
13. A waste processor class B license is one which authorizes a waste broker to receive prepackaged, low-level radioactive waste from other licensees; combine the waste into shipments; and transfer the waste without treating or processing the waste in any manner and without repackaging except to place damaged or leaking packages into overpacks. The Department shall not combine a waste processor class B license with any other license.
14. An additional facility license is an endorsement, by license condition to an existing specific license, authorizing one or more additional separate facilities where radioactive material may be stored or used for a period exceeding six months.
15. A possession-only license is a license of any other category which authorizes only the possession in storage, but no use of, the authorized materials. A license which has been suspended as an enforcement action is not considered a possession-only license.
16. A reciprocal license is the registration of the general license authorized by R9-7-320. This license is subject to a special fee as provided by R9-7-1307 but is exempt from annual fees.
17. Reserved
18. An "unclassified" radioactive material license is one authorizing radioisotopes, physical or chemical forms, possession limits, or uses not included in any other type of license specified in this Section.
19. A NORM commercial disposal site license is one that authorizes the receipt of waste material contaminated with naturally occurring radioactive material from other licensees for permanent disposal, provided the concentration of the radioactive material does not exceed 74kBq (2,000 picocuries)/gram.

E. Category E registrations are those that register the possession of x-ray machine(s) under 9 A.A.C. 7, Article 2. The Department shall not combine Category E registrations with any other registration.

1. An X-ray machine class A registration is one authorizing the possession of X-ray machines in a hospital or other facility offering inpatient care.
2. An X-ray machine class B registration is one authorizing the possession of X-ray machines in a medical, osteopathic, or chiropractic office or clinic not offering inpatient care; or the possession of X-ray machines in a school, college, university, or other teaching facility.
3. An X-ray machine class C registration is one authorizing the possession of X-ray machines in dental, podiatry, and veterinarian offices or clinics.
4. An industrial radiation machine registration is one authorizing the possession of X-ray machines, or the possession of particle accelerators not capable of producing a high radiation area, in a nonmedical facility.
5. An accelerator facility registration is one authorizing the possession and operation of one or more particle accelerators of any kind capable of accelerating any particle and producing a high radiation area.
6. A radiation machine, "other," is one authorizing possession or use of an ionizing radiation machine not included in any other category specified in subsection (E).

F. Category F registrations are those that register nonionizing radiation producing sources regulated under 9 A.A.C. 7, Article 14. The Department shall not combine Category F registrations with any other registration categories that have a difference in fee per unit.

1. A tanning registration authorizes the commercial operation of any number of tanning booths, beds, cabinets, or other devices in a single establishment.
2. A Class A laser registration authorizes the operation of one to 10 laser devices subject to R9-7-1433.
3. A Class B laser registration authorizes the operation of 11 to 49 laser devices subject to R9-7-1433.
4. A Class C laser registration authorizes operation of 50 or more laser devices subject to R9-7-1433.

5. A laser light show registration authorizes the operation of a laser device subject to R9-7-1441.
6. A medical laser registration authorizes the operation of one or more laser devices subject to R9-7-1440.
7. A Class II surgical device registration authorizes the operation of one or more Class II surgical devices subject to R9-7-1438. A device is designated as a Class II surgical device by the USFDA and is labeled as such by the manufacturer.
8. A medical radiofrequency device registration authorizes the operation of one or more medical radiofrequency devices.
9. A class A industrial radiofrequency device registration authorizes the operation of one to five radiofrequency heat sealers or industrial microwave ovens.
10. A class B industrial radiofrequency device registration authorizes the operation of six to 20 radiofrequency heat sealers or industrial microwave ovens.
11. A class C industrial radiofrequency device registration authorizes the operation more than 20 radiofrequency heat sealers or industrial microwave ovens.
12. A class A medical radiofrequency device registration authorizes the operation of one or two radiofrequency diathermy or electrocoagulation units not used in non-ionizing cosmetic procedures.
13. A class B medical radiofrequency device registration authorizes the operation of three to nine radiofrequency diathermy or electrocoagulation units not used in non-ionizing cosmetic procedures.
14. A class C medical radiofrequency device registration authorizes the operation of 10 to 19 radiofrequency diathermy or electrocoagulation units not used in non-ionizing cosmetic procedures.
15. A class D medical radiofrequency device registration authorizes the operation of 20 or more radiofrequency diathermy or electrocoagulation units not used in non-ionizing cosmetic procedures.
16. An "other" nonionizing radiation device authorizes the operation of a nonionizing radiation device or other device not included in any other category specified in subsection (F).

Historical Note
New Section R9-7-1302 recodified from R12-1-1302 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-1303. Fee for Initial License and Initial Registration
An applicant shall remit for a new license or new registration the appropriate fee as prescribed in R9-7-1306.

Historical Note
New Section R9-7-1303 recodified from R12-1-1303 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-1304. Annual Fees for Licenses and Registrations
A. Each license or registration issued by the Department shall identify the category by a letter and number corresponding to the appropriate subsection of R9-7-1302 or category type listed in R9-7-1306.
B. Except for types D16 and D17, each licensee or registrant shall submit payment of the annual fee in the amount prescribed in R9-7-1306(A) on or before January 1 of each year. This single annual fee will cover any and all renewals, amendments, and regular inspections of the license during the forthcoming calendar year.
C. If a licensee or registrant fails to pay the annual fee by January 1, the license is not current.
D. If a licensee or registrant fails to pay the annual fee by April 1, the Department shall apply administrative sanction provisions of 9 A.A.C. 7, Article 12.
E. A licensee who is required to pay an annual fee under this Article may qualify as a small entity. If a licensee qualifies as a small entity and provides the Department with proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in Table 1 to this Article. Failure to file a small entity certification in a timely manner may result in the denial of any refund.

Historical Note
New Section R9-7-1304 recodified from R12-1-1304 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-1305. Method of Payment
A. An applicant licensee or registrant shall pay fees by check or money order, payable to the "State of Arizona" at the address shown on the application, license, registration, or renewal notice.
B. Once a license or registration has been issued, no portion of the application fee or any annual fee will be refunded.

Historical Note
New Section R9-7-1305 recodified from R12-1-1305 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-1306. Table of Fees
A. The application and annual fee for each category and type are shown in Table 13-1.

Table 13-1

Category	Type	Annual Fee
A1	Broad academic Class A	$5,800
A2	Broad academic Class B	$5,800
A3	Broad academic Class C	$5,800
A4	Limited academic	$1,000
B1	Broad medical	$11,000
B2	Medical materials class A	$1,900
B3	Medical materials class B	$1,900
B4	Medical materials class C	$1,900
B5	Medical teletherapy	$5,200
B6	General medical	$250
C1	Broad industrial class A	$11,400
C2	Broad industrial class B	$11,400
C3	Broad industrial class C	$3,200
C4	Limited industrial	$700
C5	Portable gauge	$1,000
C6	Fixed gauge class A	$1,000
C7	Fixed gauge class B	$1,000
C8	Leak detector	$1,330
C9	Gas chromatograph	$1,000
C10	General industrial	No Fee
C11	Industrial Radiography class A	$5,500
C12	Industrial Radiography class B	$5,500
C13	Open field irradiator	$3,000
C14	Self-shielded irradiator	$1,500
C15	Well logging	$2,000
C16	Research and development	$2,100
C17	Laboratory	$1,000

D1	Distribution	$2,600
D2	Nuclear Pharmacy	$4,600
D3	Nuclear laundry	$10,300
D4	General industrial (with fee)	$300
D5	General depleted uranium	$200
D6	Veterinary medicine	$1,000
D7	General veterinary medicine	$200
D8	Health physics class A	$3,200
D9	Health physics class B	$1,000
D10	Secondary uranium recovery	$5,100
D11	Low-level radioactive waste disposal site	(3)
D12	Waste processor class A	$4,600
D13	Waste processor class B	$3,600
D14	Additional storage and use site	(1)
D15	Possession only	(2)
D16	Reciprocal	(3)
D17	Reserved	
D18	Unclassified	Full Cost
D19	NORM commercial disposal site	$600,000
E1	X-ray machine class A (per tube)	$75
E2	X-ray machine class B (per tube)	$51
E3	X-ray machine class C (per tube)	$42
E4	Industrial radiation machine (per device)	$42
E5	Accelerator facility	$750
E6	Other ionizing radiation machine	Full Cost
F1	Tanning device (per device)	$28
F2	Class A (1 to 10 laser devices)	$175
F3	Class B (11 to 49 laser devices)	$408
F4	Class C (50 or more laser devices)	$699
F5	Laser light show or laser demonstration	$408
F6	Medical laser (per laser device)	$47
F7	Class II surgical (per device)	$47
F8	Medical RF surgical and cosmetic (per device)	$47
F9	Class A industrial (1 to 5 radiofrequency devices)	$70
F10	Class B industrial (6 to 20 radiofrequency devices)	$210
F11	Class C industrial (more than 20 radiofrequency devices)	$349
F12	Class A medical (1 or 2 non-cosmetic radiofrequency devices) (per device)	$0
F13	Class B medical (3 to 9 non-cosmetic radiofrequency devices) (per device)	$0
F14	Class C medical (10 to 19 non-cosmetic radiofrequency devices) (per device)	$0
F15	Class D medical (20 or more non-cosmetic radiofrequency devices) (per device)	$0
F16	Other nonionizing radiation device or other device	Full Cost

Notes: (1) An additional 30% of the annual base fee is added to the annual base fee for each additional site.
(2) The fee is 50% of the annual base fee for the category under which the radioactive material will be stored.
(3) See R9-7-1307.

B. The application fee for a licensee or registrant is the annual fee as shown in R9-7-1306. "Full Cost" is based on professional personnel time for preparation, travel, onsite inspection, any reports, review of findings, and preparation of the license or registration or denial charged at $99 per hour and mileage charged at 44.5¢ per mile. The Department shall assess the licensee or registrant 90% of the estimated full cost of issuing the license or registration. The Department will assess for any remaining costs when it is prepared to issue the license, registration, denial, or if Department costs for the requested activity exceed $10,000.

C. The annual fee for a licensee or registrant for which the scheduled fee is "Full Cost" is based on professional personnel time for preparation, travel, onsite inspection, preparation of reports, review of findings, and preparation for any inspections or completion of any amendments to the license, registration or denials charged at $99 per hour and mileage charged at 44.5¢ per mile for the preceding 12 months.

Historical Note
New Section R9-7-1306 and Table 13.1 recodified from R12-1-1306 and Table 13.1 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-1307. Special License Fees

A. The fee for a Type D16 license providing reciprocal recognition under R9-7-320 of a radioactive materials license issued by the U.S. NRC or another state is half of the annual fee for an Arizona license of the appropriate type. The fee is due and payable at the time reciprocity is requested, and the general license does not become current until the fee is paid.

B. For a low-level radioactive waste disposal site the initial application fee is $6,000,000. The annual fee for the second through fifth years is $6,000,000. The Department shall promulgate a new fee rule for years subsequent to year five. Based on data gathered during the first five years, the Department shall set a reasonable fee after consideration of the following factors:
1. Unrecovered costs which the Department may charge under A.R.S. § 30-654(B)(18).
2. Actual costs incurred by the Department.

Historical Note
New Section R9-7-1307 recodified from R12-1-1307 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-1308. Fee for Requested Inspections

A. A licensee or registrant may request an inspection of its facility at any time. The Department shall assess the licensee or registrant the full cost of the inspection, based on personnel time for preparation, travel, onsite inspection, review of findings, and preparation of a report, charged at $99 per hour and mileage charged at 44.5¢ per mile.

B. The fee specified in this Section does not apply to:

1. Regular inspections as scheduled by the Department,
2. Enforcement reinspections conducted to ensure the correction of violations or safety hazards, or
3. Inspections requested by workers pursuant to R9-7-1007.

Historical Note
New Section R9-7-1308 recodified from R12-1-1308 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-1309. Abandonment of License or Registration Application

A. Any license or registration application for which the applicant has been provided a written notification of deficiencies in the application and for which the applicant does not make a written attempt to supply the requested information or request an extension in writing within 90 days of the date of the written notice of deficiencies, is considered abandoned and will not be processed.

B. If an applicant does not act in the time-frame specified in subsection (A), the applicant shall submit a new application with the appropriate fee.

Historical Note
New Section R9-7-1309 recodified from R12-1-1309 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

Table 1. Small Entity Fees[1]

Small Businesses Not Engaged in Manufacturing and Small Not-for-profit Organizations (Gross Annual Receipts, three-year average):

>$6.5 million	Pay the fee listed in R9-7-1306
$350,000 to $6.5 million	$2,200
<$350,000	$500

Manufacturing Entities that Have an Annual Average of 500 Employees or Less:

>500 employees	Pay the fee listed in R9-7-1306
35 to 500 employees	$2,200
<35 employees	$500

Small Government Jurisdictions (including publicly supported educational institutions) (Population in Jurisdiction):

>50,000	Pay the fee listed in R9-7-1306
20,000 to 50,000	$2,200
<20,000	$500

Educational Institutions that Are Not State or Publicly Supported, and Have 500 Employees or Less:

>500 employees	Pay the fee listed in R9-7-1306
35 to 500 employees	$2,200
<35 employees	$500

[1] A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under R9-7-1304 as shown in R9-7-1306 must file a certification statement with the Department each year. The licensee must file the required certification on Department Form 333 for each license under which it was billed. Department Form 333 can be accessed through the Department website at http://www.azdhs.gov/licensing/radiation-regulatory/index.php. For licensees who cannot access the Department website, Department Form 333 may be obtained by writing to the Department or by telephoning the Department at (602) 255-4845.

Historical Note
New Article 13, Table 1, recodified from 12 A.A.C. 1, Article 13, Table 1 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

ARTICLE 14. REGISTRATION OF NONIONIZING RADIATION SOURCES AND STANDARDS FOR PROTECTION AGAINST NONIONIZING RADIATION

R9-7-1401. Registration of Nonionizing Radiation Sources and Service Providers

A. A person shall not use a nonexempt nonionizing radiation source, unless the source is registered by the Department.

B. A person who possesses a nonexempt nonionizing source shall submit to the Department an application for registration within 30 days of its first use.
1. A person who possesses a nonexempt source listed in R9-7-1302(F) shall register the source with the Department.
2. A person applying for the registration of a nonexempt source shall use an application form provided by the Department.
3. An applicant shall provide the information identified in Appendix B of this Article.

C. A registrant shall notify the Department within 30 days of any change to the information contained in the registration, or sale of a source that results in termination of the activities conducted under the registration.

D. In addition to the application form, an applicant shall remit the applicable registration fee, specified in R9-7-1306.

E. A person who is operating more than one facility, where one or more nonexempt nonionizing sources are used, shall apply for a separate registration for each facility.

F. A person in the business of installing or servicing nonexempt nonionizing sources shall apply to the Department for registration 30 days before furnishing the service. The person shall apply for registration on a form furnished by the Department and shall provide the information required by A.R.S. § 30-672.01.

Historical Note
New Section R9-7-1401 recodified from R12-1-1401 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-1402. Definitions

General definitions:

"Controlled area" means any area to which human access is restricted for the purpose of protection from nonionizing radiation.

"Direct supervision" means that a licensed practitioner supervises the use of a source for medical purposes while the practitioner is present inside the facility where the source is being used.

"Indirect supervision" means: for lasers or IPL devices used for hair removal procedures, there is at a minimum, responsible supervision and control by a licensed practitioner who is easily accessible by telecommunication.

"Licensed practitioner" (See R9-7-102)

"Medical director" means a licensed practitioner, as defined in R9-7-102, who delegates a laser, IPL, or other light-emitting medical device procedure to a non-physician and is qualified to perform the procedure within the scope of practice of the license.

"Nonexempt nonionizing source" means any system or device that contains a nonionizing source listed in R9-7-1302(F).

Statutory Authority for Rules in 9 A.A.C. 7, Article 13

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.

30-656. Authority for governor to enter into agreements with federal government; effect on federal licenses

A. The governor, on behalf of this state, may enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of radiation and the assumption of the responsibilities by this state.

B. Any person that, on the effective date of an agreement entered into under subsection A of this section, possesses a license issued by the federal government shall be deemed to possess a like license issued under this chapter, which shall expire either ninety days after receipt from the department of a notice of expiration of the license or on the date of expiration specified in the federal license, whichever is earlier.

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, chiropodist 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.

30-686. Appeal; hearing

A person who is denied licensure or registration under article 2 of this chapter or who is denied an exception from licensure or registration under article 2 of this chapter may appeal the denial by making a written request for a hearing pursuant to title 41, chapter 6, article 10. The department shall give notice of such an action pursuant to tile 41, chapter 6, article 10, and the notice shall state the person's right to make a written request for a hearing.

30-721. Adoption and text of compact

The southwestern low-level radioactive waste disposal compact is adopted and enacted into law as follows:

Article 1. Compact Policy and Formation

The party states hereby find and declare all of the following:

(A) The United States Congress, by enacting the low-level radioactive waste policy act, Public Law 96-573, as amended by the low-level radioactive waste policy amendments act of 1985 (42 U.S.C. sec. 2021b to 2021j, incl.),

has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste.

(B) It is the purpose of this compact to provide the means for such a cooperative effort between or among party states to protect the citizens of the states and the states' environments.

(C) It is the policy of party states to this compact to encourage the reduction of the volume of low-level radioactive waste requiring disposal within the compact region.

(D) It is the policy of the party states that the protection of the health and safety of their citizens and the most ecological and economical management of low-level radioactive wastes can be accomplished through cooperation of the states by minimizing the amount of handling and transportation required to dispose of these wastes and by providing facilities that serve the compact region.

(E) Each party state, if an agreement state pursuant to section 2021 of title 42 of the United States Code, or the nuclear regulatory commission if not an agreement state, is responsible for the primary regulation of radioactive materials within its jurisdiction.

Article 2. Definitions

As used in this compact, unless the context clearly indicates otherwise, the following definitions apply:

(A) "Commission" means the southwestern low-level radioactive waste commission established in article 3 of this compact.

(B) "Compact region" or "region" means the combined geographical area within the boundaries of the party states.

(C) "Disposal" means the permanent isolation of low-level radioactive waste pursuant to requirements established by the nuclear regulatory commission and the environmental protection agency under applicable laws, or by a party state if that state hosts a disposal facility.

(D) "Generate," when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.

(E) "Generator" means a person whose activity, excluding the management of low-level radioactive waste, results in the production of low-level radioactive waste.

(F) "Host county" means a county, or other similar political subdivision of a party state, in which a regional disposal facility is located or being developed.

(G) "Host state" means a party state in which a regional disposal facility is located or being developed. The state of California is the host state under this compact for the first thirty years from the date the California regional disposal facility commences operations.

(H) "Institutional control period" means that period of time in which the facility license is transferred to the disposal site owner in compliance with the appropriate regulations for long-term observation and maintenance following the postclosure period.

(I) "Low-level radioactive waste" means regulated radioactive material that meets all of the following requirements:

(1) The waste is not high-level radioactive waste, spent nuclear fuel, or by-product material (as defined in section 11e(2) of the atomic energy act of 1954 (42 U.S.C. sec. 2014(e) (2))).

(2) The waste is not uranium mining or mill tailings.

(3) The waste is not any waste for which the federal government is responsible pursuant to subdivision (b) of section 3 of the low-level radioactive waste policy amendments act of 1985 (42 U.S.C. sec. 2021c(b)).

(4) The waste is not an alpha emitting transuranic nuclide with a half-life greater than five years and with a concentration greater than one hundred nanocuries per gram, or plutonium-241 with a concentration greater than three thousand five hundred nanocuries per gram, or curium-242 with a concentration greater than twenty thousand nanocuries per gram.

(J) "Management" means collection, consolidation, storage, packaging, or treatment.

(K) "Major generator state" means a party state which generates ten per cent of the total amount of low-level radioactive waste produced within the compact region and disposed of at the regional disposal facility. If no party

state other than California generates at least ten per cent of the total amount, "major generator state" means the party state which is second to California in the amount of waste produced within the compact region and disposed of at the regional disposal facility.

(L) "Operator" means a person who operates a regional disposal facility.

(M) "Party state" means any state that has become a party in accordance with article 7 of this compact.

(N) "Person" means an individual, corporation, partnership, or other legal entity, whether public or private.

(O) "Postclosure period" means that period of time after completion of closure of a disposal facility during which the licensee shall observe, monitor, and carry out necessary maintenance and repairs at the disposal facility to assure that the disposal facility will remain stable and will not need ongoing active maintenance. This period ends with the beginning of the institutional control period.

(P) "Regional disposal facility" means a nonfederal low-level radioactive waste disposal facility established and operated under this compact.

(Q) "Site closure and stabilization" means the activities of the disposal facility operator taken at the end of the disposal facility's operating life to assure the continued protection of the public from any residual radioactive or other potential hazards present at the disposal facility.

(R) "Transporter" means a person who transports low-level radioactive waste.

(S) "Uranium mine and mill tailings" means waste resulting from mining and processing of ores containing uranium.

Article 3. The Commission

(A) There is hereby established the southwestern low-level radioactive waste commission.

(1) The commission shall consist of one voting member from each party state to be appointed by the governor, confirmed by the senate of that party state, and to serve at the pleasure of the governor of each party state, and one voting member from the host county. The appointing authority of each party state shall notify the commission in writing of the identity of the member and of any alternates. An alternate may act in the member's absence.

(2) The host state shall also appoint that number of additional voting members of the commission which is necessary for the host state's members to compose at least fifty-one per cent of the membership on the commission. The host state's additional members shall be appointed by the host state governor and confirmed by the host state senate. If there is more than one host state, only the state in which is located the regional disposal facility actively accepting low-level radioactive waste pursuant to this compact may appoint these additional members.

(3) If the host county has not been selected at the time the commission is appointed, the governor of the host state shall appoint an interim local government member, who shall be an elected representative of a local government. After a host county is selected, the interim local government member shall resign and the governor shall appoint the host county member pursuant to paragraph (4).

(4) The governor shall appoint the host county member from a list of at least seven candidates compiled by the board of supervisors of the host county.

(5) In recommending and appointing the host county member pursuant to paragraph (4), the board of supervisors and the governor shall give first consideration to recommending and appointing the member of the board of supervisors in whose district the regional disposal facility is located or being developed. If the board of supervisors of the host county does not provide a list to the governor of at least seven candidates from which to choose, the governor shall appoint a resident of the host county as the host county member.

(6) The host county member is subject to confirmation by the senate of that party state and shall serve at the pleasure of the governor of the host state.

(B) The commission is a legal entity separate and distinct from the party states and shall be so liable for its actions. Members of the commission shall not be personally liable for actions taken in their official capacity. The liabilities of the commission shall not be deemed liabilities of the party states.

(C) The commission shall conduct its business affairs pursuant to the laws of the host state and disputes arising out of commission action shall be governed by the laws of the host state. The commission shall be located in the capital city of the host state in which the regional disposal facility is located.

(D) The commission's records shall be subject to the host state's public records law, and the meetings of the commission shall be open and public in accordance with the host state's open meeting law.

(E) The commission members are public officials of the appointing state and shall be subject to the conflict of interest laws, as well as any other law, of the appointing state. The commission members shall be compensated according to the appointing state's law.

(F) Each commission member is entitled to one vote. A majority of the commission constitutes a quorum. Unless otherwise provided in this compact, a majority of the total number of votes on the commission is necessary for the commission to take any action.

(G) The commission has all of the following duties and authority:

(1) The commission shall do, pursuant to the authority granted by this compact, whatever is reasonably necessary to ensure that low-level radioactive wastes are safely disposed of and managed within the region.

(2) The commission shall meet at least once a year and otherwise as business requires.

(3) The commission shall establish a compact surcharge to be imposed upon party state generators. The surcharge shall be based upon the cubic feet of low-level radioactive waste and the radioactivity of the low-level radioactive waste and shall be collected by the operator of the disposal facility. The host state shall set, and the commission shall impose, the surcharge after congressional approval of the compact. The amount of the surcharge shall be sufficient to establish and maintain at a reasonable level funds for all of the following purposes:

(a) The activities of the commission and commission staff.

(b) At the discretion of the host state, a third-party liability fund to provide compensation for injury to persons or property during the operational, closure, stabilization, and postclosure and institutional control periods of the regional disposal facility. This subparagraph does not limit the responsibility or liability of the operator, who shall comply with any federal or host state statutes or regulations regarding third-party liability claims.

(c) A local government reimbursement fund, for the purpose of reimbursing the local government entity or entities hosting the regional disposal facility for any costs or increased burdens on the local governmental entity for services, including, but not limited to, general fund expenses, the improvement and maintenance of roads and bridges, fire protection, law enforcement, monitoring by local health officials, and emergency preparation and response related to the hosting of the regional disposal facility.

(4) The surcharges imposed by the commission for purposes of subparagraphs (b) and (c) of paragraph (3) and surcharges pursuant to paragraph (3) of subdivision (E) of article 4 shall be transmitted on a monthly basis to the host state for distribution to the proper accounts.

(5) The commission shall establish a fiscal year which conforms to the fiscal years of the party states to the extent possible.

(6) The commission shall keep an accurate account of all receipts and disbursements. An annual audit of the books of the commission shall be conducted by an independent certified public accountant, and the audit report shall be made a part of the annual report of the commission.

(7) The commission shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the subsequent fiscal year.

(8) The commission may accept any grants, equipment, supplies, materials, or services, conditional or otherwise, from the federal or state government. The nature, amount and condition, if any, of any donation, grant, or other resources accepted pursuant to this paragraph and the identity of the donor or grantor shall be detailed in the annual report of the commission. However, the host state shall receive, for the uses specified in subparagraph (E) of paragraph (2) of subsection (d) of section 2021e of title 42 of the United States Code, any payments paid from the special escrow account for which the secretary of energy is trustee pursuant to subparagraph (A) of paragraph (2) of subsection (d) of section 2021e of title 42 of the United States Code.

(9) The commission shall submit communications to the governors and to the presiding officers of the legislatures of the party states regarding the activities of the commission, including an annual report to be submitted on or before January 15 of each year. The commission shall include in the annual report a review of, and recommendations for, low-level radioactive waste disposal methods which are alternative technologies to the shallow land burial of low-level radioactive waste.

(10) The commission shall assemble and make available to the party states, and to the public, information concerning low-level radioactive waste management needs, technologies, and problems.

(11) The commission shall keep a current inventory of all generators within the region, based upon information provided by the party states.

(12) The commission shall keep a current inventory of all regional disposal facilities, including information on the size, capacity, location, specific low-level radioactive wastes capable of being managed, and the projected useful life of each regional disposal facility.

(13) The commission may establish advisory committees for the purpose of advising the commission on the disposal and management of low-level radioactive waste.

(14) The commission may enter into contracts to carry out its duties and authority, subject to projected resources. No contract made by the commission shall bind a party state.

(15) The commission shall prepare contingency plans, with the cooperation and approval of the host state, for the disposal and management of low-level radioactive waste in the event that any regional disposal facility should be closed.

(16) The commission may sue and be sued and, when authorized by a majority vote of the members, may seek to intervene in an administrative or judicial proceeding related to this compact.

(17) The commission shall be managed by an appropriate staff, including an executive director. Notwithstanding any other provision of law, the commission may hire or retain, or both, legal counsel.

(18) The commission may, subject to applicable federal and state laws, recommend to the appropriate host state authority suitable land and rail transportation routes for low-level radioactive waste carriers.

(19) The commission may enter into an agreement to import low-level radioactive waste into the region only if both of the following requirements are met:

(a) The commission approves the importation agreement by a two-thirds vote of the commission.

(b) The commission and the host state assess the affected regional disposal facilities' capability to handle imported low-level radioactive wastes and any relevant environmental or economic factors, as defined by the host state's appropriate regulatory authorities.

(20) The commission may, upon petition, allow an individual generator, a group of generators, or the host state of the compact, to export low-level radioactive wastes to a low-level radioactive waste disposal facility located outside the region. The commission may approve the petition only by a two-thirds vote of the commission. The permission to export low-level radioactive wastes shall be effective for that period of time and for the amount of low-level radioactive waste, and subject to any other term or condition, which may be determined by the commission.

(21) The commission may approve, only by a two-thirds vote of the commission, the exportation outside the region of material, which otherwise meets the criteria of low-level radioactive waste, if the sole purpose of the exportation is to process the material for recycling.

(22) The commission shall, not later than ten years before the closure of the initial or subsequent regional disposal facility, prepare a plan for the establishment of the next regional disposal facility.

Article 4. Rights, Responsibilities, and Obligations of Party States

(A) There shall be regional disposal facilities sufficient to dispose of the low-level radioactive waste generated within the region.

(B) Low-level radioactive waste generated within the region shall be disposed of at regional disposal facilities and each party state shall have access to any regional disposal facility without discrimination.

(C) (1) Upon the effective date of this compact, the state of California shall serve as the host state and shall comply with the requirements of subdivision (E) for at least thirty years from the date the regional disposal facility begins to accept low-level radioactive waste for disposal. The extension of the obligation and duration shall be at the option of the state of California. If the state of California does not extend this obligation, the party state, other than the state of California, which is the largest major generator state shall then serve as the host state for the second regional disposal facility. The obligation of a host state which hosts the second regional disposal facility shall also run for thirty years from the date the second regional disposal facility begins operations.

(2) The host state may close its regional disposal facility when necessary for public health or safety.

(D) The party states of this compact cannot be members of another regional low-level radioactive waste compact entered into pursuant to the low-level radioactive waste policy act, as amended by the low-level radioactive waste policy amendments act of 1985 (42 U.S.C. secs. 2021b to 2021j, incl.).

(E) A host state shall do all of the following:

(1) Cause a regional disposal facility to be developed on a timely basis.

(2) Ensure by law, consistent with any applicable federal laws, the protection and preservation of public health and safety in the siting, design, development, licensing, regulation, operation, closure, decommissioning, and long-term care of the regional disposal facilities within the state.

(3) Ensure that charges for disposal of low-level radioactive waste at the regional disposal facility are reasonably sufficient to do all of the following:

(a) Ensure the safe disposal of low-level radioactive waste and long-term care of the regional disposal facility.

(b) Pay for the cost of inspection, enforcement, and surveillance activities at the regional disposal facility.

(c) Assure that charges are assessed without discrimination as to the party state of origin.

(4) Submit an annual report to the commission on the status of the regional disposal facility including projections of the facility's anticipated future capacity.

(5) The host state and the operator shall notify the commission immediately upon the occurrence of any event which could cause a possible temporary or permanent closure of a regional disposal facility.

(F) Each party state is subject to the following duties and authority:

(1) To the extent authorized by federal law, each party state shall develop and enforce procedures requiring low-level radioactive waste shipments originating within its borders and destined for a regional disposal facility to conform to packaging and transportation requirements and regulations. These procedures shall include, but are not limited to, all of the following requirements:

(a) Periodic inspections of packaging and shipping practices.

(b) Periodic inspections of low-level radioactive waste containers while in the custody of transporters.

(c) Appropriate enforcement actions with respect to violations.

(2) A party state may impose a surcharge on the low-level radioactive waste generators within the state to pay for activities required by paragraph (1).

(3) To the extent authorized by federal law, each party state shall, after receiving notification from a host state that a person in a party state has violated packaging, shipping, or transportation requirements or regulations, take appropriate actions to ensure that these violations do not continue. Appropriate actions may include, but are not limited to, requiring that a bond be posted by the violator to pay the cost of repackaging at the regional disposal facility and prohibit future shipments to the regional disposal facility.

(4) Each party state shall maintain a registry of all generators within the state that may have low-level radioactive waste to be disposed of at a regional disposal facility, including, but not limited to, the amount of low-level radioactive waste and the class of low-level radioactive waste generated by each generator.

(5) Each party state shall encourage generators within its borders to minimize the volume of low-level radioactive waste requiring disposal.

(6) Each party state may rely on the good faith performance of the other party states to perform those acts which are required by this compact to provide regional disposal facilities, including the use of the regional disposal facilities in a manner consistent with this compact.

(7) Each party state shall provide the commission with any data and information necessary for the implementation of the commission's responsibilities, including taking those actions necessary to obtain this data or information.

(8) Each party state shall agree that only low-level radioactive waste generated within the jurisdiction of the party states shall be disposed of in the regional disposal facility, except as provided in paragraph (19) of subdivision (G) of article 3.

(9) Each party state shall agree that if there is any injury to persons or property resulting from the operation of a regional disposal facility, the damages resulting from the injury may be paid from the third-party liability fund pursuant to subparagraph (b) of paragraph (3) of subdivision (G) of article 3, only to the extent that the damages exceed the limits of liability insurance carried by the operator. No party state, by joining this compact, assumes any liability resulting from the siting, operation, maintenance, long-term care, or other activity relating to a regional facility, and no party state shall be liable for any harm or damage resulting from a regional facility not located within the state.

Article 5. Approval of Regional Facilities

A regional disposal facility shall be approved by the host state in accordance with its laws. This compact does not confer any authority on the commission regarding the siting, design, development, licensure, or other regulation, or the operation, closure, decommissioning, or long-term care of, any regional disposal facility within a party state.

Article 6. Prohibited Acts and Penalties

(A) No person shall dispose of low-level radioactive waste within the region unless the disposal is at a regional disposal facility, except as otherwise provided in paragraphs (20) and (21) of subdivision (G) of article 3.

(B) No person shall dispose of or manage any low-level radioactive waste within the region unless the low-level radioactive waste was generated within the region, except as provided in paragraphs (19), (20), and (21) of subdivision (G) of article 3.

(C) Violations of this section shall be reported to the appropriate law enforcement agency within the party state's jurisdiction.

(D) Violations of this section may result in prohibiting the violator from disposing of low-level radioactive waste in the regional disposal facility, as determined by the commission or the host state.

Article 7. Eligibility, Entry into Effect, Congressional Consent, Withdrawal, Exclusion

(A) The states of Arizona, North Dakota, South Dakota, and California are eligible to become parties to this compact. Any other state may be made eligible by a majority vote of the commission and ratification by the legislatures of all of the party states by statute, and upon compliance with those terms and conditions for eligibility which the host state may establish. The host state may establish all terms and conditions for the entry of any state, other than the states named in this subparagraph, as a member of this compact.

(B) Upon compliance with the other provisions of this compact, an eligible state may become a party state by legislative enactment of this compact or by executive order of the governor of the state adopting this compact. A state becoming a party state by executive order shall cease to be a party state upon adjournment of the first general session of its legislature convened after the executive order is issued, unless before the adjournment the legislature enacts this compact.

(C) A party state, other than the host state, may withdraw from the compact by repealing the enactment of this compact, but this withdrawal shall not become effective until two years after the effective date of the repealing legislation. If a party state which is a major generator of low-level radioactive waste voluntarily withdraws from the compact pursuant to this subdivision, that state shall make arrangements for the disposal of the other party states' low-level radioactive waste for a time period equal the period of time it was a member of this compact. If the host state withdraws from the compact, the withdrawal shall not become effective until five years after the effective date of the repealing legislation.

(D) A party state may be excluded from this compact by a two-thirds vote of the commission members, acting in a meeting, if the state to be excluded has failed to carry out any obligations required by compact.

(E) This compact shall take effect upon the enactment by statute by the legislatures of the state of California and at least one other eligible state and upon the consent of Congress and shall remain in effect until otherwise provided by federal law. This compact is subject to review by Congress and the withdrawal of the consent of Congress every five years after its effective date, pursuant to federal law.

Article 8. Construction and Severability

(A) The provisions of this compact shall be broadly construed to carry out the purposes of the compact, but the sovereign powers of a party state shall not be infringed unnecessarily.

(B) This compact does not affect any judicial proceeding pending on the effective date of this compact.

(C) If any provision of this compact or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the compact which can be given effect without the invalid provision or application, and to this end the provisions of this compact are severable.

(D) Nothing in this compact diminishes or otherwise impairs the jurisdiction, authority, or discretion of either of the following:

(1) The nuclear regulatory commission pursuant to the atomic energy act of 1954, as amended (42 U.S.C. sec. 2011 et seq.).

(2) An agreement state under section 274 of the atomic energy act of 1954, as amended (42 U.S.C. sec. 2021).

(E) Nothing in this compact confers any new authority on the states or commission to do any of the following:

(1) Regulate the packaging or transportation of low-level radioactive waste in a manner inconsistent with the regulations of the nuclear regulatory commission or the United States department of transportation.

(2) Regulate health, safety, or environmental hazards from source, by-product, or special nuclear material.

(3) Inspect the activities of licensees of the agreement states or of the nuclear regulatory commission.

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) 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.

ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD
Title 13, Chapter 4, Article 1, Arizona Peace Officer Standards and Training Board

Amend: R13-4-101, R13-4-104, R13-4-105, R13-4-106, R13-4-108, R13-4-109, R13-4-110, R13-4-111, R13-4-114, R13-4-116

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: October 6, 2020

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

FROM: Council Staff

DATE: September 18, 2020

SUBJECT: **ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD**
Title 13, Chapter 4, Article 1

Amend: R13-4-101, R13-4-104, R13-4-105, R13-4-106, R13-4-108, R13-4-109, R13-4-110, R13-4-111, R13-4-114, R13-4-116

Summary:

This regular rulemaking from the Arizona Peace Officer Standards and Training Board relates to rules in Title 13, Chapter 4, Article 1, regarding the minimum qualifications for peace officers, application procedures, and training requirements. In this rulemaking, the Board seeks to remove the total times an individual used marijuana in the past and focus only on use in the two years before appointment, removal of "experimentation" as a reason for pre-application use of marijuana or other drugs, and add a requirement for an agency to address "resolve-in-the future" designations before appointing an individual as a peace officer.

The Department received an exemption from the rulemaking moratorium on October 8, 2019 to conduct this rulemaking. Pursuant to A.R.S. § 41-1823 AZPOST states that a rule establishing a minimum qualification for law enforcement officers shall not go into effect until six months after being filed with the Secretary of State. This provision applies to R13-4-105, R13-4-110, and R13-4-111.

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

Yes, the Board cites both general and specific statutory authority for these rules.

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

No, the rules do not establish a new fee or 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 states that it reviewed and relied on "Chief Executive and Student Views about Peace Officer Pre-Employment Drug Use Standards," by Jon Bottema, Arizona State University, January 2020.

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

The rulemaking will have minimal economic impact on peace officers, applicants, and law enforcement agencies. It will have an important impact for applicants with pre-employment use of marijuana, other dangerous drugs, prescription medications, steroids, or narcotics and law enforcement agencies.

The amendments with the most significant potential economic impact are:

- Updating minimum qualifications regarding pre-application use of marijuana, other dangerous drugs, prescription medications, steroids, and narcotics;
- Removing "experimentation" as an explanation for pre-application use of marijuana or other dangerous drugs;
- Eliminating the total times an individual could have used marijuana in the past and focus only on use in the two years before appointment as a peace officer;
- Updating requirements regarding pre-application use of Adderall and CBD oil;
- Requiring information regarding agencies to which an applicant previously applied; and
- Adding a requirement for an agency to address "resolve-in-the-future" designations before placing a peace officer in a sworn position.

The Board believes these changes will have the beneficial effect of expanding the pool of Applicants and treating applicants uniformly. The Board believes the changes are in the best interest of the law enforcement profession and public safety and welfare.

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 concluded no less intrusive or less costly alternative method exists to achieve the intended purpose of the rulemaking. The primary benefits of the rulemaking are positive. The new pre-employment drug use standards expand the pool of potential applicants while protecting public safety and the law enforcement profession and ensure all applicants are treated equitably. The minimal additional compliance cost of the rulemaking results from the requirement that before a law enforcement agency appoints a peace officer, it checks with other agencies to which the peace officer previously applied and resolve any resolve-in-the-future designation. The Board determined these minimal compliance costs are outweighed by the benefits of protecting public safety and the law enforcement profession.

6. What are the economic impacts on stakeholders?

Stakeholders are identified as applicants for appointment as a peace officer, law enforcement agencies, and the Board.

Applicants for appointment as a peace officer receive the benefits of having a standard of uniform treatment as well as having the pool of potential applicants expanded. Law enforcement agencies seeking to appoint a peace officer will have the additional requirement of obtaining information from agencies to which the individual previously applied. This ensures the appointing agency is aware of all information developed by other agencies so only qualified individuals are appointed.

The Board incurred the cost of completing rulemaking and will incur the cost of enforcing it. The Board has the benefit of new pre-employment drug use standards that will expand the pool of applicants for appointment and be easier to enforce equitably.

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

The Board states that it did not make any changes between the proposed and final rulemaking. Upon review, Council staff agrees.

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

Yes. The Board notes that no comments were received about the proposed rulemaking and no one attended the oral proceeding on August 11, 2020. However, on June 30, 2020, before publication of the rulemaking, the Board received a comment concerning the rulemaking procedure and anticipated effective date of the amended rules.

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

Yes. R13-4-105 prescribes minimum qualifications for peace officers. The Board states that certification of a peace office is not a general permit, and under A.R.S. § 41-1822(A)(3), the Board is required to prescribe reasonable minimum qualifications for peace officers.

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 there is no directly applicable federal law to the subject of these rules. The Board states there are many federal laws that apply to law enforcement agencies and the work done by peace officers. These include general laws such as OSHA, EEOC, and ADA, federal laws regarding crimes, and federal case law regarding law enforcement. The Board maintains that the training provided to peace officers is consistent with federal law.

11. Conclusion

In this regular rulemaking, the Board seeks to update the minimum qualifications for peace officers, application procedures, and training requirements. In an effort to expand the pool of applicants, the rulemaking proposes to remove "experimentation" as a reason for marijuana or other drug usage, and remove the total times an individual used marijuana in the past and focus only on use in the two years before appointment. Council staff finds that the Board's justification is adequate and that the Board submitted a thorough Economic, Small Business, and Consumer Impact Statement (EIS). Pursuant to A.R.S. § 41-1823 AZPOST requests that this rulemaking shall not go into effect until six months after being filed with the Secretary of State. This provision applies to R13-4-105, R13-4-110, and R13-4-111. Council staff recommends approval of this rulemaking.

Arizona Peace Officer Standards and Training Board

2643 East University Drive Phoenix, Arizona 85034-6914 Phone (602) 223-2514 Fax (602) 244-0477

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

Re: A.A.C. Title 13. Public Safety
Chapter 4. Arizona Peace Officer Standards and Training Board

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 August 14, 2020, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).

B. Relation of the rulemaking to a five-year-review report: The rulemaking does not relate to a five-year-review report.

C. New fee: The rulemaking does not establish a new fee.

D. Fee increase: The rulemaking does not increase an existing fee.

E. Immediate effective date: An immediate effective date is not requested. Under A.R.S. § 41-1823, a rule establishing a minimum qualification for law enforcement officers does not go into effect until six months after being filed with the Secretary of State. This provision applies to R13-4-105, R13-4-110, and R13-4-111 in this rulemaking.

F. Certification regarding studies: I certify that the preamble accurately discloses the Board reviewed and relied on "Chief Executive and Student Views about Peace Officer Pre-Employment Drug Use Standards," by Jon Bottema, Arizona State University, January 2020, in its evaluation of and justification for changes made to R13-4-105.

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 Compliance Program Administrator;
2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
3. Economic, Small Business, and Consumer Impact Statement;
4. Public comment

Sincerely,

Michael Orose
Compliance Program Administrator

NOTICE OF FINAL RULEMAKING

TITLE 13. PUBLIC SAFETY

CHAPTER 4. ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

PREAMBLE

1. Articles, Parts, and Sections Affected	**Rulemaking Action**
R13-4-101	Amend
R13-4-104	Amend
R13-4-105	Amend
R13-4-106	Amend
R13-4-108	Amend
R13-4-109	Amend
R13-4-110	Amend
R13-4-111	Amend
R13-4-114	Amend
R13-4-116	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. § 41-1822(A)

Implementing statute: A.R.S. § 41-1822(A)

3. The effective date for the rules:

As specified under A.R.S. § 41-1032(A) and except as provided under item 3(b), the rules 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):

A.R.S. § 41-1823 requires that a rule establishing a minimum qualification for law enforcement officers not go into effect until six months after being filed with the Secretary of State. This provision applies to R13-4-105, R13-4-110, and R13-4-111.

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: 26 A.A.R. 978, May 15, 2020

Notice of Proposed Rulemaking: 26 A.A.R. 1343, July 10, 2020

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

Name: Michael Orose, Compliance Program Administrator

Address: 2643 E. University Drive

Phoenix, AZ 85034

Telephone: 602-774-9354

E-mail: michaelo@azpost.gov

Web site: azpost.gov

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

The Board is amending the rules to:

Update minimum qualifications regarding pre-application use of marijuana, other dangerous drugs, prescription medications, steroids, and narcotics;

Eliminate the total times an individual could have used marijuana in the past and focus only on use in the two years before appointment as a peace officer;

Remove "experimentation" as an explanation for pre-application use of marijuana or other dangerous drugs;

Update requirements regarding pre-application use of Adderall and CBD oil. This will eliminate the need for substantive policies 2016-001 and 2019-001 and amendments;

Update procedures to allow online administration of the comprehensive final examination (CFE), waiver examination, and completion of the personal history and other forms;

Add home schooling as an acceptable form of high school equivalency,

Clarify that results of a fingerprint check are required before graduation from the academy and reimbursement of training expenses;

Require information regarding agencies to which an applicant previously applied;

Add requirement for an agency to address "resolve-in-the future" designations before appointing an individual as a peace officer;

Update certification retention requirements;

Update minimum course requirements;

Update academy training requirements;

Modernize the rules to be consistent with Board practice and industry standards; and
Ensure the rules are consistent with statute, Board practice, and current rule-writing standards.

An exemption from Executive Order 2019-01 was provided by Jennifer Thomsen by email dated October 8, 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 reviewed and relied on "Chief Executive and Student Views about Peace Officer Pre-Employment Drug Use Standards," by Jon Bottema, Arizona State University, January 2020. A copy of the report is available from the Board.

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 on peace officers, applicants, and law enforcement agencies. The amendments with the most significant potential economic impact are:

Updating minimum qualifications regarding pre-application use of marijuana, other dangerous drugs, prescription medications, steroids, and narcotics;
Removing "experimentation" as an explanation for pre-application use of marijuana or other dangerous drugs;
Eliminating the total times an individual could have used marijuana in the past and focus only on use in the two years before appointment as a peace officer;
Updating requirements regarding pre-application use of Adderall and CBD oil;
Requiring information regarding agencies to which an applicant previously applied; and
Adding a requirement for an agency to address "resolve-in-the future" designations before placing a peace officer in a sworn position.

The changes regarding pre-application drug use are designed to clarify and enforce a standard applicable to all applicants. The Board believes eliminating the total times an individual could have used marijuana and removing experimentation as an explanation of pre-application use will have the beneficial effect of expanding the pool of applicants. The Board believes the changes are in the best interest of the law enforcement profession and public safety and welfare.

Agencies seeking to appoint a peace officer will have the additional requirement of obtaining information from agencies to which the individual previously applied and if applicable, resolving any resolve-in-the future designations in the individual's record.

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

No changes were made between the proposed and final rulemaking.

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

No comments were received about the proposed rulemaking and no one attended the oral proceeding on August 11, 2020. On June 30, 2020, before publication of the proposed rulemaking, the Board received a written comment concerning the rulemaking procedure and anticipated effective date of the amended rules.

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:

A.R.S. § 41-1823 requires that a rule establishing a minimum qualification for law enforcement officers not go into effect until six months after being filed with the Secretary of State. This provision applies to R13-4-105, R13-4-110, and R13-4-111.

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:

Certification of an individual as a peace officer is not a general permit. Under A.R.S. § 41-1822(A)(3), the Board is required to prescribe reasonable minimum qualifications for peace officers. The Board established those qualifications at R13-4-105 and certifies only individuals who meet the prescribed qualifications.

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

No federal law is directly applicable to the subject of these rules. There are many federal laws that apply to law enforcement agencies and the work done by peace officers. These include general laws such as OSHA, EEOC, and ADA, federal laws regarding crimes, and federal case law regarding law enforcement. The training provided to peace officers is consistent with 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:

None

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

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

15. The full text of the rules follows:

TITLE 13. PUBLIC SAFETY

CHAPTER 4. ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

ARTICLE 1. GENERAL PROVISIONS

R13-4-101. Definitions

R13-4-104. Peace Officer Category Restrictions

R13-4-105. Minimum Qualifications

R13-4-106. Background Investigation Requirements

R13-4-108. Agency Records and Reports

R13-4-109. Denial, Revocation, Suspension, or Cancellation of Peace Officer Certified Status

R13-4-110. Basic Training Requirements

R13-4-111. Certification Retention Requirements

R13-4-114. Minimum Course Requirements

R13-4-116. Academy Requirements

ARTICLE 1. GENERAL PROVISIONS

R134101. Definitions

In this Article, unless the context otherwise requires:

"Academy" means an entity that conducts the Board-prescribed basic training courses for full-authority, specialty, or limited-authority peace officers.

"Adderall," as used in R13-5-105, means a combination drug containing salts of amphetamine that acts as a central nervous system stimulant. The combination may include amphetamine, methamphetamine, methylphenidate, dextroamphetamine, levoamphetamine, or other stimulants.

"Agency" means a law enforcement entity empowered by the state of Arizona.

"Appointment" means the selection by an agency of an individual to be a peace officer or peace officer trainee.

"Approved training program" means a course of instruction that meets Board-prescribed course requirements.

"Board" means the Arizona Peace Officer Standards and Training Board.

"Board-trained physician" means an occupational medicine specialist or a physician who has attended a Board course on peace officer job functions.

"Cancellation" means the annulment of certified status without prejudice to reapply for certification.

"Certified" means approved by the Board as being in compliance with A.R.S. Title 41, Chapter 12, Article 8 and this Chapter.

"CFE" means the Board-approved Comprehensive Final Examination that measures mastery of the knowledge and skills taught in the 585-hour full-authority peace officer basic training course.

"Denial" means the permanent refusal of the Board to grant certified status.

"Dangerous drug or narcotic" means a substance identified in A.R.S. § 13-3401 as being a dangerous drug or narcotic drug.

~~"Experimentation" means the illegal possession or use of marijuana or a dangerous drug or narcotic as described in R13-4-105(B) and (C).~~

"Full-authority peace officer" means a peace officer whose authority to enforce the laws of this state is not limited by this Chapter.

"Illegal" means in violation of federal or state statute, rule, or regulation.

"Lapse" means the expiration of certified status.

"Limited-authority peace officer" means a peace officer who is certified to perform the duties of a peace officer only in the presence and under the supervision of a full-authority peace officer.

"Open enrollee" means an individual who is admitted to an academy but is not appointed by an agency.

"Outside provider" means an entity other than the Board or an agency that makes continuing training available to peace officers.

"Peace officer" has the meaning in A.R.S. § 1-215.

"Peace officer trainee" means an individual recruited and appointed by an agency to attend an academy.

"Physician" means an individual licensed to practice allopathic or osteopathic medicine in this or another state.

"Resolve-in-the-future or RF" means a designation assigned by the Board regarding alleged misconduct of an inactive peace officer and requires an agency to resolve the alleged misconduct before the agency may appoint the peace officer.

"Restriction" means the Board's limitation on duties allowed to be performed by a certified peace officer.

"Revocation" means the permanent withdrawal of certified status.

"Service ammunition" means munitions that perform equivalently in all respects when fired during training or qualification to those carried on duty by a peace officer.

"Service handgun" means the specific handgun or equivalent that a peace officer carries for use on duty.

"Specialty peace officer" means a peace officer whose authority is limited to enforcing specific sections of the Arizona Revised Statutes or Arizona Administrative Code, as specified by the appointing agency's statutory powers and duties.

"Success criteria" means a numerical statement that establishes the performance needed for an individual to demonstrate competency in a knowledge, task, or ability required by this Chapter.

"Suspension" means the temporary withdrawal of certified status.

"Termination" means the end of employment or service with an agency as a peace officer through removal, discharge, resignation, retirement, or otherwise.

R134104. Peace Officer Category Restrictions

A. Limited-authority peace officer.

1. A limited-authority peace officer shall be in the presence and under the supervision of a full-authority peace officer when engaged in patrol or investigative activities performed to detect, prevent, or suppress crime, or to enforce criminal or traffic laws of the state, county, or municipality.
2. A limited-authority peace officer may perform the following duties without supervision of a full-authority peace officer:
   a. Directing traffic;
   b. Assisting with crowd control; or
   c. Maintaining public order in the event of riot, insurrection, or disaster.

B. Specialty peace officer. A specialty peace officer has only the authority specified in R13-4-101.

C. Peace officer category change. A certified peace officer may be appointed to another peace officer category within the same agency without the background investigation and medical examination required in R13-4-105, R13-4-106, and R13-4-107 when these requirements were previously satisfied for appointment if:

1. No more than 30 days have elapsed since the peace officer's termination, and
2. The change is to a category for which the officer is qualified under R13-4-110(A).

D. Inactive status. Certified status of a peace officer becomes inactive upon termination.

E. Lapse of certified status. ~~After three consecutive years on inactive status, the~~ The certified status of a peace officer lapses after three consecutive years on inactive status.

F. Reinstatement from inactive status. A peace officer whose certified status is inactive and has not lapsed may have certification reinstated if the requirements of R13-4-105 are met for the new appointment, and if appointed:

1. In the same peace officer category, or;
2. As a specialty peace officer from inactive status as a full-authority peace officer.

G. Active status as a specialty or limited-authority peace officer does not prevent lapse of certified status as a full-authority peace officer.

R134105. Minimum Qualifications

A. Except as provided in subsection (C) or (D), an individual shall meet the following minimum qualifications before being appointed to or attending an academy:

1. Be a United States citizen;
2. Be at least 21 years of age. An individual may attend an academy if the individual will be 21 years of age before graduating;
3. Meet one of the following education standards:
   a. Have a diploma from a high school recognized by the department of education of the jurisdiction ~~in~~ from which the diploma is issued,
   b. ~~have~~ Have successfully completed a General Education Development (G.E.D.) examination,
   c. Have a homeschool diploma or certificate of completion that is recognized as the equivalent of a high school diploma by the jurisdiction from which the homeschool diploma or certificate is issued, or
   d. ~~have~~ Have a degree from an institution of higher education accredited by an agency recognized by the U.S. Department of Education;
4. Undergo a complete background investigation that meets the standards of R13-4-106. An individual ~~may~~ shall not begin an academy ~~before the results of the background investigation are returned~~ until the agency has completed the background investigation requirements at R13-4-106(C)(1), (C)(2), and (C)(4) through (C)(9). However, ~~the~~ an individual may begin an academy before the results of the fingerprint query referenced in R13-4-106(C)(3) are returned. The academy shall not graduate the individual and the Board shall not reimburse the academy for the individual's training expenses until a qualifying background investigation report, as specified in R13-4-106(C)(9), is ~~obtained~~ completed;
5. Undergo a medical examination that meets the standards of R13-4-107 within one year before appointment. An agency may make a conditional offer of appointment before the medical examination. If the medical examination is conducted more than 180 days before appointment, the individual shall submit a written statement indicating that the individual's medical condition has not changed since the examination;
6. Not have been convicted of a felony or any offense that would be a felony if committed in Arizona;
7. Not have been dishonorably discharged from the United States Armed Forces;
8. Not have been previously denied certified status, have certified status revoked, or have current certified status suspended, or have voluntarily surrendered certified status in lieu of possible disciplinary action in this or any other state if the reason for denial, revocation, suspension, or possible disciplinary action was or would be a violation of R13-4-109(A) if committed in Arizona;

9. Not have illegally possessed, produced, cultivated, or transported marijuana for sale or sold marijuana;
10. Not have illegally possessed or used marijuana for any purpose within the past ~~three~~ two years;
~~11. Not have ever illegally possessed or used marijuana other than for experimentation;~~
~~12. Not have ever illegally possessed or used marijuana while employed or appointed as a peace officer;~~
~~13.~~11. Not have illegally sold, produced, cultivated, or transported for sale a dangerous drug or narcotic;
~~14.~~12. Not have illegally used a dangerous drug or narcotic, other than marijuana, for any purpose within the past seven years;
~~15. Not have ever illegally used a dangerous drug or narcotic other than for experimentation;~~
~~16. Not have ever illegally used a dangerous drug or narcotic while employed or appointed as a peace officer;~~
~~17.~~13. Not have a pattern of abuse of prescription medication;
~~18.~~14. Undergo a polygraph examination that meets the requirements of R13-4-106, unless prohibited by law;
~~19.~~15. Not have been convicted of or adjudged to have violated traffic regulations governing the movement of vehicles with a frequency within the past three years that indicates a disrespect for traffic laws or a disregard for the safety of others on the highway;
~~20.~~16. Read the code of ethics in subsection (E) and affirm by signature the individual understands and agrees to abide by the code.

B. ~~The illegal~~ To determine whether an individual's possession or use of marijuana, or a dangerous drug or narcotic ~~is presumed to be not for experimentation if~~ disqualifies the individual from being appointed or attending an academy, the Board shall use the following standards:

1. ~~The possession or use of marijuana exceeds a total of 20 times or exceeds five times since the age of 21 years; or~~ Marijuana.
    a. All forms of marijuana, including THC extracts, cannabis, hashish, marijuana extracts, and marijuana edibles, and all forms of use will be treated the same;
    b. The individual has not illegally possessed or used marijuana within the two years before appointment as a peace officer; and
    c. The individual has never illegally possessed or used marijuana as a peace officer;
2. ~~The use of any dangerous drug or narcotic, other than marijuana, in any combination exceeds a total of five times, or exceeds one time since the age of 21 years.~~ Dangerous drugs, hallucinogens,

narcotics, and prescription drugs containing an active ingredient that is a narcotic or dangerous drug.

a. The individual has not illegally possessed or used any of these substances:
   i. Within the seven years before appointment as a peace officer;
   ii. More than a total of five times for all substances combined;
   iii. More than one time for all substances combined since turning 21 years of age; and
   iv. As a peace officer;
b. Dangerous drugs. All dangerous drugs, including methamphetamine, amphetamine, speed, spice, and bath salts will be treated the same;
c. Hallucinogens. All hallucinogens, including peyote, mushrooms, ecstasy, lysergic acid diethylamide (LSD), ketamine, mescaline, salvia, and phencyclidine (PCP) will be treated the same;
d. Narcotics. All narcotics, including cocaine, heroin, and opioids will be treated the same; and
e. Prescription medications. All prescription medications containing an active ingredient that is a narcotic or dangerous drug will be treated the same. Possession or use for recreational purposes of a prescription medication containing an active ingredient that is a narcotic or dangerous drug is disqualifying under subsection (B)(2);

3. Steroids.
   1. All steroids, including anabolic-androgenic steroids and corticosteroids will be treated the same;
   2. The individual has not illegally possessed or used a steroid within the three years before appointment as a peace officer; and
   3. The individual has never illegally possessed or used a steroid as a peace officer;
4. Adderall.
   a. All uses of Adderall, except as prescribed by a physician, will be treated the same;
   b. The individual has not possessed or used Adderall, except as prescribed by a physician, within the three years before appointment as a peace officer, and
   c. The individual has never possessed or used Adderall, except as prescribed by a physician, as a peace officer; and
5. Over-the counter products containing cannabidiol (CBD). The Board does not consider possession or use of over-the-counter products containing CBD, as allowed under federal and state law, as disqualifying an individual from appointment as a peace officer.

C. An agency head who wishes to appoint an individual whose illegal possession or use of marijuana or a dangerous drug or narcotic is ~~presumed~~ determined to be ~~not for experimentation~~ disqualifying

under this Section may petition the Board for a determination that, given the unique circumstances of the individual's possession or use, the use ~~was for experimentation~~ should not be disqualifying. The petition shall:

1. Specify the type of drugs illegally possessed or used, the number of uses, the age at the time of each possession or use, the method by which the information regarding illegal possession or use of drugs came to the agency's attention, and any attempt by the agency head to verify the accuracy of the information; and
2. State the factors the agency head wishes the Board to consider in making its determination. These factors may include:
   a. The duration of possession or use,
   b. The motivation for possession or use,
   c. The time elapsed since the last possession or use,
   d. How the drug was obtained,
   e. How the drug was ingested,
   f. Why the individual stopped possessing or using the drug, and
   g. Any other factor the agency head believes is relevant to the Board's determination.

D. An agency head who wishes to appoint an individual whose conduct is grounds to deny certification under R13-4-109 may petition the Board for a determination that the otherwise disqualifying conduct constitutes juvenile indiscretion. The petition shall:

1. Specify the nature of the conduct, the number of times the conduct occurred, the method by which information regarding the conduct came to the agency's attention, and any attempt by the agency head to verify the accuracy of the information; and
2. Include sufficient information for the Board to determine that all of the following are true:
   a. The conduct occurred when the individual was ~~less~~ younger than age 18;
   b. The conduct occurred more than 10 years before application for appointment;
   c. The individual has consistently exhibited responsible, law-abiding behavior between the time of the conduct and application for appointment;
   d. There is reason to believe that the individual's immaturity at the time of the conduct contributed substantially to the conduct;
   e. There is evidence that the individual's maturity at the time of application makes reoccurrence of the conduct unlikely; and
   f. The conduct was not so egregious that public trust in the law enforcement profession would be jeopardized if the individual is certified.

3. If the Board finds that the information submitted is sufficient for the Board to determine that the factors listed in subsection (D)(2) are true, the Board shall determine that the conduct constituted juvenile indiscretion and grant appointment.

E. Code of Ethics. Because the people of the state of Arizona confer upon all peace officers the authority and responsibility to safeguard lives and property within constitutional parameters, a peace officer shall commit to the following Code of Ethics and shall affirm the peace officer's commitment by signing the Code.

"I will exercise self-restraint and be constantly mindful of the welfare of others. I will be exemplary in obeying the laws of the land and loyal to the state of Arizona and my agency and its objectives and regulations. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept secure unless revelation is necessary in the performance of my duty.

I will never take selfish advantage of my position and will not allow my personal feelings, animosities, or friendships to influence my actions or decisions. I will exercise the authority of my office to the best of my ability, with courtesy and vigilance, and without favor, malice, ill will, or compromise. I am a servant of the people and I recognize my position as a symbol of public faith. I accept it as a public trust to be held so long as I am true to the law and serve the people of Arizona."

F. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

R13-4-106. Background Investigation Requirements

A. Personal history statement. An individual who seeks to be appointed shall complete and submit to the appointing agency a personal history statement on a form prescribed by the Board before the start of a background investigation. The Board shall use the answers to questions contained in the personal history statement to determine whether the individual is eligible for certified status as a peace officer. The Board shall ensure that the questions concern whether the individual meets the minimum requirements for appointment, has engaged in conduct or a pattern of conduct that would jeopardize the public trust in the law enforcement profession, and is of good moral character.

B. Investigative requirements for the applicant. To assist with the background investigation, an individual who seeks to be appointed shall provide the following:

1. Proof of United States citizenship. A copy of a birth certificate, United States passport, or United States naturalization papers is acceptable proof.
2. Proof of education. A copy of a diploma, certificate, or transcript is acceptable proof.

3. Record of any military discharge. A copy of the Military Service Record (DD Form 214 or NGB Form 22~~, Member 4~~), which documents the character of service, separation code, and reentry code, is acceptable proof.
4. Personal references. The names and addresses of at least three people who can provide information as personal references.
5. Previous employers or schools attended. The names and addresses of all employers and schools attended within the previous five years.
6. Residence history. The complete address for every location at which the individual has lived in the last five years.

C. Investigative requirements for the agency. A complete background investigation includes the following inquiries and a review of the returns to determine that the individual seeking appointment meets the requirements of R13-4-105, and that the individual's personal history statement is accurate and truthful. For each individual seeking to be appointed, the appointing agency shall:

1. Query all the law enforcement agency records in jurisdictions listed in subsections (B)(5) and (B)(6);
2. Query the motor vehicle division driving record from any state listed in subsections (B)(5) and (B)(6);
3. Complete and submit a Fingerprint Card Inventory Sheet to the Federal Bureau of Investigation and Arizona Department of Public Safety for query;
4. Query the National Crime Information Center/Interstate Identification Index (NCIC/III), and the Arizona Criminal Information Center/Arizona Computerized Criminal History (ACIC/ACCH), or the equivalent for each state listed in subsections (B)(5) and (B)(6);
5. Contact all personal references and employers listed in subsections (B)(4) and (B)(5) and document the answers to inquiries concerning whether the individual meets the standards of this Section;
6. Query the Board regarding the individual's certification status, reports of alleged misconduct by the individual, and whether the individual has a Board case with an RF designation;
7. Query all Arizona law enforcement agencies where the individual was appointed or applied for appointment as a peace officer regarding records maintained under R13-4-108(C);
6.8. Administer a polygraph examination, unless prohibited by law. The results shall include a detailed report of the pre-test interview and any post-test interview and shall cover responses to all questions that concern:
   a. ~~minimum~~ Minimum standards for appointment as required by R13-4-105,
   b. ~~truthfulness~~ Truthfulness on the personal history statement, ~~and~~

c. ~~the commission~~ Commission of any crimes; and

d. Any Board case with an RF designation; and

~~7.~~9. If the results of the background investigation show that the individual meets minimum qualifications for appointment, has not engaged in conduct or a pattern of conduct that would jeopardize public trust in the law enforcement profession, and is of good moral character, complete a report that attests to those findings. If the agency is unable to obtain all information required under subsections (C)(1) through (C)(8), include in the report a description of the missing information and efforts made to obtain it.

R13-4-108. Agency Records and Reports

A. Agency reports. On forms prescribed by the Board, an agency shall submit:

1. A report by the agency head attesting that the requirements of R13-4-105 are met for each individual appointed. The report shall be submitted to the Board before an individual attends an academy or performs the duties of a peace officer.
2. A report of the termination of a peace officer. The report shall be submitted to the Board within 15 days of the termination and include:
   a. The nature of the termination and effective date;
   b. A detailed description of any termination for cause; and
   c. A detailed description of, and supporting documentation for, any cause existing for suspension or revocation of certified status.

B. Agency records. An agency shall make its records available on request by the Board or staff. The agency shall maintain the following for each individual for whom certification is sought:

1. An application file that contains all of the information required in R13-4-103(E) and R13-4-106(C) for each individual appointed for certification as a peace officer;
2. A copy of reports submitted under subsection (A);
3. A signed copy of the affirmation to the Code of Ethics required under R13-4-105;
4. A written report of the results of a completed or partially completed background investigation and all written documentation obtained or recorded under R13-4-106, including information obtained regarding a Board case with an RF designation;
5. A completed medical report required under R13-4-107; and
6. A record of all continuing training, proficiency training, and firearms qualifications conducted under R13-4-111.

C. Record retention. An agency shall maintain the records required by this Section as follows:

1. For applicants investigated under R13-4-106 who are not appointed: three years;

2. For applicants who are appointed: five years from the date of termination, except records retained under subsection (B)(6) shall be retained for three years following completion of training; and
3. Reports of a polygraph examination given under R13-4-106(C)(6) shall be maintained in accordance with state law.

D. An agency shall make the records maintained under subsection (C) available, on request, to another agency completing a background investigation under R13-4-106(C).

R13-4-109. Denial, Revocation, Suspension, or Cancellation of Peace Officer Certified Status

A. Causes for denial, suspension, or revocation. The Board may deny certified status or suspend or revoke the certified status of a peace officer for:
1. Failing to satisfy a minimum qualification for appointment listed in R13-4-105;
2. Willfully providing false information in connection with obtaining or reactivating certified status;
3. Having a medical, physical, or mental disability that substantially limits the individual's ability to perform the duties of a peace officer effectively, or that may create a reasonable probability of substantial harm to the individual or others, for which a reasonable accommodation cannot be made;
4. Violating a restriction or requirement for certified status imposed under R13-4-109.01, R13-4-103 (G), or R13-4-104;
5. ~~Illegally possessing or using marijuana, a dangerous drug, or a narcotic~~ Engaging in behavior that would be disqualifying under R13-4-105(B);
6. Using or being under the influence of spirituous liquor on duty without authorization;
7. Committing a felony, an offense that would be a felony if committed in this state, or an offense involving dishonesty, unlawful sexual conduct, or physical violence;
8. Committing malfeasance, misfeasance, or nonfeasance in office;
9. Performing the duties or exercising the authority of a peace officer without having active certified status;
10. Making a false or misleading statement, written or oral, to the Board or its representative;
11. Failing to furnish information in a timely manner to the Board or its representative on request; or
12. Engaging in any conduct or pattern of conduct that tends to disrupt, diminish, or otherwise jeopardize public trust in the law enforcement profession.

B. Cause for cancellation. The Board shall cancel the certified status of a peace officer if the Board determines that the individual was not qualified when certified status was granted, and revocation is not warranted under subsection (A).

C. Cause for mandatory revocation. Upon the receipt of a certified copy of a judgment of a felony conviction of a peace officer, the Board shall revoke certified status of the peace officer.

D. Action by the Board. Upon receipt of information that cause exists to deny certification, or to cancel, suspend, or revoke the certified status of a peace officer, the Board shall determine whether to initiate action regarding the retention of certified status. The Board may conduct additional inquiries or investigations to obtain sufficient information to make a fair determination.

E. Notice of action. The Board shall notify the affected individual of Board action to initiate proceedings regarding certified status for a cause listed under subsection (A) or (B). The notice shall be served as required by A.R.S. § 41-1092.04 and specify the cause for the action. Within 30 days after receiving the notice, the individual named in the notice shall advise the Board or its staff in writing whether a hearing is requested. Failure to file a written request for hearing at the Board offices within 30 days after receiving the notice constitutes a waiver of the right to a hearing.

F. Effect of agency action. Action by an agency or a decision resulting from an appeal of that action does not preclude action by the Board to deny, cancel, suspend, or revoke the certified status of a peace officer.

R13-4-110. Basic Training Requirements

A. Required training for certified status. The Board shall not certify and an individual shall not perform the duties of a peace officer until the individual successfully completes basic training as follows:

1. To be certified as a full-authority peace officer, an individual shall complete the 585-hour full-authority peace officer basic training course, specified in R13-4-116, at an academy and pass the CFE.
    a. The Board ~~staff~~ shall ~~administer~~ ensure the CFE is administered in a secure manner.
    b. The Board shall ensure that the CFE is administered during the final two weeks of the full-authority peace officer basic training course.
    c. An individual passes the CFE by achieving a score of at least 70 percent on each of the three blocks of the CFE when each block is scored separately.
    d. An individual who fails one or more blocks of the CFE may retake the failed block one time before the individual is scheduled to graduate from the academy.
    e. An individual who fails a retake of a block of the CFE, as described in subsection (A)(1)(d), may retake the failed block once more within 60 days from the original testing date if the individual remains appointed by the original appointing agency or enrolled in the academy.

f. An individual who fails a second retake of a block of the CFE, as described in subsection (A)(1)(e), may pursue certification only by repeating the 585-hour full-authority peace officer basic training course.

g. An agency head is not required to continue to appoint an individual during the 60 days permitted for a second retake of a failed block of the CFE, as described in subsection (A)(1)(e).

2. To be certified as a specialty peace officer, an individual shall complete a Board-prescribed specialty peace officer basic training course or the 585-hour full-authority peace officer basic training course, specified in R13-4-116, at an academy and pass blocks of the CFE prescribed under subsection (A)(1) that are relevant to the duties of a specialty peace officer.

3. To be certified as a limited-authority peace officer, an individual shall complete a Board-prescribed limited-authority peace officer basic training course or the 585-hour full-authority peace officer basic training course, specified in R13-4-116, at an academy and pass blocks of the CFE prescribed under subsection (A)(1) that are relevant to the duties of a limited-authority peace officer.

B. Exceptions. The training requirement in subsection (A) is waived when an agency uses an individual during a:

1. Riot, insurrection, disaster, or other event that exhausts the peace officer resources of the agency and the individual is attending an academy; or
2. Field training program that is a component of a basic training program at an academy, and the individual is under the direct supervision and control of a certified peace officer.

C. Firearms training required. Unless otherwise specified in this Section, a peace officer shall complete the firearms qualification courses required in R13-4-116(E) before the peace officer carries a firearm in the course of duty.

D. Waiver of required training. An agency, on behalf of an individual, may apply to the Board for a waiver of required training if the individual's certified status is lapsed or the individual has functioned in the capacity of a peace officer in another state or for a federal law enforcement agency. The Board shall grant a ~~complete or partial~~ waiver of required training if the Board determines that the best interests of the law enforcement profession are served, the public welfare and safety are not jeopardized, and:

1. The appointing agency submits to the Board written verification of the individual's previous experience and training on a form prescribed by the Board;
2. The individual meets the minimum qualifications listed in R13-4-105;
3. The individual complies with the requirements of R13-4-103(E)(1);

4. The appointing agency complies with the requirements of R13-4-106(C);
5. The individual successfully completes an examination measuring the individual's comprehension of the 585-hour full-authority peace officer basic training course as follows:
   a. If the individual has ~~at least two years of active status~~ experience as a certified peace officer in another state or for a federal law enforcement agency ~~during the last three years, has been on inactive status for no more than one year,~~ and submits to the Board basic training and in-service training records that the Board determines demonstrate substantial comparability to Arizona's 585-hour full-authority peace officer basic training course, the individual shall pass all blocks ~~II and IV~~ of the CFE; and
   b. If the individual's certification is lapsed, the individual shall pass all blocks of the CFE; and
   ~~c. If the individual's out-of-state or federal law enforcement experience does not meet the criterion in subsection (D)(5)(a), but the Board determines that the individual's basic training and in-service training records demonstrate substantial comparability to Arizona's full-authority peace officer basic training course, the individual shall pass all blocks of the CFE; and~~
   ~~d.~~c. The provisions in subsections (A)(1)(c) through (f) apply to this subsection; and
6. In addition to the examination required under subsection (D)(5), the individual ~~satisfactorily performs the practical demonstrations of~~ demonstrates proficiency in the areas of physical conditioning, vehicle operations, pursuit operations, and firearms, including firearms qualifications, as required under R13-4-116(E)(1).

E. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

R13-4-111. Certification Retention Requirements

A. Continuing training required.

1. ~~The following continuing training standards apply for a peace officer to retain certification:~~
   ~~a.~~ A full-authority, specialty, or limited-authority peace officer shall complete eight hours of continuing training each year beginning January 1 following the date the officer is certified.
   ~~b. A specialty or limited-authority peace officer shall complete eight hours of continuing training every three years beginning January 1 following the date the officer is certified.~~
2. Continuing training course standards for peace officers. The provider of a continuing training course for peace officers shall ensure that:

a. The course curriculum consists of ~~advanced or remedial~~ instruction on ~~one or more of the topic areas specified in R13-4-116(E)(1)~~ topics related to law enforcement operations and peace officer functions and skills;
b. The instructor meets the requirements of R13-4-114(A)(2)(a) or (b);
c. An attendance verification certificate, which includes a statement that the provider believes the course meets the requirements of this Section, is given to each attendee for audit purposes;
d. If the training provider is an agency, an attendance roster and lesson plan or other information sufficient to determine compliance with this Section is made available upon request by the Board for Board audit;
e. If the training provider is an outside provider that does not seek confirmation that the course meets the requirements under subsection (A)(3)(c), a copy of the lesson plan or other information sufficient to determine compliance with this Section is given to each attendee; and
f. If the training provider is an outside provider that seeks and receives confirmation under subsection (A)(3)(c), a copy of the Board's written confirmation is distributed to each attendee.

3. Training providers. Courses of continuing training may be conducted by the Board, an agency, or an outside provider.
   a. All Board-provided continuing training courses meet the requirements of this Section.
   b. Agency-provided continuing training courses meet the requirements of this Section if all the requirements of subsection (A)(2) are met.
   c. Outside-provider continuing training courses meet the requirements of this Section if all the requirements of subsection (A)(2) are met. The Board ~~shall~~ may inform an outside provider in writing whether a continuing training course meets these requirements if a course package is submitted to the Board, in a timely manner before the training is conducted, that includes:
      i. A description of the training course that allows the Board to determine whether the course contains advanced or remedial instruction on one or more of the topic areas specified in R13-4-116(E)(1);
      ii. The name of the individual, or if applicable, the institution or organization, providing the training with sufficient information to allow the Board to determine whether the requirements of R13-4-114(A)(2)(a) or (b) are met;
      iii. A course schedule listing the number of instructional hours; and

iv. An attestation that the outside provider shall, upon request by the Board, make the lesson plan or other information sufficient to determine compliance with this Section available for Board audit, and shall ensure that the requirement of subsection (A)(2)(b) is met.

d. The Board's confirmation that a continuing training course conducted by an outside provider meets the requirements of this Section is not an evaluation of the content of the course. Rather, confirmation indicates only that the topic of the course is consistent with R13-4-116(E)(1). Confirmation is effective as long as the information submitted to the Board under subsection (A)(3)(c) is unchanged.

e. The Board shall withdraw confirmation that a continuing training course conducted by an outside provider meets the requirements of this Section if the Board receives information that the course content conflicts with the basic peace officer course content and the Board finds that the conflict creates an issue of public safety, liability, or ethics.

f. If an agency wishes to host an outside-provider continuing training course:

i. Both the agency and outside provider shall comply with the provisions of subsections (A)(3)(c)(i) through (iii);

ii. The agency shall provide the confirmation described under subsection (A)(3)(c);

iii. The outside provider shall distribute to each attendee an attendance verification certificate described under subsection (A)(2)(c) and a copy of the confirmation received under subsection (A)(3)(f)(ii); and

iv. Upon request, the agency shall make available to the Board the lesson plan and other information used to determine the outside-provider continuing training course met the requirements of this Section.

4. Required records. A peace officer shall provide to the appointing agency a copy of all documents provided to the peace officer under subsection (A)(2)(c), (A)(2)(e), ~~or~~ (A)(2)(f), or (A)(3)(f)(iii). The appointing agency shall maintain the documents and make them available, upon request by the Board, for Board audit.

B. Proficiency training required.

1. To retain certification, a peace officer who is not in a ~~supervisory position~~ Sergeant or higher rank within the peace officer's appointing agency shall complete eight hours of proficiency training every three years beginning January 1, following the date the peace officer is certified.

2. Proficiency training course standards. The provider of a proficiency training course for peace officers shall ensure that:

a. The training requires physical demonstration of one or more performance objectives included in the 585-hour full-authority peace officer basic training course under R13-4-116 and demonstration of the use of judgment in the application of the physical act;

b. The curriculum consists of advanced or remedial instruction on one or more of the following topic areas:

i. Arrest and control tactics,

ii. Tactical firearms (not the annual firearms qualification required under this Section),

iii. Emergency vehicle operations,

iv. Pursuit operations,

v. First aid and emergency care,

vi. Physical conditioning, and

vii. High-risk stops;

c. The instructor meets the requirements of R13-4-114(A)(2)(c);

d. An attendance verification certificate, which includes a statement that the provider believes the course meets the requirements of this Section, is given to each attendee for audit purposes; and

e. If the training provider is an agency, an attendance roster and lesson plan or other information sufficient to determine compliance with this Section is made available upon request by the Board for Board audit.

3. Training providers. Courses that qualify for proficiency training credit may be conducted by the Board or an agency.

a. All Board-provided proficiency training courses meet the requirements of this Section.

b. Agency-provided proficiency training courses meet the requirements of this Section if all the requirements of subsection (B)(2) are met.

4. Required records. A peace officer shall provide to the appointing agency a copy of the document provided to the peace officer under subsection (B)(2)(d). The appointing agency shall maintain and make the document available, upon request by the Board, for Board audit.

C. Firearms qualification required. A peace officer authorized to carry a firearm shall qualify to continue to be authorized to carry a firearm each year beginning January 1 following certification by completing a Board-prescribed firearms qualification course, using a service handgun and service ammunition, and a Board-prescribed target identification and judgment course.

1. Firearms qualification course standards.

a. A firearms qualification course is a course:

i. Prescribed under R13-4-116(E)(1), or

ii. Determined by the Board to measure firearms competency at least as accurately as courses prescribed under R13-4-116(E)(1).

b. The provider of a firearms qualification course shall ensure that the course includes:

i. A timed accuracy component;

ii. A type and style of target that is equal to, or more difficult than, targets used in a course prescribed under R13-4-116(E)(1); and

iii. A success criterion that is equal to, or more difficult than, criteria used in a course prescribed under R13-4-116(E)(1).

2. Firearms target identification and judgment course standards.

a. A firearms target identification and judgment course is a course:

i. Prescribed under R13-4-116(E)(1), or

ii. Determined by the Board to measure target identification and judgment competency at least as accurately as courses prescribed under R13-4-116(E)(1).

b. The provider of a firearms target identification and judgment course shall ensure that the course includes:

i. A timed accuracy component;

ii. A type and style of target discrimination test that is equal to, or more difficult than, those used in a course prescribed under R13-4-116(E)(1); and

iii. A success criterion that is equal to, or more difficult than, criteria used in a course prescribed under R13-4-116(E)(1).

3. The provider of a firearms qualification or firearms target identification and judgment course shall ensure that the course is taught by a firearms instructor who meets the requirements of R13-4-114(A)(2)(c).

D. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

R13-4-114. Minimum Course Requirements

A. Instructors. An academy administrator or agency head shall ensure that only an instructor who meets the requirements of this Section facilitates a Board-prescribed course.

1. Instructor classifications.

a. General instructor. An individual qualified to teach topics not requiring a proficiency instructor under subsection (A)(1)(c).

b. Specialist instructor. An individual, other than an Arizona peace officer, qualified to teach a topic in which the instructor has special expertise but who does not qualify for general instructor status.

c. Proficiency instructor. An individual qualified to teach a topic area listed in R13-4-111(B)(2)(b).

2. Instructor qualification standards.

a. A general instructor shall meet the following requirements ~~of subsections (A)(2)(a)(i) and (A)(2)(a)(ii) and either the requirement of subsection (A)(2)(a)(iii) or (A)(2)(a)(iv)~~:

i. Have two years' experience as a certified peace officer;

ii. Maintain instructional competency;

iii. Successfully complete a Board-sponsored instructor training course or an instructor training course that contains all of the performance objectives and demonstrations of the Board-sponsored instructor course~~;~~.

~~iv. Possess a community college or university teaching certificate.~~

b. A specialist instructor shall meet the requirements of subsections (A)(2)(b)(i) and (A)(2)(b)(ii) and either subsection (A)(2)(b)(iii) or ~~subsections~~ (A)(2)(b)(iv) ~~and (A)(2)(b)(v)~~:

i. Be nominated by an agency head or the administrator of an academy authorized to provide a peace officer basic training course;

ii. Maintain instructional competency;

iii. Possess a professional license or certification other than a peace officer certification that relates to the topics to be taught;

iv. Provide documentation to the agency head or academy administrator for forwarding to the Board that demonstrates the expertise and ability to enhance peace officer training in a special field~~;~~.

~~v. Possess a community college or university teaching certificate.~~

c. A proficiency instructor shall meet the requirements of subsections (A)(2)(c)(i) and (A)(2)(c)(ii) and either subsection (A)(2)(c)(iii) or (A)(2)(c)(iv):

i. Meet the requirements for general instructor;

ii. Maintain instructional competency;

iii. Successfully complete a proficiency instructor course in a topic area listed in R13-4-111(B)(2)(b) that includes a competency assessment to instruct in that area within the 585-hour full-authority peace officer basic training course listed in R13-4-116(E);

iv. Complete a form prescribed by the Board that documents advanced training and experience in the topic area including a competency assessment to instruct in that area

within the 585-hour full-authority peace officer basic training course listed in R13-4-116(E);

d. A proficiency instructor shall meet the requirements of subsection (A)(2)(c) separately for each topic area listed in R13-4-111(B)(2)(b) for which the proficiency instructor seeks qualification.

3. Instructional competency. An academy administrator or an agency head shall immediately notify the Board in writing of any instructor:
   a. Who jeopardizes the safety of students or the public,
   b. Whose instruction violates acceptable training standards,
   c. Who is grossly deficient in performance as an instructor, or
   d. Who is a proficiency instructor and fails to complete satisfactorily the competency assessment to instruct in the instructor's topic area within the 585-hour full-authority peace officer basic training course.
4. If the Board determines that an instructor fails to comply with the provisions of this Section, has an instructional deficiency, or fails to maintain proficiency, any course facilitated by the instructor does not meet the requirements of this Section.

B. Curriculum standards. An academy administrator or agency head shall ensure that the curriculum for a Board-prescribed course meets the following standards:

1. Curriculum.
   a. Curriculum development employs valid, job-based performance objectives and learning activities, and promotes student, officer, and public safety, as determined by a scientifically conducted validation study of the knowledge, skills, abilities, and aptitudes needed by the affected category of Arizona peace officer.
   b. The curriculum meets or exceeds the requirements of subsection (B)(2), unless otherwise provided in this Section.
2. Curriculum format standard. The curriculum consists of the following:
   a. A general statement of instructional intent that summarizes the desired learning outcome, is broad in scope, and includes long-term or far-reaching learning goals;
   b. Lesson plans containing:
      i. Course title,
      ii. Hours of instruction,
      iii. Materials and aids to be used,
      iv. Instructional strategy,
      v. Topic areas in outline form,

vi. Performance objectives or learning activities,

vii. Success criteria, and

viii. Reference material;

c. Performance objectives consisting of at least the following components:

i. The student, which is an individual or group that performs a behavior as the result of instruction;

ii. The behavior, which is an observable demonstration by the student at the end of instruction that shows that the objective is achieved and allows evaluation of the student's capabilities to perform the behavior; and

iii. The conditions, which is a description of the important conditions of instruction or evaluation under which the student performs the behavior. Unless specified otherwise within the lesson plan, instruction and evaluation will be in written or oral form;

d. Learning activities. A student is not required to demonstrate mastery of learning activities as a condition for successfully completing the training. Learning activities are subject areas for which performance objectives are not appropriate because either:

i. Reliable and meaningful assessment of mastery of the material would be extremely difficult or impossible, or

ii. Mastery of the material is not likely to bear a direct relationship to the ability to perform entry-level peace officer job duties; and

e. The following decimal numbering system to provide a logical means of organization:

i. Functional area (1.0, 2.0, 3.0),

ii. Topic area (1.1.0, 1.2.0, 1.3.0), and

iii. Performance objective or learning activity (1.1.1, 1.1.2, 1.1.3).

C. The Board shall maintain and provide upon request a copy of curricula that meet the standards of this Section.

R13-4-116. Academy Requirements

A. Unless otherwise provided in this Article, only the basic training provided by an academy that the Board determines meets the standards prescribed in this Section may be used to qualify for certified peace officer status.

B. The academy administrator shall ensure that the academy has the following:

1. A classroom with adequate heating, cooling, ventilation, lighting, and space;
2. Chairs with tables or arms for writing;
3. Visual aid devices for classroom presentation;

4. Equipment in good condition for specialized instruction;
5. A safe driving range for conducting the defensive and pursuit driving course;
6. A firing range with adequate backstop to ensure the safety of all individuals on or near the range; and
7. A safe location for practical exercises.

C. Administrative requirements. The academy administrator shall ensure that the academy:

1. Establishes and maintains written policies, procedures, and rules concerning:
   a. Operation of the academy,
   b. Entrance requirements,
   c. Student and instructor conduct, and
   d. Administering examinations;
2. Admits only individuals who meet the requirements of R13-4-105, as attested to by the appointing agency or, in the case of an open enrollee, by the academy administrator, on ~~a~~ form A1 or A4, as applicable, which is submitted to ~~prescribed by~~ the Board on or before the first day of training;
3. Administers to each student at the beginning of each academy session a written examination prescribed by the Board measuring competency in reading and writing English;
4. Schedules sufficient time for ~~Board staff to administer~~ the CFE to be administered as required by R13-4-110(A); and
5. Uses only instructors who are qualified under R13-4-114(A).

D. Academic requirements. The academy administrator shall ensure that the academy:

1. Establishes a curriculum with performance objectives and learning activities that meet the requirements of subsection (E) and R13-4-114(B);
2. Requires instructors to use lesson plans that cover the course content and list the performance objectives to be achieved and learning activities to be used;
3. Administers written, oral, or practical demonstration examinations that measure the attainment of the performance objectives;
4. Reviews examination results with each student and ensures that the student is shown any necessary corrections and signs and dates an acknowledgment that the student participated in the review;
5. Requires a student to complete successfully oral or written examinations that cover all topics in all functional areas before graduating.
   a. Successful completion of an examination is a score of 70 percent or greater;
   b. For a student who scores less than 70 percent, the academy shall:

i. Provide remedial training, and

ii. Re-examine the student in the area of deficiency; and

c. The academy shall allow a student to retake each examination only once;

6. Requires a student to qualify with firearms as described in R13-4-116(E);

7. Ensures that a student meets the success criteria for police proficiency skills under subsection (E)(1);

8. Provides remedial training for a student who misses a class before allowing the student to graduate; and

9. Refuses to graduate a student who is absent more than 32 hours from the 585-hour full-authority peace officer basic training course or 16 hours from the specialty or limited-authority peace officer basic training course.

E. Basic course requirements. The academy administrator shall ensure that the academy uses curricula that meet the requirements of R13-4-114 for the following basic courses of instruction.

1. The 585-hour full-authority peace officer basic training course shall include all of the topics listed in each of the following functional areas:

a. Functional Area I - Introduction to Law Enforcement.

i. Criminal justice systems,

ii. History of law enforcement,

iii. Law enforcement services,

iv. Supervision and management,

v. Ethics and professionalism, and

vi. Stress management.

b. Functional Area II - Law and Legal Matters.

i. Introduction to criminal law;

ii. Laws of arrest;

iii. Search and seizure;

iv. Rules of evidence;

v. Summonses, subpoenas, and warrants;

vi. Civil process;

vii. Administration of criminal justice;

viii. Juvenile law and procedures;

ix. Courtroom demeanor;

x. Constitutional law;

xi. Substantive criminal law, A.R.S. Titles 4, 13, and 36; and

xii. Liability issues.

c. Functional Area III - Patrol Procedures.
   i. Patrol and observation (part 1),
   ii. Patrol and observation (part 2),
   iii. Domestic violence,
   iv. Mental illness,
   v. Crimes in progress,
   vi. Crowd control formations and tactics,
   vii. Bomb threats and disaster training,
   viii. Intoxication cases,
   ix. Communication and police information systems,
   x. Hazardous materials,
   xi. Bias-motivated crimes,
   xii. Fires, and
   xiii. Civil Disputes.

d. Functional Area IV - Traffic Control.
   i. Impaired driver cases;
   ii. Traffic citations;
   iii. Traffic collision investigation;
   iv. Traffic collision (practical);
   v. Traffic direction; and
   vi. Substantive Traffic Law, A.R.S. Title 28.

e. Functional Area V - Crime Scene Management.
   i. Preliminary investigation and crime scene management,
   ii. Crime scene investigation (practical),
   iii. Physical evidence procedures,
   iv. Interviewing and questioning,
   v. Fingerprinting,
   vi. Sex crimes investigations,
   vii. Death investigations including sudden infant death syndrome,
   viii. Organized crime activity,
   ix. Investigation of specific crimes, and
   x. Narcotics and dangerous drugs.

f. Functional Area VI - Community and Police Relations.

i. Cultural awareness,

ii. Victimology,

iii. Interpersonal communications,

iv. Crime prevention, and

v. Police and the community.

g. Functional Area VII - Records and Reports. Report writing.

h. Functional Area VIII - Police Proficiency Skills.

i. First aid,

ii. Firearms training (including firearms qualification),

iii. Physical conditioning,

iv. High-risk stops,

v. Arrest and control tactics,

vi. Vehicle operations, and

vii. Pursuit operations.

i. Functional Area IX - Orientation and Introduction.

i. Examinations and reviews,

ii. Counseling, and

iii. Non-Board specified courses.

2. The specialty peace officer basic training course shall include all of the topics necessary from the 585-hour full-authority peace officer basic training course for the curriculum to meet the requirements of R13-4-114(B).

3. The limited-authority peace officer basic training course shall include all of the topics necessary from the 585-hour full-authority peace officer basic training course for the curriculum to meet the requirements of R13-4-114(B).

4. Administrative functions such as orientation, introductions, examinations and reviews, and counseling are exempt from the requirements of R13-4-114(B).

F. Records required. The academy administrator shall ensure that the following records are maintained and made available for inspection by the Board or staff. The academy administrator shall provide to the Board copies of records upon request.

1. A record of all students attending the academy;

2. A manual containing the policies, procedures, and rules of the academy;

3. A document signed by each student indicating that the student received and read a copy of the academy policies, procedures, and rules;

4. An application for each student, on a form prescribed by the Board, from the appointing agency or, in the case of an open enrollee, from the academy administrator, attesting that the requirements of R13-4-105 are met;
5. A copy of all lesson plans used by instructors;
6. An annually signed and dated acknowledgment that the academy administrator reviewed and approved each lesson plan used at the academy;
7. A copy of all examinations, answer sheets or records of performance, and examination review acknowledgments;
8. An attendance roster for all classes or other record that identifies absent students;
9. A record of classes missed by each student and the remedial training received;
10. A record of disciplinary actions for all students; and
11. A file for each student containing the student's performance history.

G. Reports required. The academy administrator shall submit to the Board:

1. At least 10 working days before the start of each academy session, a complete schedule of classes containing the name of the instructor for each class and the training location;
2. No more than five working days after the start of each academy session, on a form prescribed by the Board, a roster indicating whether a student is an open enrollee or appointed and if appointed, identifying the appointing agency, and the full name and Social Security number of each student;
3. No more than five working days after dismissing a student from the academy, notification of the dismissal and the reason;
4. No later than the tenth day of each month, a report containing:
    a. A summary of training activities and progress of the academy class to date;
    b. Unusual occurrences, accidents, or liability issues; and
    c. Other problems or matters of interest noted in the course of the academy, if not included under subsection (G)(4)(b);
5. No more than 10 working days after the end of each academy session, a complete schedule of classes containing the name of the instructor for each class and the training location;
6. No more than 10 working days after the end of each academy session, on a form prescribed by the Board, a roster indicating whether a student is an open enrollee or appointed and if appointed, identifying the appointing agency, and the full name and Social Security number of each student successfully completing the training.

H. Required inspections. Before an academy provides training to individuals seeking certification for any category of peace officer, the Board staff shall conduct an onsite inspection of the academy to

determine compliance with this Section and R13-4-114. Board staff shall conduct additional inspections as often as the Board deems necessary.

1. Within 30 days after the inspection, the Board staff shall provide to the academy administrator an inspection report that lists any deficiencies identified and remedial actions the academy is required to take to comply with the standards of this Section and R13-4-114.
2. Within 30 days after receipt of the inspection report, the academy administrator shall submit to the Board a response that indicates the progress made to complete the remedial actions necessary to correct the deficiencies described in the inspection report. The academy administrator shall submit to the Board additional responses every 30 days until all remedial action is complete.
3. Within 30 days after receipt of notice that all remedial action is complete, Board staff shall conduct another inspection.
4. Following each inspection, Board staff shall present an inspection report to the Board describing the academy's compliance in meeting the standards of this Section and R13-4-114.

I. If an academy does not conduct a peace officer basic training course for 12 consecutive months, the academy shall not provide training until Board staff conducts another inspection as required by subsection (H). Otherwise, an academy may continue to provide training unless the Board determines that the academy is not in compliance with the standards of this Section or R13-4-114.

J. If the Board finds that an academy fails to comply with the provisions of this Section or R13-4-114, the academy shall not provide training to individuals seeking to be certified as peace officers.

K. An academy administrator shall ensure that an open enrollee is admitted only after the academy administrator complies with every requirement of an agency or agency head imposed by R13-4-105, R13-4-106, R13-4-107, and R13-4-108 except for R13-4-106(C)(4).

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT[1]

TITLE 13. PUBLIC SAFETY

CHAPTER 4. ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

1. Identification of the rulemaking:

The Board is amending the rules to:

Update minimum qualifications regarding pre-application use of marijuana, other dangerous drugs, prescription medications, steroids, and narcotics;

Eliminate the total times an individual could have used marijuana in the past and focus only on use in the two years before appointment as a peace officer;

Remove "experimentation" as an explanation for pre-application use of marijuana or other dangerous drugs;

Update requirements regarding pre-application use of Adderall and CBD oil. This will eliminate the need for substantive policies 2016-001 and 2019-001 and amendments;

Update procedures to allow online administration of the comprehensive final examination (CFE), waiver examination, and completion of the personal history and other forms;

Add home schooling as an acceptable form of high school equivalency,

Clarify that results of a fingerprint check are required before graduation from the academy and reimbursement of training expenses;

Require information regarding agencies to which an applicant previously applied;

Add requirement for an agency to address "resolve-in-the future" designations before appointing an individual as a peace officer;

Update certification retention requirements;

Update minimum course requirements;

Update academy training requirements;

Modernize the rules to be consistent with Board practice and industry standards; and

Ensure the rules are consistent with statute, Board practice, and current rule-writing standards.

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

The current rules regarding pre-employment use of marijuana, other dangerous drugs, prescription medications, steroids, and narcotics exclude some individuals who could be employed as a peace officer without endangering public safety or the law

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

enforcement profession. The concept of "experimentation" may result in inconsistent enforcement of the current rules regarding pre-employment use of drugs.

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:

Until the rulemaking is completed, the changes proposed, especially those relating to pre-employment use of marijuana, other dangerous drugs, prescription medications, steroids, and narcotics, will not be applicable to peace officer applicants, will not expand the pool of potential applicants, and will result in continued use of the concept of "experimentation."

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

When the rulemaking is completed, the Board expects the pool of potential applicants to expand while protecting public safety and the law enforcement profession and all applicants to be treated more uniformly regarding pre-employment use of marijuana, other dangerous drugs, prescription medications, steroids, and narcotics.

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 on peace officers. It will have important impact for applicants with pre-employment use of marijuana, other dangerous drugs, prescription medications, steroids, or narcotics and law enforcement agencies. The amendments with the most significant potential economic impact are:

Updating minimum qualifications regarding pre-application use of marijuana, other dangerous drugs, prescription medications, steroids, and narcotics;

Removing "experimentation" as an explanation for pre-application use of marijuana or other dangerous drugs;

Eliminating the total times an individual could have used marijuana in the past and focus only on use in the two years before appointment as a peace officer;

Updating requirements regarding pre-application use of Adderall and CBD oil;

Requiring information regarding agencies to which an applicant previously applied; and

Adding a requirement for an agency to address "resolve-in-the future" designations before placing a peace officer in a sworn position.

The changes regarding pre-application drug use are designed to clarify and enforce a standard applicable to all applicants. The Board believes eliminating the total times an

individual could have used marijuana and removing experimentation as an explanation of pre-application use will have the beneficial effect of expanding the pool of applicants and treating applicants uniformly. The Board believes the changes are in the best interest of the law enforcement profession and public safety and welfare.

Agencies seeking to appoint a peace officer will have the additional requirement of obtaining information from agencies to which the individual previously applied and if applicable, resolving any resolve-in-the future designations in the individual's record.

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: Michael Orose, Compliance Program Administrator
   Address: 2643 E. University Drive
   Phoenix, AZ 85034
   Telephone: 602-774-9354
   E-mail: michaelo@azpost.gov
   Web site: azpost.gov

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

   Applicants for appointment as a peace officer, law enforcement agencies, and the Board are directly affected by, bear the costs of, and directly benefit from the rulemaking.

   There are currently 14,971 peace officers certified by the Board. There are 159 law enforcement agencies in the state. During calendar year 2019, 918 recruits entered one of Arizona's 14 law enforcement training academies and 702 (76 percent) completed the training. Thirteen individuals were denied certification last year. Ten (77 percent) of these were for untruthfulness.

   During 2019, the Board received 20 petitions from law enforcement agencies for a determination that pre-employment drug use was for experimentation. The Board granted 18 of the petitions. Neither of the two denied petitions would have been approved under the pre-employment drug use standards in this rulemaking. However, the Board believes the new pre-employment drug use standards will expand the pool of individuals eligible for appointment. This is because the current requirements for a determination that

pre-employment drug use was for experimentation are clearly defined causing law enforcement entities not to petition regarding individuals unlikely to meet the standard.

The Board places a resolve-in-the-future designation in the file of an inactive peace officer when it has been alleged the peace office engaged in misconduct and even after an investigation, the Board determines it is unable to assess the accuracy of the allegation. If the inactive peace officer wants to return to police work, the appointing law enforcement agency is required to resolve the issue. During 2019, the Board placed resolve-in-the-future designations in the files of eight cases. One of the eight cases has been resolved.

During 2019, the Board received 238 allegations of peace officer misconduct. Forty-seven of these were citizen complaints. The Board revoked, suspended, or accepted voluntary relinquishment of certification from 85 peace officers.

Law enforcement agencies seeking to appoint a peace officer will have the additional requirement of obtaining information from agencies to which the individual previously applied. This ensures the appointing agency is aware of all information developed by other agencies so only qualified individuals are appointed.

During 2019, all individuals, including 54 individuals entitled to have training waived because previous training and employment as a peace officer was applicable, were required to take the comprehensive final examination. Additionally, 806 basic training recruits took the CFE and 31 (four percent) failed one or more of the examination blocks. Twenty-seven of these passed the failed block when it was retaken.

The Board is responsible for administering the Peace Officer Training Fund, which receives approximately 16.64% of the monies generated by a surcharge on all criminal and traffic fines (See A.R.S. §§ 12-116.01 and 41-2401). During 2019, the Fund received $5,203,296. It also received a supplemental allocation of $932,150 from state funds. The Board has 23 full-time employees.

The Board incurred the cost of completing this rulemaking and will incur the cost of enforcing it. The Board has the benefit of new pre-employment drug use standards

that will expand the pool of applicants for appointment and be easier to enforce equitably.

5. Cost-benefit analysis:

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

      The Board is the only state agency directly affected by the rulemaking. Its costs and benefits are described in item 4. It will not require a new full-time employee to implement the proposed rules.

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

      Political subdivisions are directly affected by the rulemaking. This includes the political subdivisions[2] that operate training academies and those that appoint certified peace officers. Their benefits and costs are described in item 4.

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

      No businesses are directly affected by the rulemaking.

6. Impact on private and public employment:

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

7. Impact on small businesses[3]:

   No businesses are directly affected by the rulemaking.

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

   Private persons and consumers are not directly affected by the rulemaking.

9. Probable effects on state revenues:

   The rulemaking will have no effect on state revenues.

10. Less intrusive or less costly alternative methods considered:

    The Board concluded no less intrusive or less costly alternative method existed to achieve the intended purpose of the rulemaking. The primary benefits of the rulemaking are positive. The new pre-employment drug use standards expand the pool of potential applicants while protecting public safety and the law enforcement profession and ensure all applicants are treated equitably. The minimal additional compliance cost of the rulemaking results from the requirement that before a law enforcement agency appoints a peace office, it check with other

[2] A.R.S. § 41-1822(A)(4) provides that only this state and political subdivisions of this state may conduct basic peace officer training.
[3] Small business has the meaning specified in A.R.S. § 41-1001(21).

agencies to which the peace officer previously applied and resolve any resolve-in-the-future designation. The Board determined these minimal compliance costs are outweighed by the benefits of protecting public safety and the law enforcement profession.

Michael Orose

7:33 AM (1 hour ago)

to Jennifer, bcc: me

Ms. Zito,
Thank you for your question reference the anticipated date of the proposed changes to the AZPOST rules related to the minimum hiring standards. This is a relatively lengthy process, with all the legal steps that need to be followed along with the review time frames required at each step in the process. The current schedule for completing the entire process and implementing the new rules is approximately April of 2021.

Mike Orose
Compliance Specialist

Arizona Peace Officer Standards & Training Board
2643 E University Drive
Phoenix, AZ 85034
Phone: 602.774.9354
Michaelo@azpost.gov

On Tue, Jun 30, 2020 at 11:42 AM Jennifer Zito <bizybeejz@gmail.com> wrote:
Good morning Mr. Orose. I was just checking the AZPost website concerning the proposed changes to the disqualification standards for police officers and I see that the Board approved the proposed changes earlier this month. Are you able to tell me the next step in the process and when these new rules could go into effect? My son lost an opportunity with Phoenix PD a couple of years ago because he had a couple years earlier tasted an edible at a college party and he has been eagerly waiting for time to pass or for the guidelines to be amended. He was an otherwise strong candidate with a spotless record so it was a huge disappointment for him, as for many others as I have heard. It would be wonderful if these changes actually went into effect. I appreciate your time and any information you can provide. Thank you. Jen

Jennifer Zito
(602) 828-0690

CHIEF EXECUTIVE AND STUDENT VIEWS ABOUT PEACE OFFICER PRE-EMPLOYMENT DRUG USE STANDARDS

Cody Telep
Jon Bottema
Arizona State University

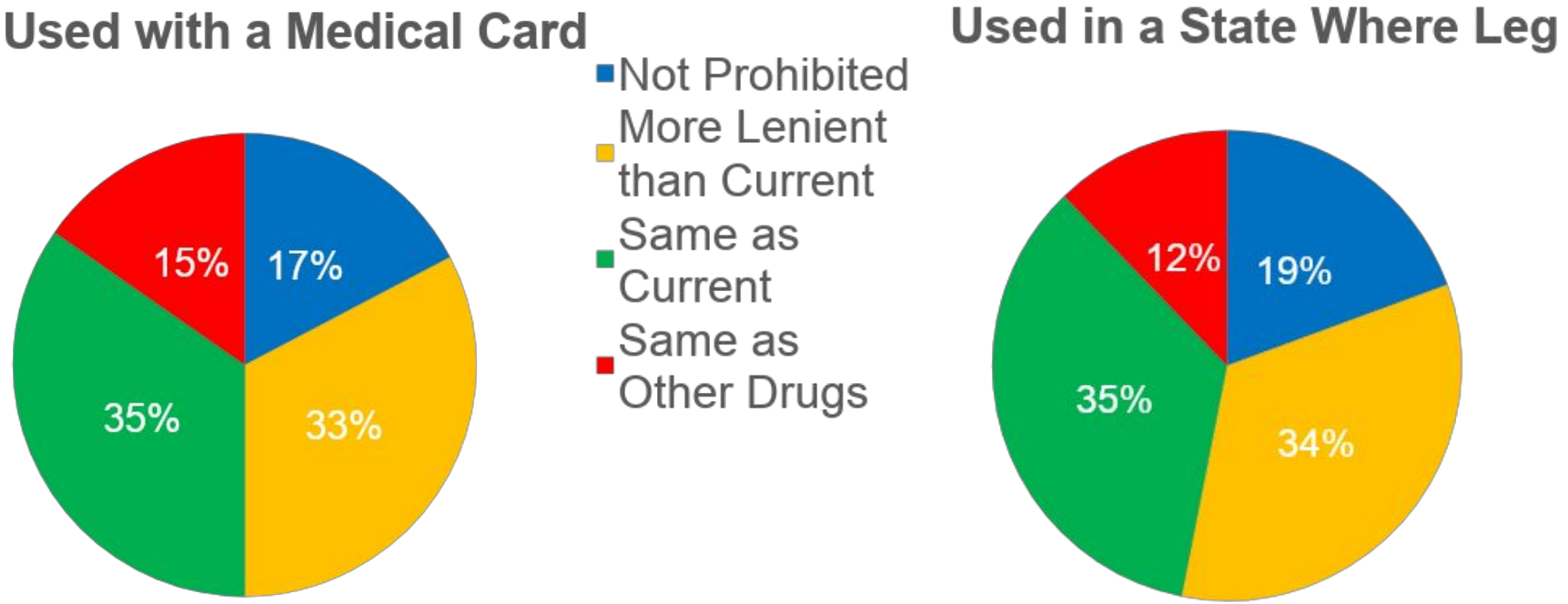
January 15, 2020

Data Collection

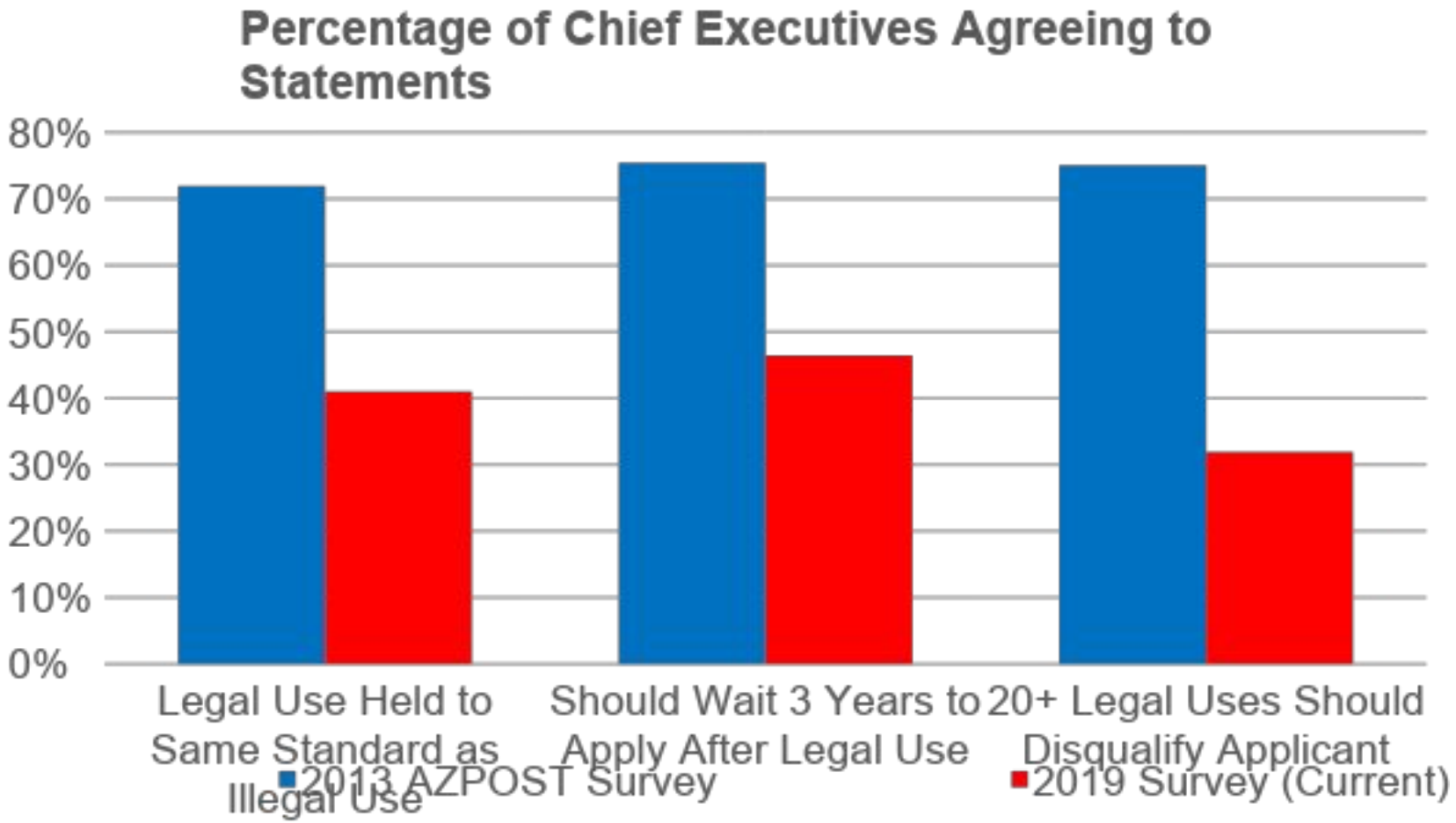
- Surveys collected in Fall 2019
- Chief executives of Arizona law enforcement agencies
  - 98 responses
- Arizona State University students enrolled in criminology and criminal justice undergraduate courses
  - 1,137 responses

Marijuana Experimentation

- Current standards are….
  - About right: **41%** of chief executives
  - Too harsh: **54%** of chief executives



Changing Views on Legal Marijuana



Other Dangerous Drugs or Narcotics

- For drugs other than marijuana
  - Current standards are
    - About right: **67%** of chief executives
    - Too harsh: **30%** of chief executives

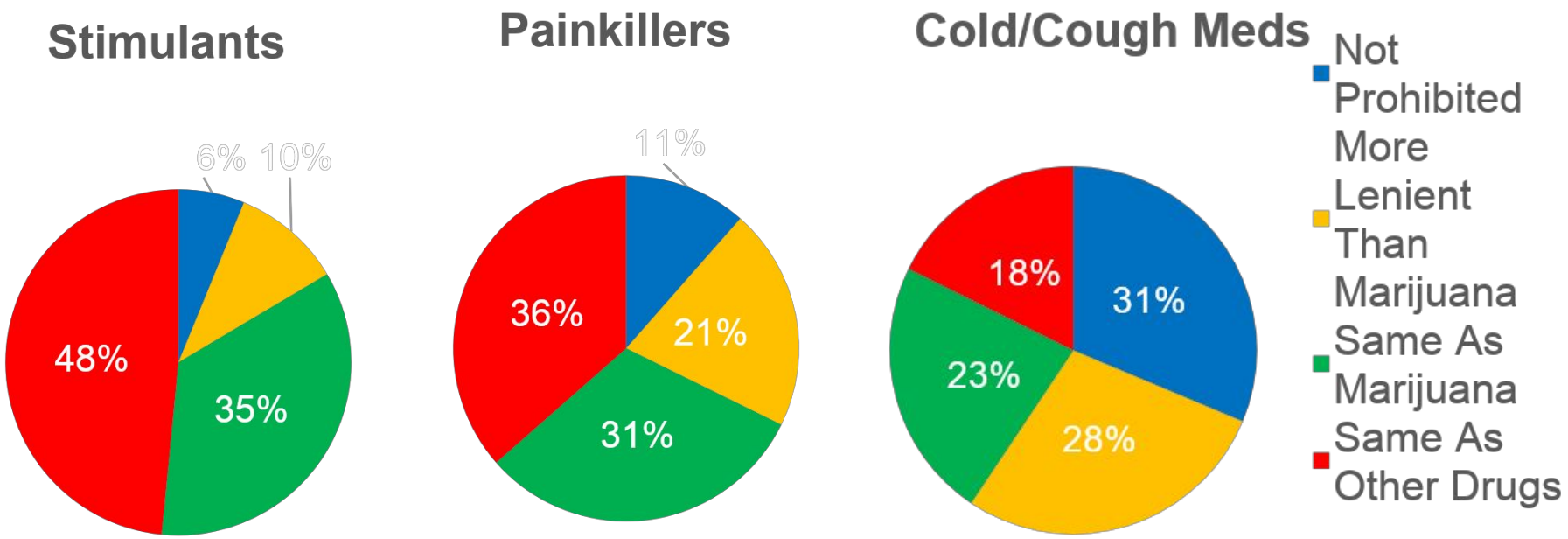
- Marijuana consumed as an edible (non-smoked)
  - Treat like marijuana experimentation:

    71% of chief executives
  - Treat more leniently than marijuana experimentation:

    13% of chief executives

Prescription Drugs

- **76%** of chief executives think illicit prescription drug use should be a separate drug experimentation category



Thank You

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Arizona State University

CHAPTER 4. ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

ARTICLE 1. GENERAL PROVISIONS

R13-4-101. Definitions

In this Article, unless the context otherwise requires:

"Academy" means an entity that conducts the Board-prescribed basic training courses for full-authority, specialty, or limited-authority peace officers.

"Agency" means a law enforcement entity empowered by the state of Arizona.

"Appointment" means the selection by an agency of an individual to be a peace officer or peace officer trainee.

"Approved training program" means a course of instruction that meets Board-prescribed course requirements.

"Board" means the Arizona Peace Officer Standards and Training Board.

"Board-trained physician" means an occupational medicine specialist or a physician who has attended a Board course on peace officer job functions.

"Cancellation" means the annulment of certified status without prejudice to reapply for certification.

"Certified" means approved by the Board as being in compliance with A.R.S. Title 41, Chapter 12, Article 8 and this Chapter.

"CFE" means the Board-approved Comprehensive Final Examination that measures mastery of the knowledge and skills taught in the 585-hour full-authority peace officer basic training course.

"Denial" means the permanent refusal of the Board to grant certified status.

"Dangerous drug or narcotic" means a substance identified in A.R.S. § 13-3401 as being a dangerous drug or narcotic drug.

"Experimentation" means the illegal possession or use of marijuana or a dangerous drug or narcotic as described in R13-4-105(B) and (C).

"Full-authority peace officer" means a peace officer whose authority to enforce the laws of this state is not limited by this Chapter.

"Illegal" means in violation of federal or state statute, rule, or regulation.

"Lapse" means the expiration of certified status.

"Limited-authority peace officer" means a peace officer who is certified to perform the duties of a peace officer only in the presence and under the supervision of a full-authority peace officer.

"Open enrollee" means an individual who is admitted to an academy but is not appointed by an agency.

"Outside provider" means an entity other than the Board or an agency that makes continuing training available to peace officers.

"Peace officer" has the meaning in A.R.S. § 1-215.

"Peace officer trainee" means an individual recruited and appointed by an agency to attend an academy.

"Physician" means an individual licensed to practice allopathic or osteopathic medicine in this or another state.

"Restriction" means the Board's limitation on duties allowed to be performed by a certified peace officer.

"Revocation" means the permanent withdrawal of certified status.

"Service ammunition" means munitions that perform equivalently in all respects when fired during training or qualification to those carried on duty by a peace officer.

"Service handgun" means the specific handgun or equivalent that a peace officer carries for use on duty.

"Specialty peace officer" means a peace officer whose authority is limited to enforcing specific sections of the Arizona Revised Statutes or Arizona Administrative Code, as specified by the appointing agency's statutory powers and duties.

"Success criteria" means a numerical statement that establishes the performance needed for an individual to demonstrate competency in a knowledge, task, or ability required by this Chapter.

"Suspension" means the temporary withdrawal of certified status.

"Termination" means the end of employment or service with an agency as a peace officer through removal, discharge, resignation, retirement, or otherwise.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). Amended effective August 6, 1991 (Supp. 91-3). References to "Council" changed to "Board" (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-102. Internal Organization and Control of the Board

A. Scheduled meetings. The Chair, in consultation with the Board, shall set regular meeting dates of the Board.

B. Special meetings. Except in the case of an emergency meeting declared by the Governor or the Chair, the Chair shall give at least five days' written notice of a special meeting to each member of the Board.

C. Subcommittees. The Chair may appoint subcommittees to inquire into any matter of Board interest. Each subcommittee shall report its findings, conclusions, and recommendations to the Board, in a manner directed by the Chair.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-103. Certification of Peace Officers

A. Certified status mandatory. An individual who is not certified by the Board or whose certified status is inactive shall not function as a peace officer or be assigned the duties of a peace officer by an agency, except as provided in subsection (B).

B. Sheriffs who are elected are exempt from the requirement of certified status.

C. An individual shall satisfy the minimum qualifications and training requirements to receive certified status.

D. Peace officer categories. The categories for which certified status may be granted are:

1. Full-authority peace officer,

2. Specialty peace officer, and
3. Limited-authority peace officer.

E. Application for certification. An individual who seeks to be certified as a peace officer shall make application as follows:
1. Submit to an agency an application that contains all documents required by R13-4-105, R13-4-106(A) and (B), and R13-4-107;
2. Obtain an appointment from the agency; and
3. Obtain either a certificate of graduation from a Board-prescribed Peace Officer Basic Course or a certificate of successful completion of the waiver of training process prescribed by R13-4-110(D).

F. An open enrollee shall obtain an appointment from an agency within one year after graduating from a Board-prescribed Peace Officer Basic Course.
1. If more than one year but less than three years elapse after graduation from a Board-prescribed Peace Officer Basic Course before an open enrollee obtains an appointment from an agency, the open enrollee shall again take the CFE required under R13-4-110 and satisfactorily perform the practical demonstrations of proficiency in physical conditioning, vehicle operations, pursuit operations, and firearms, including firearms qualifications, as required under R13-4-116(E)(1).
2. If more than three years elapse after graduation from a Board-prescribed Peace Officer Basic Course, an open enrollee shall again graduate from the Board-prescribed Peace Officer Basic Course before obtaining an appointment from an agency.

G. Establishing or enforcing qualifications, standards, or training requirements. The Board may waive in whole or in part any provision of this Article upon a finding that the best interests of the law enforcement profession are served and the public welfare and safety is not jeopardized by the waiver. The Board may place restrictions or requirements on a peace officer as a condition of certified status.

H. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

Historical Note
Adopted effective March 23, 1989 (Supp. 89-1). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, filed in the Office of the Secretary of State on February 8, 2016; effective six months after the date filed in accordance with A.R.S. § 1823 (Supp. 16-1).

R13-4-104. Peace Officer Category Restrictions

A. Limited-authority peace officer.
1. A limited-authority peace officer shall be in the presence and under the supervision of a full-authority peace officer when engaged in patrol or investigative activities performed to detect, prevent, or suppress crime, or to enforce criminal or traffic laws of the state, county, or municipality.
2. A limited-authority peace officer may perform the following duties without supervision of a full-authority peace officer:
   a. Directing traffic;
   b. Assisting with crowd control; or
   c. Maintaining public order in the event of riot, insurrection, or disaster.

B. Specialty peace officer. A specialty peace officer has only the authority specified in R13-4-101.

C. Peace officer category change. A certified peace officer may be appointed to another peace officer category within the same agency without the background investigation and medical examination required in R13-4-105, R13-4-106, and R13-4-107 when these requirements were previously satisfied for appointment if:
1. No more than 30 days have elapsed since the peace officer's termination, and
2. The change is to a category for which the officer is qualified under R13-4-110(A).

D. Inactive status. Certified status of a peace officer becomes inactive upon termination.

E. Lapse of certified status. After three consecutive years on inactive status, the certified status of a peace officer lapses.

F. Reinstatement from inactive status. A peace officer whose certified status is inactive and has not lapsed may have certification reinstated if the requirements of R13-4-105 are met for the new appointment, and if appointed:
1. In the same peace officer category, or;
2. As a specialty peace officer from inactive status as a full-authority peace officer.

G. Active status as a specialty or limited-authority peace officer does not prevent lapse of certified status as a full-authority peace officer.

Historical Note
Adopted effective March 23, 1989 (Supp. 89-1). Amended effective August 6, 1991 (Supp. 91-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-105. Minimum Qualifications

A. Except as provided in subsection (C) or (D), an individual shall meet the following minimum qualifications before being appointed to or attending an academy:
1. Be a United States citizen;
2. Be at least 21 years of age. An individual may attend an academy if the individual will be 21 years of age before graduating;
3. Have a diploma from a high school recognized by the department of education of the jurisdiction in which the diploma is issued, have successfully completed a General Education Development (G.E.D.) examination, or have a degree from an institution of higher education accredited by an agency recognized by the U.S. Department of Education;
4. Undergo a complete background investigation that meets the standards of R13-4-106. An individual may begin an academy before the results of the background investigation are returned. However, the academy shall not graduate the individual and the Board shall not reimburse the academy for the individual's training expenses until a qualifying background investigation report is obtained;
5. Undergo a medical examination that meets the standards of R13-4-107 within one year before appointment. An agency may make a conditional offer of appointment before the medical examination. If the medical examination is conducted more than 180 days before appointment, the individual shall submit a written statement indicating that the individual's medical condition has not changed since the examination;
6. Not have been convicted of a felony or any offense that would be a felony if committed in Arizona;

7. Not have been dishonorably discharged from the United States Armed Forces;
8. Not have been previously denied certified status, have certified status revoked, or have current certified status suspended, or have voluntarily surrendered certified status in lieu of possible disciplinary action in this or any other state if the reason for denial, revocation, suspension, or possible disciplinary action was or would be a violation of R13-4-109(A) if committed in Arizona;
9. Not have illegally possessed, produced, cultivated, or transported marijuana for sale or sold marijuana;
10. Not have illegally possessed or used marijuana for any purpose within the past three years;
11. Not have ever illegally possessed or used marijuana other than for experimentation;
12. Not have ever illegally possessed or used marijuana while employed or appointed as a peace officer;
13. Not have illegally sold, produced, cultivated, or transported for sale a dangerous drug or narcotic;
14. Not have illegally used a dangerous drug or narcotic, other than marijuana, for any purpose within the past seven years;
15. Not have ever illegally used a dangerous drug or narcotic other than for experimentation;
16. Not have ever illegally used a dangerous drug or narcotic while employed or appointed as a peace officer;
17. Not have a pattern of abuse of prescription medication;
18. Undergo a polygraph examination that meets the requirements of R13-4-106, unless prohibited by law;
19. Not have been convicted of or adjudged to have violated traffic regulations governing the movement of vehicles with a frequency within the past three years that indicates a disrespect for traffic laws or a disregard for the safety of others on the highway;
20. Read the code of ethics in subsection (E) and affirm by signature the individual understands and agrees to abide by the code.

B. The illegal possession or use of marijuana, or a dangerous drug or narcotic is presumed to be not for experimentation if:
1. The possession or use of marijuana exceeds a total of 20 times or exceeds five times since the age of 21 years; or
2. The use of any dangerous drug or narcotic, other than marijuana, in any combination exceeds a total of five times, or exceeds one time since the age of 21 years.

C. An agency head who wishes to appoint an individual whose illegal possession or use of marijuana or a dangerous drug or narcotic is presumed to be not for experimentation under this Section may petition the Board for a determination that, given the unique circumstances of the individual's possession or use, the use was for experimentation. The petition shall:
1. Specify the type of drugs illegally possessed or used, the number of uses, the age at the time of each possession or use, the method by which the information regarding illegal possession or use of drugs came to the agency's attention, and any attempt by the agency head to verify the accuracy of the information; and
2. State the factors the agency head wishes the Board to consider in making its determination. These factors may include:
   a. The duration of possession or use,
   b. The motivation for possession or use,
   c. The time elapsed since the last possession or use,
   d. How the drug was obtained,
   e. How the drug was ingested,
   f. Why the individual stopped possessing or using the drug, and
   g. Any other factor the agency head believes is relevant to the Board's determination.

D. An agency head who wishes to appoint an individual whose conduct is grounds to deny certification under R13-4-109 may petition the Board for a determination that the otherwise disqualifying conduct constitutes juvenile indiscretion. The petition shall:
1. Specify the nature of the conduct, the number of times the conduct occurred, the method by which information regarding the conduct came to the agency's attention, and any attempt by the agency head to verify the accuracy of the information; and
2. Include sufficient information for the Board to determine that all of the following are true:
   a. The conduct occurred when the individual was less than age 18;
   b. The conduct occurred more than 10 years before application for appointment;
   c. The individual has consistently exhibited responsible, law-abiding behavior between the time of the conduct and application for appointment;
   d. There is reason to believe that the individual's immaturity at the time of the conduct contributed substantially to the conduct;
   e. There is evidence that the individual's maturity at the time of application makes reoccurrence of the conduct unlikely; and
   f. The conduct was not so egregious that public trust in the law enforcement profession would be jeopardized if the individual is certified.
3. If the Board finds that the information submitted is sufficient for the Board to determine that the factors listed in subsection (D)(2) are true, the Board shall determine that the conduct constituted juvenile indiscretion and grant appointment.

E. Code of Ethics. Because the people of the state of Arizona confer upon all peace officers the authority and responsibility to safeguard lives and property within constitutional parameters, a peace officer shall commit to the following Code of Ethics and shall affirm the peace officer's commitment by signing the Code.

"I will exercise self-restraint and be constantly mindful of the welfare of others. I will be exemplary in obeying the laws of the land and loyal to the state of Arizona and my agency and its objectives and regulations. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept secure unless revelation is necessary in the performance of my duty.

I will never take selfish advantage of my position and will not allow my personal feelings, animosities, or friendships to influence my actions or decisions. I will exercise the authority of my office to the best of my ability, with courtesy and vigilance, and without favor, malice, ill will, or compromise. I am a servant of the people and I recognize my position as a symbol of public faith. I accept it as a public trust to be held so long as I am true to the law and serve the people of Arizona."

F. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). Amended effective August 6, 1991 (Supp. 91-3). Amended effective January 13, 1993; filed July 13, 1992 (Supp. 92-3). References to "Council" changed to "Board" (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995

(Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective July 10, 2006 (Supp. 06-1). Amended by final rulemaking a 22 A.A.R. 555, filed in the Office of the Secretary of State on February 8, 2016; effective six months after the date filed in accordance with A.R.S. § 1823 (Supp. 16-1).

R13-4-106. Background Investigation Requirements

A. Personal history statement. An individual who seeks to be appointed shall complete and submit to the appointing agency a personal history statement on a form prescribed by the Board before the start of a background investigation. The Board shall use the answers to questions contained in the personal history statement to determine whether the individual is eligible for certified status as a peace officer. The Board shall ensure that the questions concern whether the individual meets the minimum requirements for appointment, has engaged in conduct or a pattern of conduct that would jeopardize the public trust in the law enforcement profession, and is of good moral character.

B. Investigative requirements for the applicant. To assist with the background investigation, an individual who seeks to be appointed shall provide the following:

1. Proof of United States citizenship. A copy of a birth certificate, United States passport, or United States naturalization papers is acceptable proof.
2. Proof of education. A copy of a diploma, certificate, or transcript is acceptable proof.
3. Record of any military discharge. A copy of the Military Service Record (DD Form 214, Member 4) is acceptable proof.
4. Personal references. The names and addresses of at least three people who can provide information as personal references.
5. Previous employers or schools attended. The names and addresses of all employers and schools attended within the previous five years.
6. Residence history. The complete address for every location at which the individual has lived in the last five years.

C. Investigative requirements for the agency. A complete background investigation includes the following inquiries and a review of the returns to determine that the individual seeking appointment meets the requirements of R13-4-105, and that the individual's personal history statement is accurate and truthful. For each individual seeking to be appointed, the appointing agency shall:

1. Query all the law enforcement agency records in jurisdictions listed in subsections (B)(5) and (B)(6);
2. Query the motor vehicle division driving record from any state listed in subsections (B)(5) and (B)(6);
3. Complete and submit a Fingerprint Card Inventory Sheet to the Federal Bureau of Investigation and Arizona Department of Public Safety for query;
4. Query the National Crime Information Center/Interstate Identification Index (NCIC/III), and the Arizona Criminal Information Center/Arizona Computerized Criminal History (ACIC/ACCH), or the equivalent for each state listed in subsections (B)(5) and (B)(6);
5. Contact all personal references and employers listed in subsections (B)(4) and (B)(5) and document the answers to inquiries concerning whether the individual meets the standards of this Section;
6. Administer a polygraph examination, unless prohibited by law. The results shall include a detailed report of the pre-test interview and any post-test interview and shall cover responses to all questions that concern minimum standards for appointment as required by R13-4-105, truthfulness on the personal history statement, and the commission of any crimes; and
7. If the results of the background investigation show that the individual meets minimum qualifications for appointment, has not engaged in conduct or a pattern of conduct that would jeopardize public trust in the law enforcement profession, and is of good moral character, complete a report that attests to those findings.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). Amended effective January 13, 1993; filed July 13, 1992 (Supp. 92-3). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-107. Medical Requirements

A. Medical, physical, and mental eligibility for certification.

1. An agency may appoint an individual if the individual meets the minimum qualifications in R13-4-105 and is able to perform all the essential functions of the job of peace officer effectively, with or without reasonable accommodation, without creating a reasonable probability of substantial harm to the individual or others.
2. If an agency wishes to appoint an individual who is unable to perform all the essential functions of the job of peace officer effectively, the agency may seek a restricted certification for the individual. The Board shall determine whether placing restrictions or requirements on the individual as a condition of certification will enable the individual to perform the essential functions authorized within the restriction without creating a reasonable probability of harm to the individual or others.

B. Medical examination process.

1. Medical history. An individual applying to be appointed shall provide to the examining, board-trained, physician a written statement of the individual's medical history that includes past and present diseases, illnesses, symptoms, conditions, injuries, functionality, surgeries, procedures, immunizations, medications, and psychological information.
2. Medical examination.
   a. The examining, board-trained, physician shall not delegate any part of the medical examination process to another person;
   b. The examining, board-trained, physician shall review the medical history statement and take an additional verbal history from the applicant;
   c. The examining, board-trained, physician shall conduct a physical examination consistent with the standard of care for occupational medical examinations;
   d. The examining, board-trained, physician shall order tests, obtain medical records, and require specialist or functional examinations and evaluations that the examining physician deems necessary to determine the applicant's ability to perform all the essential functions of the job of peace officer;
   e. The examining, board-trained, physician shall make a report to the agency and provide a:
      i. Summary of the examination;
      ii. Description of any significant medical findings;

iii. Description of any limitation to the ability to perform the essential functions of the job of a peace officer; and
iv. Medical opinion about the applicant's ability to perform the essential functions of the job of peace officer, with or without reasonable accommodations; and

f. The examining, board-trained, physician shall consult with the agency, upon request, about the report and the efficacy of any accommodations the agency deems reasonable.

C. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

Historical Note
Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, filed in the Office of the Secretary of State on February 8, 2016; effective six months after the date filed in accordance with A.R.S. § 1823 (Supp. 16-1).

R13-4-108. Agency Records and Reports

A. Agency reports. On forms prescribed by the Board, an agency shall submit:
1. A report by the agency head attesting that the requirements of R13-4-105 are met for each individual appointed. The report shall be submitted to the Board before an individual attends an academy or performs the duties of a peace officer.
2. A report of the termination of a peace officer. The report shall be submitted to the Board within 15 days of the termination and include:
   a. The nature of the termination and effective date;
   b. A detailed description of any termination for cause; and
   c. A detailed description of, and supporting documentation for, any cause existing for suspension or revocation of certified status.

B. Agency records. An agency shall make its records available on request by the Board or staff. The agency shall maintain the following for each individual for whom certification is sought:
1. An application file that contains all of the information required in R13-4-103(E) and R13-4-106(C) for each individual appointed for certification as a peace officer;
2. A copy of reports submitted under subsection (A);
3. A signed copy of the affirmation to the Code of Ethics required under R13-4-105;
4. A written report of the results of a completed or partially completed background investigation and all written documentation obtained or recorded under R13-4-106;
5. A completed medical report required under R13-4-107; and
6. A record of all continuing training, proficiency training, and firearms qualifications conducted under R13-4-111.

C. Record retention. An agency shall maintain the records required by this Section as follows:
1. For applicants investigated under R13-4-106 who are not appointed: three years;
2. For applicants who are appointed: five years from the date of termination, except records retained under subsection (B)(6) shall be retained for three years following completion of training; and
3. Reports of a polygraph examination given under R13-4-106(C)(6) shall be maintained in accordance with state law.

Historical Note
Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-109. Denial, Revocation, Suspension, or Cancellation of Peace Officer Certified Status

A. Causes for denial, suspension, or revocation. The Board may deny certified status or suspend or revoke the certified status of a peace officer for:
1. Failing to satisfy a minimum qualification for appointment listed in R13-4-105;
2. Willfully providing false information in connection with obtaining or reactivating certified status;
3. Having a medical, physical, or mental disability that substantially limits the individual's ability to perform the duties of a peace officer effectively, or that may create a reasonable probability of substantial harm to the individual or others, for which a reasonable accommodation cannot be made;
4. Violating a restriction or requirement for certified status imposed under R13-4-109.01, R13-4-103 (G), or R13-4-104;
5. Illegally possessing or using marijuana, a dangerous drug, or a narcotic;
6. Using or being under the influence of spirituous liquor on duty without authorization;
7. Committing a felony, an offense that would be a felony if committed in this state, or an offense involving dishonesty, unlawful sexual conduct, or physical violence;
8. Committing malfeasance, misfeasance, or nonfeasance in office;
9. Performing the duties or exercising the authority of a peace officer without having active certified status;
10. Making a false or misleading statement, written or oral, to the Board or its representative;
11. Failing to furnish information in a timely manner to the Board or its representative on request; or
12. Engaging in any conduct or pattern of conduct that tends to disrupt, diminish, or otherwise jeopardize public trust in the law enforcement profession.

B. Cause for cancellation. The Board shall cancel the certified status of a peace officer if the Board determines that the individual was not qualified when certified status was granted, and revocation is not warranted under subsection (A).

C. Cause for mandatory revocation. Upon the receipt of a certified copy of a judgment of a felony conviction of a peace officer, the Board shall revoke certified status of the peace officer.

D. Action by the Board. Upon receipt of information that cause exists to deny certification, or to cancel, suspend, or revoke the certified status of a peace officer, the Board shall determine whether to initiate action regarding the retention of certified status. The Board may conduct additional inquiries or investigations to obtain sufficient information to make a fair determination.

E. Notice of action. The Board shall notify the affected individual of Board action to initiate proceedings regarding certified status for a cause listed under subsection (A) or (B). The notice shall be served as required by A.R.S. § 41-1092.04 and specify the cause for the action. Within 30 days after receiving the notice, the individual named in the notice shall advise the

Board or its staff in writing whether a hearing is requested. Failure to file a written request for hearing at the Board offices within 30 days after receiving the notice constitutes a waiver of the right to a hearing.

F. Effect of agency action. Action by an agency or a decision resulting from an appeal of that action does not preclude action by the Board to deny, cancel, suspend, or revoke the certified status of a peace officer.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-109.01. Restriction of Certified Peace Officer Status: Training or Qualification Deficiencies

A. Restricted status. The Board shall restrict certified status if a peace officer fails to satisfy the requirements of R13-4-111.

1. The Board shall consider reports of training or qualification deficiencies at a regularly scheduled public meeting and provide a peace officer alleged to have a training or qualification deficiency the opportunity to be heard without referral to an independent hearing officer. At the public meeting, the Board shall determine only whether the peace officer has successfully completed the required training or qualification and can produce documentation to verify it.
2. The Board shall leave a restriction in effect until the training or qualification requirement is met and the peace officer files written verification of the training or qualification with the Board.
3. The Board shall provide notice of restriction or reinstatement following a restriction under this Section by regular mail to the peace officer at the employing agency address. The Board shall provide a copy of the restriction or reinstatement notice by regular mail to the agency head.

B. Firearms qualification. If a peace officer fails to satisfy R13-4-111(C), the peace officer shall not carry or use a firearm on duty.

C. Continuing and proficiency training. If a peace officer fails to satisfy R13-4-111(A) or (B), the peace officer shall not engage in enforcement duties, carry a firearm, wear or display a badge, wear a uniform, make arrests, perform patrol functions, or operate a marked police vehicle.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-110. Basic Training Requirements

A. Required training for certified status. The Board shall not certify and an individual shall not perform the duties of a peace officer until the individual successfully completes basic training as follows:

1. To be certified as a full-authority peace officer, an individual shall complete the 585-hour full-authority peace officer basic training course, specified in R13-4-116, at an academy and pass the CFE.
   a. Board staff shall administer the CFE.
   b. The Board shall ensure that the CFE is administered during the final two weeks of the full-authority peace officer basic training course.
   c. An individual passes the CFE by achieving a score of at least 70 percent on each of the three blocks of the CFE when each block is scored separately.
   d. An individual who fails one or more blocks of the CFE may retake the failed block one time before the individual is scheduled to graduate from the academy.
   e. An individual who fails a retake of a block of the CFE, as described in subsection (A)(1)(d), may retake the failed block once more within 60 days from the original testing date if the individual remains appointed by the original appointing agency or enrolled in the academy.
   f. An individual who fails a second retake of a block of the CFE, as described in subsection (A)(1)(e), may pursue certification only by repeating the 585-hour full-authority peace officer basic training course.
   g. An agency head is not required to continue to appoint an individual during the 60 days permitted for a second retake of a failed block of the CFE, as described in subsection (A)(1)(e).
2. To be certified as a specialty peace officer, an individual shall complete a Board-prescribed specialty peace officer basic training course or the 585-hour full-authority peace officer basic training course, specified in R13-4-116, at an academy and pass blocks of the CFE prescribed under subsection (A)(1) that are relevant to the duties of a specialty peace officer.
3. To be certified as a limited-authority peace officer, an individual shall complete a Board-prescribed limited-authority peace officer basic training course or the 585-hour full-authority peace officer basic training course, specified in R13-4-116, at an academy and pass blocks of the CFE prescribed under subsection (A)(1) that are relevant to the duties of a limited-authority peace officer.

B. Exceptions. The training requirement in subsection (A) is waived when an agency uses an individual during a:

1. Riot, insurrection, disaster, or other event that exhausts the peace officer resources of the agency and the individual is attending an academy; or
2. Field training program that is a component of a basic training program at an academy, and the individual is under the direct supervision and control of a certified peace officer.

C. Firearms training required. Unless otherwise specified in this Section, a peace officer shall complete the firearms qualification courses required in R13-4-116(E) before the peace officer carries a firearm in the course of duty.

D. Waiver of required training. An agency, on behalf of an individual, may apply to the Board for a waiver of required training if the individual's certified status is lapsed or the individual has functioned in the capacity of a peace officer in another state or for a federal law enforcement agency. The Board shall grant a complete or partial waiver of required training if the Board determines that the best interests of the law enforcement profession are served, the public welfare and safety are not jeopardized, and:

1. The appointing agency submits to the Board written verification of the individual's previous experience and training on a form prescribed by the Board;
2. The individual meets the minimum qualifications listed in R13-4-105;
3. The individual complies with the requirements of R13-4-103(E)(1);
4. The appointing agency complies with the requirements of R13-4-106(C);

5. The individual successfully completes an examination measuring the individual's comprehension of the full-authority peace officer basic training course as follows:
   a. If the individual has at least two years of active-status experience as a peace officer in another state or for a federal law enforcement agency during the last three years, has been on inactive status for no more than one year, and submits to the Board basic training and in-service training records that the Board determines demonstrate substantial comparability to Arizona's full-authority peace officer basic training course, the individual shall pass blocks II and IV of the CFE;
   b. If the individual's certification is lapsed, the individual shall pass all blocks of the CFE;
   c. If the individual's out-of-state or federal law enforcement experience does not meet the criterion in subsection (D)(5)(a), but the Board determines that the individual's basic training and in-service training records demonstrate substantial comparability to Arizona's full-authority peace officer basic training course, the individual shall pass all blocks of the CFE; and
   d. The provisions in subsections (A)(1)(c) through (f) apply to this subsection; and
6. In addition to the examination required under subsection (D)(5), the individual satisfactorily performs the practical demonstrations of proficiency in physical conditioning, vehicle operations, pursuit operations, and firearms, including firearms qualifications, as required under R13-4-116(E)(1).

E. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective July 10, 2006 (Supp. 06-1). Amended by final rulemaking a 22 A.A.R. 555, filed in the Office of the Secretary of State on February 8, 2016; effective six months after the date filed in accordance with A.R.S. § 1823 (Supp. 16-1).

R13-4-111. Certification Retention Requirements

A. Continuing training required.
1. The following continuing training standards apply for a peace officer to retain certification:
   a. A full-authority peace officer shall complete eight hours of continuing training each year beginning January 1 following the date the officer is certified.
   b. A specialty or limited-authority peace officer shall complete eight hours of continuing training every three years beginning January 1 following the date the officer is certified.
2. Continuing training course standards for peace officers. The provider of a continuing training course for peace officers shall ensure that:
   a. The course curriculum consists of advanced or remedial instruction on one or more of the topic areas specified in R13-4-116(E)(1);
   b. The instructor meets the requirements of R13-4-114(A)(2)(a) or (b);
   c. An attendance verification certificate, which includes a statement that the provider believes the course meets the requirements of this Section, is given to each attendee for audit purposes;
   d. If the training provider is an agency, an attendance roster and lesson plan or other information sufficient to determine compliance with this Section is made available upon request by the Board for Board audit;
   e. If the training provider is an outside provider that does not seek confirmation that the course meets the requirements under subsection (A)(3)(c), a copy of the lesson plan or other information sufficient to determine compliance with this Section is given to each attendee; and
   f. If the training provider is an outside provider that seeks and receives confirmation under subsection (A)(3)(c), a copy of the Board's written confirmation is distributed to each attendee.
3. Training providers. Courses of continuing training may be conducted by the Board, an agency, or an outside provider.
   a. All Board-provided continuing training courses meet the requirements of this Section.
   b. Agency-provided continuing training courses meet the requirements of this Section if all the requirements of subsection (A)(2) are met.
   c. Outside-provider continuing training courses meet the requirements of this Section if all the requirements of subsection (A)(2) are met. The Board shall inform an outside provider in writing whether a continuing training course meets these requirements if a course package is submitted to the Board, before the training is conducted, that includes:
      i. A description of the training course that allows the Board to determine whether the course contains advanced or remedial instruction on one or more of the topic areas specified in R13-4-116(E)(1);
      ii. The name of the individual, or if applicable, the institution or organization, providing the training with sufficient information to allow the Board to determine whether the requirements of R13-4-114(A)(2)(a) or (b) are met;
      iii. A course schedule listing the number of instructional hours; and
      iv. An attestation that the outside provider shall, upon request by the Board, make the lesson plan or other information sufficient to determine compliance with this Section available for Board audit, and shall ensure that the requirement of subsection (A)(2)(b) is met.
   d. The Board's confirmation that a continuing training course conducted by an outside provider meets the requirements of this Section is not an evaluation of the content of the course. Rather, confirmation indicates only that the topic of the course is consistent with R13-4-116(E)(1). Confirmation is effective as long as the information submitted to the Board under subsection (A)(3)(c) is unchanged.
   e. The Board shall withdraw confirmation that a continuing training course conducted by an outside provider meets the requirements of this Section if the Board receives information that the course content conflicts with the basic peace officer course content and the Board finds that the conflict creates an issue of public safety, liability, or ethics.

4. Required records. A peace officer shall provide to the appointing agency a copy of all documents provided to the peace officer under subsection (A)(2)(c), (A)(2)(e), or (A)(2)(f). The appointing agency shall maintain the documents and make them available, upon request by the Board, for Board audit.

B. Proficiency training required.
1. To retain certification, a peace officer who is not in a supervisory position within the peace officer's appointing agency shall complete eight hours of proficiency training every three years beginning January 1, following the date the peace officer is certified.
2. Proficiency training course standards. The provider of a proficiency training course for peace officers shall ensure that:
   a. The training requires physical demonstration of one or more performance objectives included in the 585-hour full-authority peace officer basic training course under R13-4-116 and demonstration of the use of judgment in the application of the physical act;
   b. The curriculum consists of advanced or remedial instruction on one or more of the following topic areas:
      i. Arrest and control tactics,
      ii. Tactical firearms (not the annual firearms qualification required under this Section),
      iii. Emergency vehicle operations,
      iv. Pursuit operations,
      v. First aid and emergency care,
      vi. Physical conditioning, and
      vii. High-risk stops;
   c. The instructor meets the requirements of R13-4-114(A)(2)(c);
   d. An attendance verification certificate, which includes a statement that the provider believes the course meets the requirements of this Section, is given to each attendee for audit purposes; and
   e. If the training provider is an agency, an attendance roster and lesson plan or other information sufficient to determine compliance with this Section is made available upon request by the Board for Board audit
3. Training providers. Courses that qualify for proficiency training credit may be conducted by the Board or an agency.
   a. All Board-provided proficiency training courses meet the requirements of this Section.
   b. Agency-provided proficiency training courses meet the requirements of this Section if all the requirements of subsection (B)(2) are met.
4. Required records. A peace officer shall provide to the appointing agency a copy of the document provided to the peace officer under subsection (B)(2)(d). The appointing agency shall maintain and make the document available, upon request by the Board, for Board audit.

C. Firearms qualification required. A peace officer authorized to carry a firearm shall qualify to continue to be authorized to carry a firearm each year beginning January 1 following certification by completing a Board-prescribed firearms qualification course, using a service handgun and service ammunition, and a Board-prescribed target identification and judgment course.
1. Firearms qualification course standards.
   a. A firearms qualification course is a course:
      i. Prescribed under R13-4-116(E)(1), or
      ii. Determined by the Board to measure firearms competency at least as accurately as courses prescribed under R13-4-116(E)(1).
   b. The provider of a firearms qualification course shall ensure that the course includes:
      i. A timed accuracy component;
      ii. A type and style of target that is equal to, or more difficult than, targets used in a course prescribed under R13-4-116(E)(1); and
      iii. A success criterion that is equal to, or more difficult than, criteria used in a course prescribed under R13-4-116(E)(1).
2. Firearms target identification and judgment course standards.
   a. A firearms target identification and judgment course is a course:
      i. Prescribed under R13-4-116(E)(1), or
      ii. Determined by the Board to measure target identification and judgment competency at least as accurately as courses prescribed under R13-4-116(E)(1).
   b. The provider of a firearms target identification and judgment course shall ensure that the course includes:
      i. A timed accuracy component;
      ii. A type and style of target discrimination test that is equal to, or more difficult than, those used in a course prescribed under R13-4-116(E)(1); and
      iii. A success criterion that is equal to, or more difficult than, criteria used in a course prescribed under R13-4-116(E)(1).
3. The provider of a firearms qualification or firearms target identification and judgment course shall ensure that the course is taught by a firearms instructor who meets the requirements of R13-4-114(A)(2)(c).

D. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective July 10, 2006 (Supp. 06-1). Amended by final rulemaking a 22 A.A.R. 555, filed in the Office of the Secretary of State on February 8, 2016; effective six months after the date filed in accordance with A.R.S. § 1823 (Supp. 16-1).

R13-4-112. Time Frames

A. For the purposes of A.R.S. § 41-1073, the Board establishes the following time frames for peace officer certification:
1. Administrative completeness review time frame: 90 days.
2. Substantive review time frame: 180 days.
3. Overall time frame: 270 days.

B. The administrative completeness review time frame begins on the date the Board receives the report required by R13-4-108(A)(1) from an appointing agency.
1. Within 90 days, the Board shall review the report and issue to the appointing agency a notice of administrative completeness or a notice of administrative deficiency that lists each document or item of information establishing compliance with R13-4-105 that is missing.

2. If the Board issues a notice of administrative deficiency, the appointing agency shall make the missing documents and information available to the Board within 90 days of the date of the notice. The administrative completeness review time frame is suspended from the date of the deficiency notice until the date the missing documents and information are made available to the Board.
3. If the appointing agency fails to make available all missing documents and information within the 90 days provided, the Board shall close the applicant's file. An applicant whose file is closed and who wants to be certified shall apply again under R13-4-103.
4. When the file is administratively complete, the Board shall provide written notice of administrative completeness to the appointing agency.

C. The substantive review time frame begins on the date the Board issues the notice of administrative completeness.
1. During the substantive review time frame, the Board may make one comprehensive written request for additional information.
2. The appointing agency shall make available to the Board the additional information identified in the request for additional information within 60 days. The time frame for the Board to finish the substantive review of the application is suspended from the date of the request for additional information until the additional information is made available to the Board.
3. If the appointing agency fails to make available the additional information requested within the 60 days provided, the Board shall close the applicant's file. An applicant whose file is closed and who wants to be certified shall apply again under R13-4-103.
4. When the substantive review is complete, the Board shall grant or deny certification.

Historical Note
Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Adopted effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-113. Repealed

Historical Note
Adopted effective March 23, 1989 (Supp. 89-1). Amended effective August 6, 1991 (Supp. 91-3). Reference to "Council" changed to "Board" (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Section repealed by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3).

R13-4-114. Minimum Course Requirements

A. Instructors. An academy administrator or agency head shall ensure that only an instructor who meets the requirements of this Section facilitates a Board-prescribed course.
1. Instructor classifications.
   a. General instructor. An individual qualified to teach topics not requiring a proficiency instructor under subsection (A)(1)(c).
   b. Specialist instructor. An individual, other than an Arizona peace officer, qualified to teach a topic in which the instructor has special expertise but who does not qualify for general instructor status.
   c. Proficiency instructor. An individual qualified to teach a topic area listed in R13-4-111(B)(2)(b).
2. Instructor qualification standards.
   a. A general instructor shall meet the requirements of subsections (A)(2)(a)(i) and (A)(2)(a)(ii) and either the requirement of subsection (A)(2)(a)(iii) or (A)(2)(a)(iv):
      i. Have two years' experience as a certified peace officer;
      ii. Maintain instructional competency;
      iii. Successfully complete a Board-sponsored instructor training course or an instructor training course that contains all of the performance objectives and demonstrations of the Board-sponsored instructor course;
      iv. Possess a community college or university teaching certificate.
   b. A specialist instructor shall meet the requirements of subsections (A)(2)(b)(i) and (A)(2)(b)(ii) and either subsection (A)(2)(b)(iii) or subsections (A)(2)(b)(iv) and (A)(2)(b)(v):
      i. Be nominated by an agency head or the administrator of an academy authorized to provide a peace officer basic training course;
      ii. Maintain instructional competency;
      iii. Possess a professional license or certification other than a peace officer certification that relates to the topics to be taught;
      iv. Provide documentation to the agency head or academy administrator for forwarding to the Board that demonstrates the expertise and ability to enhance peace officer training in a special field;
      v. Possess a community college or university teaching certificate.
   c. A proficiency instructor shall meet the requirements of subsections (A)(2)(c)(i) and (A)(2)(c)(ii) and either subsection (A)(2)(c)(iii) or (A)(2)(c)(iv):
      i. Meet the requirements for general instructor;
      ii. Maintain instructional competency;
      iii. Successfully complete a proficiency instructor course in a topic area listed in R13-4-111(B)(2)(b) that includes a competency assessment to instruct in that area within the 585-hour full-authority peace officer basic training course listed in R13-4-116(E);
      iv. Complete a form prescribed by the Board that documents advanced training and experience in the topic area including a competency assessment to instruct in that area within the 585-hour full-authority peace officer basic training course listed in R13-4-116(E);
   d. A proficiency instructor shall meet the requirements of subsection (A)(2)(c) separately for each topic area listed in R13-4-111(B)(2)(b) for which the proficiency instructor seeks qualification.
3. Instructional competency. An academy administrator or an agency head shall immediately notify the Board in writing of any instructor:
   a. Who jeopardizes the safety of students or the public,
   b. Whose instruction violates acceptable training standards,
   c. Who is grossly deficient in performance as an instructor, or

d. Who is a proficiency instructor and fails to complete satisfactorily the competency assessment to instruct in the instructor's topic area within the 585-hour full-authority peace officer basic training course.

4. If the Board determines that an instructor fails to comply with the provisions of this Section, has an instructional deficiency, or fails to maintain proficiency, any course facilitated by the instructor does not meet the requirements of this Section.

B. Curriculum standards. An academy administrator or agency head shall ensure that the curriculum for a Board-prescribed course meets the following standards:

1. Curriculum.
   a. Curriculum development employs valid, job-based performance objectives and learning activities, and promotes student, officer, and public safety, as determined by a scientifically conducted validation study of the knowledge, skills, abilities, and aptitudes needed by the affected category of Arizona peace officer.
   b. The curriculum meets or exceeds the requirements of subsection (B)(2), unless otherwise provided in this Section.
2. Curriculum format standard. The curriculum consists of the following:
   a. A general statement of instructional intent that summarizes the desired learning outcome, is broad in scope, and includes long-term or far-reaching learning goals;
   b. Lesson plans containing:
      i. Course title,
      ii. Hours of instruction,
      iii. Materials and aids to be used,
      iv. Instructional strategy,
      v. Topic areas in outline form,
      vi. Performance objectives or learning activities,
      vii. Success criteria, and
      viii. Reference material;
   c. Performance objectives consisting of at least the following components:
      i. The student, which is an individual or group that performs a behavior as the result of instruction;
      ii. The behavior, which is an observable demonstration by the student at the end of instruction that shows that the objective is achieved and allows evaluation of the student's capabilities to perform the behavior; and
      iii. The conditions, which is a description of the important conditions of instruction or evaluation under which the student performs the behavior. Unless specified otherwise within the lesson plan, instruction and evaluation will be in written or oral form;
   d. Learning activities. A student is not required to demonstrate mastery of learning activities as a condition for successfully completing the training. Learning activities are subject areas for which performance objectives are not appropriate because either:
      i. Reliable and meaningful assessment of mastery of the material would be extremely difficult or impossible, or
      ii. Mastery of the material is not likely to bear a direct relationship to the ability to perform entry-level peace officer job duties; and
   e. The following decimal numbering system to provide a logical means of organization:
      i. Functional area (1.0, 2.0, 3.0),
      ii. Topic area (1.1.0, 1.2.0, 1.3.0), and
      iii. Performance objective or learning activity (1.1.1, 1.1.2, 1.1.3).

C. The Board shall maintain and provide upon request a copy of curricula that meet the standards of this Section.

Historical Note
Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 12 A.A.R. 331, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-115. Repealed

Historical Note
Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Section repealed by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3).

R13-4-116. Academy Requirements

A. Unless otherwise provided in this Article, only the basic training provided by an academy that the Board determines meets the standards prescribed in this Section may be used to qualify for certified peace officer status.

B. The academy administrator shall ensure that the academy has the following:

1. A classroom with adequate heating, cooling, ventilation, lighting, and space;
2. Chairs with tables or arms for writing;
3. Visual aid devices for classroom presentation;
4. Equipment in good condition for specialized instruction;
5. A safe driving range for conducting the defensive and pursuit driving course;
6. A firing range with adequate backstop to ensure the safety of all individuals on or near the range; and
7. A safe location for practical exercises.

C. Administrative requirements. The academy administrator shall ensure that the academy:

1. Establishes and maintains written policies, procedures, and rules concerning:
   a. Operation of the academy,
   b. Entrance requirements,
   c. Student and instructor conduct, and
   d. Administering examinations;
2. Admits only individuals who meet the requirements of R13-4-105, as attested to by the appointing agency or, in the case of an open enrollee, by the academy administrator, on a form prescribed by the Board;
3. Administers to each student at the beginning of each academy session a written examination prescribed by the Board measuring competency in reading and writing English;
4. Schedules sufficient time for Board staff to administer the CFE as required by R13-4-110(A); and
5. Uses only instructors who are qualified under R13-4-114(A).

D. Academic requirements. The academy administrator shall ensure that the academy:

1. Establishes a curriculum with performance objectives and learning activities that meet the requirements of subsection (E) and R13-4-114(B);
2. Requires instructors to use lesson plans that cover the course content and list the performance objectives to be achieved and learning activities to be used;
3. Administers written, oral, or practical demonstration examinations that measure the attainment of the performance objectives;
4. Reviews examination results with each student and ensures that the student is shown any necessary corrections and signs and dates an acknowledgment that the student participated in the review;
5. Requires a student to complete successfully oral or written examinations that cover all topics in all functional areas before graduating.
   a. Successful completion of an examination is a score of 70 percent or greater;
   b. For a student who scores less than 70 percent, the academy shall:
      i.Provide remedial training, and
      ii.Re-examine the student in the area of deficiency; and
   c. The academy shall allow a student to retake each examination only once;
6. Requires a student to qualify with firearms as described in R13-4-116(E);
7. Ensures that a student meets the success criteria for police proficiency skills under subsection (E)(1);
8. Provides remedial training for a student who misses a class before allowing the student to graduate; and
9. Refuses to graduate a student who is absent more than 32 hours from the full-authority peace officer basic training course or 16 hours from the specialty or limited-authority peace officer basic training course.

E. Basic course requirements. The academy administrator shall ensure that the academy uses curricula that meet the requirements of R13-4-114 for the following basic courses of instruction.

1. The 585-hour full-authority peace officer basic training course shall include all of the topics listed in each of the following functional areas:
   a. Functional Area I - Introduction to Law Enforcement.
      i. Criminal justice systems,
      ii. History of law enforcement,
      iii. Law enforcement services,
      iv. Supervision and management,
      v. Ethics and professionalism, and
      vi. Stress management.
   b. Functional Area II - Law and Legal Matters.
      i. Introduction to criminal law;
      ii. Laws of arrest;
      iii. Search and seizure;
      iv. Rules of evidence;
      v. Summonses, subpoenas, and warrants;
      vi. Civil process;
      vii. Administration of criminal justice;
      viii. Juvenile law and procedures;
      ix. Courtroom demeanor;
      x. Constitutional law;
      xi. Substantive criminal law, A.R.S. Titles 4, 13, and 36; and
      xii. Liability issues.
   c. Functional Area III - Patrol Procedures.
      i. Patrol and observation (part 1),
      ii. Patrol and observation (part 2),
      iii. Domestic violence,
      iv. Mental illness,
      v. Crimes in progress,
      vi. Crowd control formations and tactics,
      vii. Bomb threats and disaster training,
      viii. Intoxication cases,
      ix. Communication and police information systems,
      x. Hazardous materials,
      xi. Bias-motivated crimes,
      xii. Fires, and
      xiii. Civil Disputes.
   d. Functional Area IV - Traffic Control.
      i. Impaired driver cases;
      ii. Traffic citations;
      iii. Traffic collision investigation;
      iv. Traffic collision (practical);
      v. Traffic direction; and
      vi. Substantive Traffic Law, A.R.S. Title 28.
   e. Functional Area V - Crime Scene Management.
      i. Preliminary investigation and crime scene management,
      ii. Crime scene investigation (practical),
      iii. Physical evidence procedures,
      iv. Interviewing and questioning,
      v. Fingerprinting,
      vi. Sex crimes investigations,
      vii. Death investigations including sudden infant death syndrome,
      viii. Organized crime activity,
      ix. Investigation of specific crimes, and
      x. Narcotics and dangerous drugs.
   f. Functional Area VI - Community and Police Relations.
      i. Cultural awareness,
      ii. Victimology,
      iii. Interpersonal communications,
      iv. Crime prevention, and
      v. Police and the community.
   g. Functional Area VII - Records and Reports. Report writing.
   h. Functional Area VIII - Police Proficiency Skills.
      i. First aid,
      ii. Firearms training (including firearms qualification),
      iii. Physical conditioning,
      iv. High-risk stops,
      v. Arrest and control tactics,
      vi. Vehicle operations, and
      vii. Pursuit operations.
   i. Functional Area IX - Orientation and Introduction.
      i. Examinations and reviews,
      ii. Counseling, and
      iii. Non-Board specified courses.
2. The specialty peace officer basic training course shall include all of the topics necessary from the 585-hour full-authority peace officer basic training course for the curriculum to meet the requirements of R13-4-114(B).
3. The limited-authority peace officer basic training course shall include all of the topics necessary from the 585-hour full-authority peace officer basic training course for the curriculum to meet the requirements of R13-4-114(B).
4. Administrative functions such as orientation, introductions, examinations and reviews, and counseling are exempt from the requirements of R13-4-114(B).

F. Records required. The academy administrator shall ensure that the following records are maintained and made available for inspection by the Board or staff. The academy administrator shall provide to the Board copies of records upon request.
1. A record of all students attending the academy;
2. A manual containing the policies, procedures, and rules of the academy;
3. A document signed by each student indicating that the student received and read a copy of the academy policies, procedures, and rules;
4. An application for each student, on a form prescribed by the Board, from the appointing agency or, in the case of an open enrollee, from the academy administrator, attesting that the requirements of R13-4-105 are met;
5. A copy of all lesson plans used by instructors;
6. An annually signed and dated acknowledgment that the academy administrator reviewed and approved each lesson plan used at the academy;
7. A copy of all examinations, answer sheets or records of performance, and examination review acknowledgments;
8. An attendance roster for all classes or other record that identifies absent students;
9. A record of classes missed by each student and the remedial training received;
10. A record of disciplinary actions for all students; and
11. A file for each student containing the student's performance history.

G. Reports required. The academy administrator shall submit to the Board:
1. At least 10 working days before the start of each academy session, a complete schedule of classes containing the name of the instructor for each class and the training location;
2. No more than five working days after the start of each academy session, on a form prescribed by the Board, a roster indicating whether a student is an open enrollee or appointed and if appointed, identifying the appointing agency, and the full name and Social Security number of each student;
3. No more than five working days after dismissing a student from the academy, notification of the dismissal and the reason;
4. No later than the tenth day of each month, a report containing:
   a. A summary of training activities and progress of the academy class to date;
   b. Unusual occurrences, accidents, or liability issues; and
   c. Other problems or matters of interest noted in the course of the academy, if not included under subsection (G)(4)(b);
5. No more than 10 working days after the end of each academy session, a complete schedule of classes containing the name of the instructor for each class and the training location;
6. No more than 10 working days after the end of each academy session, on a form prescribed by the Board, a roster indicating whether a student is an open enrollee or appointed and if appointed, identifying the appointing agency, and the full name and Social Security number of each student successfully completing the training.

H. Required inspections. Before an academy provides training to individuals seeking certification for any category of peace officer, the Board staff shall conduct an onsite inspection of the academy to determine compliance with this Section and R13-4-114. Board staff shall conduct additional inspections as often as the Board deems necessary.
1. Within 30 days after the inspection, the Board staff shall provide to the academy administrator an inspection report that lists any deficiencies identified and remedial actions the academy is required to take to comply with the standards of this Section and R13-4-114.
2. Within 30 days after receipt of the inspection report, the academy administrator shall submit to the Board a response that indicates the progress made to complete the remedial actions necessary to correct the deficiencies described in the inspection report. The academy administrator shall submit to the Board additional responses every 30 days until all remedial action is complete.
3. Within 30 days after receipt of notice that all remedial action is complete, Board staff shall conduct another inspection.
4. Following each inspection, Board staff shall present an inspection report to the Board describing the academy's compliance in meeting the standards of this Section and R13-4-114.

I. If an academy does not conduct a peace officer basic training course for 12 consecutive months, the academy shall not provide training until Board staff conducts another inspection as required by subsection (H). Otherwise, an academy may continue to provide training unless the Board determines that the academy is not in compliance with the standards of this Section or R13-4-114.

J. If the Board finds that an academy fails to comply with the provisions of this Section or R13-4-114, the academy shall not provide training to individuals seeking to be certified as peace officers.

K. An academy administrator shall ensure that an open enrollee is admitted only after the academy administrator complies with every requirement of an agency or agency head imposed by R13-4-105, R13-4-106, R13-4-107, and R13-4-108 except for R13-4-106(C)(4).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-117. Training Expense Reimbursements

A. Approval of training courses. The Board shall approve or deny training courses for training expense reimbursement based on compliance with this Section and R13-4-111, and availability of funds.

B. Application for reimbursement. Before the beginning of a training program described in R13-4-111, an agency planning to participate in the training and apply for reimbursement, shall notify the Board on prescribed forms.

C. Claim for reimbursement. When an individual completes a training course, the appointing agency may submit a claim for reimbursement on a form prescribed by the Board. The agency shall submit the claim within 60 days after the training is completed.

D. Allowable reimbursements. The Board shall allow the following reimbursements subject to the limits on the amount of reimbursement as determined by the Board under subsection (E):

Statutes

41-1821. Arizona peace officer standards and training board; membership; appointment; term; vacancies; meetings; compensation; acceptance of grants

A. The Arizona peace officer standards and training board is established and consists of thirteen members appointed by the governor. The membership shall include:

1. Two sheriffs, one of whom is appointed from a county having a population of two hundred thousand or more persons and the remaining sheriff who is appointed from a county having a population of less than two hundred thousand persons.

2. Two chiefs of police, one of whom is appointed from a city or federally recognized Native American tribe having a population of sixty thousand or more persons and the remaining chief who is appointed from a city or federally recognized Native American tribe having a population of less than sixty thousand persons.

3. A college faculty member in public administration or a related field.

4. The attorney general.

5. The director of the department of public safety.

6. The director of the state department of corrections.

7. One member who is employed in administering county or municipal correctional facilities.

8. Two certified law enforcement officers who have knowledge of and experience in representing peace officers in disciplinary cases. One of the certified law enforcement officers must have a rank of officer and the other must have a rank of deputy. One of the appointed officers must be from a county with a population of less than five hundred thousand persons.

9. Two public members.

B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

C. The governor shall appoint a chairman from among the members at its first meeting and every year thereafter, except that an ex officio member shall not be appointed chairman. The governor shall not appoint more than one member from the same law enforcement agency. No board member who was qualified when appointed becomes disqualified unless the member ceases to hold the office that qualified the member for appointment.

D. Meetings shall be held at least quarterly or on the call of the chairman or by the written request of five members of the board or by the governor. A vacancy on the board shall occur when a member except an ex officio member is absent without the permission of the chairman from three consecutive meetings. The governor may remove a member except an ex officio member for cause.

E. The term of each regular member is three years unless a member vacates the public office that qualified the member for this appointment.

F. The board members are not eligible to receive per diem but are eligible to receive reimbursement for travel expenses pursuant to title 38, chapter 4, article 2.

G. On behalf of the board, the executive director may seek and accept contributions, grants, gifts, donations, services or other financial assistance from any individual, association, corporation or other organization having an interest in police training, and from the United States of America and any of its agencies or instrumentalities, corporate or otherwise. Only the executive director of the board may seek monies pursuant to this subsection. Such monies shall be deposited in the fund created by section 41-1825.

H. Membership on the board shall not constitute the holding of an office, and members of the board shall not be required to take and file oaths of office before serving on the board. No member of the board shall be disqualified from holding any public office or employment nor shall such member forfeit any such office or employment by reason of such member's appointment, notwithstanding the provisions of any general, special or local law, ordinance or city charter.

41-1822. Powers and duties of board; definition

A. With respect to peace officer training and certification, the board shall:

1. Establish rules for the government and conduct of the board, including meeting times and places and matters to be placed on the agenda of each meeting.

2. Make recommendations, consistent with this article, to the governor, the speaker of the house of representatives and the president of the senate on all matters relating to law enforcement and public safety.

3. Prescribe reasonable minimum qualifications for officers to be appointed to enforce the laws of this state and the political subdivisions of this state and certify officers in compliance with these qualifications. Notwithstanding any other law, the qualifications shall require United States citizenship, shall relate to physical, mental and moral fitness and shall govern the recruitment, appointment and retention of all agents, peace officers and police officers of every political subdivision of this state. The board shall constantly review the qualifications established by this section and may amend the qualifications at any time, subject to the requirements of section 41-1823.

4. Prescribe minimum courses of training and minimum standards for training facilities for law enforcement officers. Only this state and political subdivisions of this state may conduct basic peace officer training. Basic peace officer academies may admit individuals who are not peace officer cadets only if a cadet meets the minimum qualifications established by paragraph 3 of this subsection. Training shall include:

(a) Courses in responding to and reporting all criminal offenses that are motivated by race, color, religion, national origin, sexual orientation, gender or disability.

(b) Training certified by the director of the department of health services with assistance from a representative of the board on the nature of unexplained infant death and the handling of cases involving the unexplained death of an infant.

(c) Medical information on unexplained infant death for first responders, including awareness and sensitivity in dealing with families and child care providers, and the importance of forensically competent death scene investigations.

(d) Information on the protocol of investigation in cases of an unexplained infant death, including the importance of a consistent policy of thorough death scene investigation.

(e) The use of the infant death investigation checklist pursuant to section 36-3506.

(f) If an unexplained infant death occurs, the value of timely communication between the medical examiner's office, the department of health services and appropriate social service agencies that address the issue of infant death and bereavement, to achieve a better understanding of these deaths and to connect families to various community and public health support systems to enhance recovery from grief.

5. Recommend curricula for advanced courses and seminars in law enforcement and intelligence training in universities, colleges and community colleges, in conjunction with the governing body of the educational institution.

6. Make inquiries to determine whether this state or political subdivisions of this state are adhering to the standards for recruitment, appointment, retention and training established pursuant to this article. The failure of this state or any political subdivision to adhere to the standards shall be reported at the next regularly scheduled meeting of the board for action deemed appropriate by that body.

7. Employ an executive director and other staff as are necessary to fulfill the powers and duties of the board in accordance with the requirements of the law enforcement merit system council.

B. With respect to state department of corrections correctional officers, the board shall:

1. Approve a basic training curriculum of at least two hundred forty hours.

2. Establish uniform minimum standards. These standards shall include high school graduation or the equivalent and a physical examination as prescribed by the director of the state department of corrections.

3. Establish uniform standards for background investigations, including criminal histories under section 41-1750, of all applicants before enrolling in the academy. The board may adopt special procedures for extended screening and investigations in extraordinary cases to ensure suitability and adaptability to a career as a correctional officer.

4. Issue a certificate of completion to any state department of corrections correctional officer who satisfactorily complies with the minimum standards and completes the basic training program. The board may issue a certificate of completion to a state department of corrections correctional officer who has received comparable training in another state if the board determines that the training was at least equivalent to that provided by the academy and if the person complies with the minimum standards.

5. Establish continuing training requirements and approve curricula.

C. With respect to peace officer misconduct, the board may:

1. Receive complaints of peace officer misconduct from any person, request law enforcement agencies to conduct investigations and conduct independent investigations into whether an officer is in compliance with the qualifications established pursuant to subsection A, paragraph 3 of this section.

2. Receive a complaint of peace officer misconduct from the president or chief executive officer of a board recognized law enforcement association that represents the interests of certified law enforcement officers if the association believes that a law enforcement agency refused to investigate or made findings that are contradictory to prima facie evidence of a violation of the qualifications established pursuant to subsection A, paragraph 3 of this section. If the board finds that the law enforcement agency refused to investigate or made findings that contradicted prima facie evidence of a violation of the qualifications

established pursuant to subsection A, paragraph 3 of this section, the board shall conduct an independent investigation to determine whether the officer is in compliance with the qualifications established pursuant to subsection A, paragraph 3 of this section and provide a letter of the findings based on the investigation conducted by the board to the president or chief executive officer of the board recognized law enforcement association who made the complaint.

D. The board may:

1. Deny, suspend, revoke or cancel the certification of an officer who is not in compliance with the qualifications established pursuant to subsection A, paragraph 3 of this section.

2. Provide training and related services to assist state, tribal and local law enforcement agencies to better serve the public, including training for emergency alert notification systems.

3. Enter into contracts to carry out its powers and duties.

E. This section does not create a cause of action or a right to bring an action, including an action based on discrimination due to sexual orientation.

F. For the purposes of this section, "sexual orientation" means consensual homosexuality or heterosexuality.

41-1823. Adoption of minimum qualifications; certification required

A. No minimum qualifications for law enforcement officers adopted pursuant to this article shall be effective until six months after they have been filed with the secretary of state pursuant to section 41-1031.

B. Except for agency heads duly elected as required by the constitution and persons given the authority of a peace officer pursuant to section 8-205, 11-572, 12-253, 13-916 or 22-131, no person may exercise the authority or perform the duties of a peace officer unless he is certified by the board pursuant to section 41-1822, subsection A, paragraph 3.

41-1824. Training expenditures

In exercising its powers and duties, the board shall endeavor to minimize costs of administration, including utilization of training facilities already in existence and available, so that the greatest possible proportion of the funds available to it shall be expended for the purposes of providing training for local law enforcement officers.

41-1825. Peace officers' training fund

A. A special fund designated as the peace officers' training fund is established. All monies deposited in the fund are continuously appropriated to the department of public safety for the benefit of the board. The monies shall be used exclusively for the costs of training peace officers, including Indian tribe police officers who are training to be qualified pursuant to section 13-3874 and full authority peace officers who are appointed by the director of the state department of corrections and the director of the department of juvenile corrections, for grants to state agencies, counties, cities and towns of this state for peace officer training and for expenses for the operation of the board. No peace officers' training fund monies may be spent for training correctional officers of the state department of corrections.

B. All amounts to be paid or advanced from the fund shall be on warrants drawn by the department of administration on presentation of a proper claim or voucher that is approved and signed by the executive director.

C. The executive director shall lawfully disburse monies as approved by the board.

D. The board may use and the department of public safety shall provide to the board administrative support services. The board shall reimburse the department for expenses incurred for administrative support services. This subsection does not require the department to provide administrative support services that are different in kind from those that were provided on January 1, 2000. For the purposes of this subsection, "administrative support services" includes all services relating to business office, finance and procurement, information management and technology, fleet, human resources, supply, telecommunications, facilities, security and clerical and administrative assistance personnel.

41-1826. Arizona law enforcement training academy; former property; title transfer

A. Notwithstanding any law to the contrary and for the benefit of the board, the department of public safety shall transfer to the state department of corrections the title to the property that was formerly known as the Arizona law enforcement training academy and that is operated as the correctional officer training academy in Tucson.

B. If at any time after title is transferred the state department of corrections leases or sells the property, the proceeds from the lease or sale shall be deposited, pursuant to sections 35-146 and 35-147, as follows:

1. 53.66 per cent of the proceeds or 53.66 per cent of the fair market value, whichever is greater, in the peace officers' training fund established by section 41-1825.

2. 46.34 per cent of the proceeds or 46.34 per cent of the fair market value, whichever is greater, in the state general fund.

41-1827. Application for grants

Any state agency, county, city or town which desires to receive a grant pursuant to section 41-1825 shall make application to the board for such aid. The application shall contain such information as the board may request.

As of March 26, 2020

41-1828. Allocation of monies

A. On the recommendation of the board, the executive director shall allocate and the state treasurer shall pay from the peace officers' training fund to each county, city or town of this state that has applied and qualified for a grant pursuant to this chapter a sum that will reimburse the political subdivision in an amount not to exceed one-half of the salary paid to each peace officer while participating in training. The cost of the training and living and travel expenses up to the maximum as prescribed by title 38, chapter 4, article 2 that are incurred by state, county, city or town officers while participating in training may be paid to the appropriate state agency or political subdivision.

B. If the monies in the peace officers' training fund budgeted by the board for such salary reimbursement are insufficient to allocate such amount to each participating county, city or town, the amount that is allocated to each shall be reduced proportionately. The board may refuse to allocate monies to any state agency, county, city or town that has not, throughout the period covered by the allocation, adhered to the recruitment and training standards established by the board as applicable to personnel recruited or trained by the state agency, county, city or town during the allocation period.

41-1828.01. Required law enforcement agency reporting

A. A law enforcement agency may report to the board any peace officer misconduct in violation of the rules for retention established pursuant to section 41-1822, subsection A, paragraph 3 at any time and shall report this misconduct on the peace officer's termination, resignation or separation from the agency.

B. On request of a law enforcement agency conducting a background investigation of an applicant for the position of a peace officer, another law enforcement agency employing, previously employing or having conducted a complete or partial background investigation on the applicant shall advise the requesting agency of any known misconduct in violation of the rules for retention established pursuant to section 41-1822, subsection A, paragraph 3.

C. Civil liability may not be imposed on either a law enforcement agency or the board for providing information specified in subsections A and B of this section if there exists a good faith belief that the information is accurate.

BOARD OF COSMETOLOGY
Title 4, Chapter 10, Articles 1-4, Board of Cosmetology

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 6, 2020

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

FROM: Council Staff

DATE: September 14, 2020

SUBJECT: **BOARD OF COSMETOLOGY (F20-1001)**
Title 4, Chapter 10, Articles 1-4, Board of Cosmetology

Summary

This Five-year Review Report (5YRR) from the Board of Cosmetology (Board) relates to rules in Title 4, Chapter 10, Articles 1-4, regarding the Board of Cosmetology. The Board submits this 5YRR outside of the Five-Year Review Report process in response to a request from the Council pursuant to A.R.S. § 41-1056(D). In this 5YRR, the Board identifies numerous issues with the rules under review as described in the 5YRR, and also indicates that it has already filed a Notice of Proposed Rulemaking to address those issues.

Proposed Action

The Board states that it has already filed a Notice of Proposed Rulemaking with the Secretary of State to address the issues with the rules that it identifies in this 5YRR. The Board states that it expects to complete the rulemaking by December 31, 2020. The Board's Notice of Proposed Rulemaking and Economic, Small Business, and Consumer Impact Statement (EIS) from its 2017 rulemaking are included with these materials for the Council Members' review.

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

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

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The analysis of the economic, small business, and consumer impact submitted with its previous 5YRR is unchanged. The Board expected the rulemaking that it completed in 2017, which simply implemented a statutory change made by the Legislature, to have minimal economic impact. It is the Legislature that created an economic impact by requiring the Board to regulate an additional occupation, reduce the number of hours required to become licensed as a cosmetology or aesthetics instructor, and adding hairstyling as a kind of school that can be operated in Arizona.

The stakeholders include the Board, applicants for a hairstylist license, cosmetology or aesthetics instructor license, or license to operate hairstyling schools, and operators of cosmetology schools.

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

The Board believes the benefits of the rules outweigh the costs and the rules impose the least burden possible to achieve its statutory responsibility of protecting the public.

4. Has the agency received any written criticisms of the rules over the last five years?

Yes. In item 7 of the 5YRR, the Board describes the petition challenging R4-10-111(D) that was filed with the Council toward the end of 2019 and which the Council took action on in February 2020.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Yes. The Board states that the rules are mostly clear, concise, and understandable. It also identifies some issues with the rules, which the Board indicates it is in the process of amending these rules through a Notice of Proposed Rulemaking that it filed with the Secretary of State on July 27, 2020.

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

Yes. The Board states that the rules are **inconsistent** with other rules and statutes, as explained in the 5YRR. The Board further states that it is in the process of addressing these inconsistencies through a Notice of Proposed Rulemaking that it filed with the Secretary of State on July 27, 2020.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

Yes. The Board states that the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

Yes. The Board states that the rules are enforced as written. The Board further states that where the rules are inconsistent with applicable statutes, the rules are enforced in a manner consistent with statute.

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

No. The Board indicates that the rules under review are not more stringent than corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Yes. The Board indicates that its statutes, which it identifies in item 13 the 5YRR, require individualized licenses. Therefore, the Board does not issue general permits and is not required to do so pursuant to A.R.S. § 41-1037(A)(2).

11. Conclusion

Council staff finds that the Board submitted an adequate report that meets the requirements of A.R.S. § 41-1056(A). Further, the Board has already initiated the rulemaking process to address the substantive issues that it identifies in the 5YRR, and that it expects to complete this rulemaking by December 31, 2020. Council staff recommends approval of this report.

Arizona State
Board of Cosmetology

Kim Scoplitte, Executive Director

1740 W. Adams • Suite #4400 • Phoenix, AZ 85007
Phone 480.784.4539 • www.azboc.gov

July 21, 2020

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Board of Cosmetology
Five-year-review Report
4 A.A.C. 10, Articles 1 though 4

Dear Ms. Sornsin:

The Board of Cosmetology submits a 5YRR of its rules for Council's review and approval. The report is due at the end of July 2020.

The Board certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Kimberly Scoplitte at 480-784-4632 or kscoplitte@azboc.gov.

Sincerely,

Kimberly Scoplitte
Executive Director

Five-year-review Report
A.A.C. Title 4. Professions and Occupations
Chapter 10. Board of Cosmetology

INTRODUCTION

The mission of the Board is to ensure the public health, welfare, and safety through education and enforcement of the cosmetology laws and rules and by regulation of salons, schools, and individuals who practice cosmetology. The Board issues licenses in 16 categories1.

Since Council approved the Board's previous 5YRR on August 2, 2016, the Board has completed two rulemakings. In a rulemaking at 22 A.A.R. 3329, the Board added a provision to R4-10-108 allowing the written section of the licensing examination to be given in languages other than English. The second rulemaking, at 23 A.A.R. 3028, was in response to Laws 2017, Chapter 12, which added hairstylist as an occupation regulated by the Board, reduced the number of hours of training to become a cosmetology or aesthetics instructor, and added hairstyling as a kind of school or salon that could be operated in Arizona. The Board currently is nearing completion of another rulemaking that will make changes planned but not included in the second rulemaking referenced.

Under Laws 2019, Chapter 109, the legislature amended several of the Board's statutes, in particular A.R.S. § 32-511, to add a provision allowing completion of an apprenticeship program in cosmetology as a means of requiring necessary training. The Board will address this change in the rulemaking that is nearing completion.

Under Laws 2019, Chapter 55, amended A.R.S. § 32-4302 establishing universal recognition of occupational or professional licenses issued in other states. The Board has been issuing licenses under this provision but believes adding information about it to the rules will be useful to applicants.

1 The sixteen categories are: cosmetologist, hair stylist, nail technologist, aesthetician, cosmetology instructor, hair-stylist instructor, nail technology instructor, aesthetician instructor, cosmetology salon, hairstyling salon, nail technology salon, aesthetic salon, cosmetology school, hairstyling school, nail technology school, and aesthetic school.

On March 3, 2020, and a result, in part, of the A.R.S. § 41-1033 petition addressed in item 7, the Council requested under A.R.S. § 41-1056(D) that the Board submit this 5YRR outside the usual schedule.2

Statute that generally authorizes the agency to make rules: A.R.S. § 32-504(A)(1)

1. Specific statute authorizing the rule:

R4-10-101: A.R.S. § 32-504(A)(1)
R4-10-102: A.R.S. § 32-507
R4-10-103: A.R.S. §§ 32-504(A)(2) and 32-507
R4-10-104: A.R.S. §§ 32-504(A)(3), 32-510, 32-511, 32-512, 32-512.01, and 32-531
R4-10-105: A.R.S. §§ 32-513 and 32-532
R4-10-106: A.R.S. § 41-1072
R4-10-107: A.R.S. § 32-517
R4-10-108: A.R.S. §§ 32-510, 32-511, 32-512, 32-512.01, 32-514, 32-515, and 32-531
R4-10-110: A.R.S. § 32-518
R4-10-111: A.R.S. §§ 32-543 and 32-554
R4-10-112: A.R.S. § 32-541(B)
R4-10-113: A.R.S. §§ 32-541 and 32-551
R4-10-114: A.R.S. §§ 32-542, 32-562, 32-572, and 32-573
R4-10-115: A.R.S. § 41-1092.09
Table 1: A.R.S. § 41-1072
R4-10-201: A.R.S. §§ 32-551 and 32-564
R4-10-202: A.R.S. § 32-563
R4-10-203: A.R.S. § 32-555
R4-10-204: A.R.S. §§ 32-558, 32-560, and 32-561
R4-10-205: A.R.S. § 32-555
R4-10-206: A.R.S. § 32-555
R4-10-206.1: A.R.S. § 32-555
R4-10-207: A.R.S. § 32-555
R4-10-208: A.R.S. § 32-555

2 In the usual five-year schedule, the Board's report would have been due at the end of October 2020.

R4-10-209: A.R.S. § 32-553

R4-10-301: A.R.S. § 32-531

R4-10-302: A.R.S. § 32-531

R4-10-303: A.R.S. § 32-510

R4-10-304: A.R.S. § 32-511

R4-10-304.1: A.R.S. § 32-512.01

R4-10-305: A.R.S. § 32-512

R4-10-306: A.R.S. §§ 32-510, 32-511, 32-512, 32-512.01, and 32-531

R4-10-401: A.R.S. § 32-541

R4-10-402: A.R.S. §§ 32-543, and 32-545

R4-10-403: A.R.S. § 32-541

R4-10-404: A.R.S. § 32-541

R4-10-405: A.R.S. § 32-504(A)(1)

2. Objective of the rules:

R4-10-101. 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.

R4-10-102. Fees and Charges: The objective of the rule is to specify the fees the Board charges for its licensing activities and charges made for services provided by the Board.

R4-10-103. Payment of Fees: The objective of the rule is to specify a required method of payment for agency services and a penalty payment for insufficient funds checks.

R4-10-104. Application for License by Examination: The objective of this rule is to specify the content of an application for a license by examination.

R4-10-105. Application for License by Reciprocity: The objective of the rule is to specify the content of an application for a license by reciprocity.

R4-10-106. Licensing Time-frames: The objective of this rule is to specify the time frames within which the Board will act on a license application.

R4-10-107. License Renewal: The objective of this rule is to specify the requirements for renewal of a license and the manner in which renewal application is made.

R4-10-108. Pre-screening Review; Licensing Examinations: The objective of the rule is to describe the procedure for applying for a pre-screening review of whether a student is qualified to taking the licensing examination, establish when the examination may be taken, and indicate materials that may be taken to the examination.

R4-10-110. Reactivating an Inactive License: The objective of the rule is to specify the conditions under which and requirements to reactive an inactive license.

R4-10-111. Display of Licenses and Signs: The objective of the rule is to specify the notices that must be made to the public.

R4-10-112. Infection Control and Safety Standards: The objective of the rule is to establish infection control and safety standards.

R4-10-113. Establishment Management: The objective of the rule is to establish the Board's expectations regarding the owner or manager of a salon or school.

R4-10-114. Disciplinary Action: The objective of the rule is to provide notice a licensee is required to allow a representative of the Board to conduct an inspection of a salon or school.

R4-10-115. Rehearing or Review of Decisions: The objective of this rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision.

Table 1. Time-frames (in days): The objective of this rule is to specify in table form the time frames within which the Board will act on a license application.

R4-10-201. Application for School License; Renewal: The objective of the rule is to specify the requirements for submitting an application for an initial or renewal school license.

R4-10-202. School Closure: The objective of the rule is to establish procedures to be followed when a school closes.

R4-10-203. General School Requirements: The objective of the rule is to specify the minimum facilities, equipment, supplies, and materials required to operate a school.

R4-10-204. School Records: The objective of the rule is to specify the records a school must maintain regarding each student's participation and the information that must be transmitted to the Board as a monthly report verifying earned student hours.

R4-10-205. Aesthetic School Requirements: The objective of the rule is to specify equipment necessary in a school of aesthetics and equipment that must be provided to each student.

R4-10-206. Cosmetology School Requirements: The objective of the rule is to specify equipment necessary in a school of cosmetology and equipment that must be provided to each student.

R4-10-206.1. Hairstyling School Requirements: The objective of the rule is to specify equipment necessary in a school of hairstyling and equipment that must be provided to each student.

R4-10-207. Nail Technology School Requirements: The objective of the rule is to specify equipment necessary in a school of nail technology and equipment that must be provided to each student.

R4-10-208. Combined School Requirements: The objective of the rule is to specify equipment necessary in a school that teaches aesthetics, cosmetology, hairstyling, and nail

technology to both students and instructors and equipment that must be provided to each student.

R4-10-209. Demonstrators, Exclusions: The objective of the rule is to specify the limits on an individual who gives demonstrations in a licensed school.

R4-10-301. Instructors; Licensed Individuals: The objective of the rule is to specify requirements for schools that provide professional development instruction for licensees.

R4-10-302. Instructor Curriculum Required Hours: The objective of the rule is to specify the hours of education required in a course for an instructor of aesthetics, cosmetology, hairstyling, and nail technology and to place limits on teaching done by student instructors.

R4-10-303. Aesthetics Curriculum Required 600 Hours: The objective of the rule is to specify the hours of education required in an aesthetics curriculum and place limits on remuneration for student services.

R4-10-304. Cosmetology Curriculum Required 1600 Hours: The objective of the rule is to specify the hours of education required in a cosmetology curriculum and place limits on remuneration for student services.

R4-10-304.1. Hairstyling Curriculum Required 1000 Hours: The objective of the rule is to specify the hours of education required in a hairstyling curriculum and place limits on remuneration for student services.

R4-10-305. Nail Technology Curriculum Required 600 Hours: The objective of the rule is to specify the hours of education required in a nail technology curriculum and place limits on remuneration for student services.

R4-10-306. Curricula Hours: The objective of the rule is to specify the number of hours in one discipline of study that may transfer to another discipline and to specify the number of hours that may be obtained in an alternative format or at an alternative location.

R4-10-401. Application for a Salon License: The objective of the rule is to specify the requirements for submitting an application for a salon license.

R4-10-402. Changes Affecting a Salon License: The objective of the rule is to specify the changes in a salon ownership or location that require a new application for salon licensure.

R4-10-403. Salon Requirements and Minimum Equipment: The objective of the rule is to specify the minimum equipment, materials, supplies, tools, and instruments required for the kind of services provided at a salon and to protect the public and employees.

R4-10-404. Mobile Services: The objective of the rule is to specify the requirements for providing mobile services.

R4-10-405. Shampoo Assistants: The objective of the rule is to specify the work that may be performed by an unlicensed individual working in a salon.

3. Are the rules effective in achieving their objectives? Yes

The Board concludes the rules are effective in achieving their objectives. The Board bases this conclusion of the fact it is able to license and regulate individuals in the cosmetology industry while protecting public health and safety.

The Board believes the rules will be more effective when the rulemaking on which it is working is completed because the rulemaking reduces regulatory burdens on applicants and licensees as follows:

- Obtaining e-mail addresses and encouraging electronic submission of documents;
- Allowing online access to study materials rather than requiring hard copies;
- Allowing virtual learning as a means to teach and learn the theory portion of cosmetology classes;

- Accepting money orders and credit cards rather than only checks for payment of fees;
- Reducing the fee for an initial personal license, personal license by reciprocity or universal recognition, school renewal, and delinquent school renewal;
- Reducing the charge to issue a duplicate license;
- Deleting the requirement that an application to operate a school be notarized;
- Increasing the amount of time a license can be inactive and then reactivated without applying for a new license;
- Deleting requirements regarding personal and establishment cleanliness;
- Deleting requirement for a school licensee to submit a new operating schedule at the time of license renewal;
- Deleting requirements for a school licensee regarding filing cabinets and personal storage for students and instructors;
- Deleting requirements for a school licensee regarding student records;
- Deleting requirements specifying the size of tables and mirrors in a school;
- Deleting restrictions regarding having a salon in a residence.

4. Are the rules consistent with other rules and statutes? No

The rules are consistent with applicable federal statutes. The applicable federal statutes are:

- 42 U.S.C. 7412: This establishes a list of hazardous air pollutants and is consistent with R4-10-112(M).
- 34 CFR Part 600: This establishes the rules and procedures used by the U.S. Department of Education to determine whether an educational institution qualifies as an eligible institution and may apply to participate in programs authorized by the Higher Education Act of 1965. A school licensed by the Board under R4-10-201 is qualified.

There are some minor inconsistencies with state statutes:

- The Board has yet to complete amendments needed to address the statutory change made by Laws 2019, Chapter 109, regarding apprenticeship programs.
- The Board has yet to address in rule universal recognition of occupational or professional licenses as established under Laws 2019, Chapter 55.
- A.R.S. § 41-1080 requires that the Board not issue a license to an individual unless the individual's presence in the U.S. is authorized under federal law. The Board

complies with this provision and has added it to the proposed rulemaking filed with the Office of the Secretary of State on July 27, 2020.

- R4-19-115(A) and (D) are inconsistent with the times specified in A.R.S. § 41-1092.09 and the rule incorrectly refers to a contested case rather than an appealable agency action. These issues are addressed in the proposed rulemaking filed with the Office of the Secretary of State on July 27, 2020.

The following are inconsistencies with current Board procedure:

- R4-10-101(25) references an examination given by the Board but the required examination is actually given by the contracted examination provider. This is corrected in the proposed rulemaking filed with the Office of the Secretary of State on July 27, 2020.

The following are internal inconsistencies in the Board's rules:

- R4-10-102(C)(2) and (3) list charges to review or re-grade an examination. The Board does not provide these services. These charges are deleted in the proposed rulemaking filed with the Office of the Secretary of State on July 27, 2020.
- R4-10-106(B)(1)(a) and (C)(3), and Table 1 reference Board approval to take an examination. However, by the Board's definition at R4-10-101(25), taking and passing an examination is part of the substantive review of an application for licensure rather than a separate approval. These issues are addressed in the proposed rulemaking filed with the Office of the Secretary of State on July 27, 2020.
- R4-10-204(E), which indicates a student "registers" for the Board examination is inconsistent with R4-10-104 and R4-10-106, which require applicants to apply for Board approval to take the examination. All issues regarding the examination are addressed in the proposed rulemaking filed with the Office of the Secretary of State on July 27, 2020.
- R4-10-306(H) refers to an approved course of instruction. However, the Board does not approve courses of instruction. This is addressed in the proposed rulemaking filed with the Office of the Secretary of State on July 27, 2020.

5. Are the rules enforced as written? Yes

The Board enforces the rules either as written or, when there is an inconsistency with statute, in a manner consistent with statute. As indicated in item 7, the Board enforces R4-10-111(D) in a manner consistent with the Council's instruction. The Board made a conforming change to R4-10-203(N)(7)(b) in the rulemaking filed with the Office of the Secretary of State on July 27, 2020.

6. Are the rules clear, concise, and understandable? Generally yes

The Board concluded the rules are generally clear, concise, and understandable. However, the following issues impair clarity:

- Contrary to current rule-writing standards, some of the rules are written in the passive voice and items in a list do not follow the lead language;
- The heading for R4-10-114 is inaccurate because the substance of the Section does not deal with disciplinary action;
- The word "unexpected" in R4-10-201(A)(5) should be "unexecuted;"
- The internal citation in R4-10-103(C)(2) is incorrect and use of the term "penalty" is inaccurate;
- The internal citation in R4-10-302(B) is incorrect.

All of these issues are addressed in the proposed rulemaking filed with the Office of the Secretary of State on July 27, 2020.

7. Has the agency received written criticisms of the rules within the last five years? Yes

Kathleen Tucker, a licensed nail technologist, filed a petition with the Council under A.R.S. § 1033(J) in which she argued the requirement at R4-10-111(D) requiring the prominent display of a duplicate of both a personal and establishment license in an area where mobile services are provided was unduly burdensome because a duplicate costs $20 and a photocopy of the original provided the necessary information. On February 4, 2020, after a hearing, the Council concluded the requirement is unduly burdensome and not necessary to fulfill a specific public health, safety, or welfare concern. The Council instructed the Board to change the requirement to allow use of a photocopy of the personal and establishment license in an area where mobile services are provided. The Board has been complying with the Council's

instruction and the rule change is included in the proposed rulemaking filed with the Office of the Secretary of State on July 27, 2020.

8. Economic, small business, and consumer impact comparison:

Except as referenced in item 7, the Board believes the analysis of the economic, small business, and consumer impact submitted with its previous 5YRR is unchanged. In a rulemaking that went into effect on December 31, 2017 (See 23 A.A.R. 3028), the Board amended or made the following Sections: R4-10-101, R4-10-104, R4-10-105, R4-10-107, R4-10-108, R4-10-110, R4-10-203, R4-10-204, R4-10-205, R4-10-206, R4-10-206.1, R4-10-208, R4-10-302, R4-10-304.1, R4-10-306, R4-10-403, and R4-10-404. The economic, small business, and consumer impact statement prepared with that rulemaking was available for review and informed this report.

The Board conducted the 2017 rulemaking because under Laws 2017, Chapter 12, the legislature added hairstylist as an occupation regulated by the Board, reduced the number of hours of training to become a cosmetology or aesthetics instructor, added hairstyling as a kind of school or salon that could be operated in Arizona, and required the Board to make rules necessary and proper to achieve this. At the time of the rulemaking, the Board estimated the economic impact of the rules would be minimal although the economic impact of the implemented legislation would be significant for those who chose to become licensed as a hairstylist rather than as a licensed cosmetologist. Because of the fewer hours to obtain training required to be licensed as a hairstylist rather than a cosmetologist, an individual who chose to become a licensed hairstylist would spend less time receiving training, perhaps save money on the training, and enter the work force sooner. The economic, small business, and consumer impact statement prepared with the rulemaking correctly estimated the rules, which simply added hairstyling to many of the existing rules and added information regarding a hairstyling-only school curriculum, would have minimal economic impact but it was not accurate in other respects. The Board and perhaps the legislature apparently misjudged interest in being licensed as a hairstylist or a hairstyling school or salon.

The Board currently licenses 115,606 individuals. Of the individuals licensed in one of the four occupations (cosmetologist, aesthetician, nail technologist, and hairstylist), 60 percent are licensed as cosmetologists, 21 percent as aestheticians, and 19 percent as nail technologists. Currently, only .4

percent of licensees are hairstylists. This may increase in the future because in 2019, almost eight percent of occupational applications were for licensure as a hairstylist.

At the time of the rulemaking, the Board estimated that if licensure as a hairstylist had been available, 45 percent of new applicants for licensure as a cosmetologist would have chosen instead to be licensed as a hairstylist. In 2019, of the 1,430 applicants for licensure as a cosmetologist or hairstylist, only18 percent opted for licensure as a hairstylist.

The Board also estimated that if licensure as a hairstyling school had been available, almost all of the applicants for licensure as a cosmetology school would have chosen licensure as a hairstyling school. This did not happen. There is currently one licensed hairstyling school and no licensed hairstyling salons. During 2019, there were seven applications for licensure as a cosmetology school and none for licensure as any other kind of school. Thirty-seven percent of cosmetology schools offer a hairstyling program.

9. Has the agency received any business competitiveness analyses of the rules? No

10. How the agency completed the course of action indicated in the agency's previous 5YRR: No
In a 5YRR approved by the Council on August 2, 2016, the Board indicated it intended to amend all of its rules. The Board was unable to amend all of the rules in the rulemaking that went into effect on December 31, 2017, because the exemption provided by the Governor's office addressed only the rules required to comply with Laws 2017, Chapter 12. Since then, staff turnover, including turnover in the executive director position, has slowed the rulemaking process. The Board currently has an exemption to the rulemaking moratorium that will enable it to complete the rulemaking before December 31, 2020.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:
The Board believes the benefits of the rules outweigh the costs and the rules are the least burdensome possible to achieve the statutory responsibility of protecting the public.

Many of the costs associated with licensing and regulating cosmetologists result from statute rather than rule. For example, it is statute that establishes the requirements for obtaining a license from the Board and requires cosmetologists to be licensed, renew the license biennially, and pass a licensing examination. Statute requires that the Board fund its activities by charging fees. An initial personal license currently costs $70 but the cost is reduced in the proposed rulemaking filed with the Office of the Secretary of State on July 27, 2020. Thereafter, a biennial renewal is $60. Statute establishes nine grounds for disciplinary action.

To protect public health and safety, the rules provide detail about necessary infection control and sanitation standards, as required by A.R.S. § 32-504(A)(1). To protect students, the rules impose curriculum and recordkeeping standards.

Although the following provisions impose costs on applicants and licensees, the Board believes they are compliance costs necessary to protect public health and safety:

- To become licensed or to renew a licensure, an applicant is required to complete and submit an application form;
- All licensees are required to display a Board-issued license at place of business;
- Salons are required submit to inspections by the Board;
- Schools are required to provide notice to students and employees when the school closes;
- Schools are required to send student records to the Board when the school closes;
- Schools are required to have specified minimum equipment, supplies, and materials;
- Schools are required to maintain prescribed student records and handle the records as specified;
- Schools are required to report monthly regarding students and training provided;
- Schools are required to employ instructors who have specified qualifications;
- Schools and salons are required to obtain a new license under specified circumstances;
- Schools are required to provide a training kit containing specified tools to each student; and
- Salons are required to have specified equipment.

12. Are the rules more stringent than corresponding federal laws? No

    See item 4 for a list of applicable federal laws.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

    The Board's statutes (See A.R.S. §§ 32-510, 32-511, 32-512, 32-512.01, 32-531, 32-541, and 32-551), require individualized licenses be issued so a general permit is not applicable.

14. Proposed course of action:

    In the proposed rulemaking filed with the Office of the Secretary of State on July 27, 2020, the Board amends almost all of its rules and addresses the issues identified in this report. The Board anticipates completing the rulemaking by December 31, 2020.

Supp. 17-4

Supplement to the
Arizona Administrative Code
The official compilation of Arizona Rules

Replacement Check List

For rules filed in the fourth quarter between
October 1 - December 31
2017

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

TITLE 04. Professions and Occupations

Chapter 10. Board of Cosmetology

Sections, Parts, Exhibits, Tables or Appendices modified
R4-10-101, R4-10-104, R4-10-105, R4-10-107, R4-10-108, R4-10-110, R4-10-203 through R4-10-206.1, R4-10-208, R4-10-302, R4-10-304.1, R4-10-306, R4-10-403, R4-10-404

☐ REMOVE Supp. 16-4
Pages: 1 - 18

☐ REPLACE with Supp. 17-4
Pages: 1 - 18

The agency's contact person who can answer questions about rules in this Chapter:

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

PUBLISHER
Arizona Department of State
Office of the Secretary of State, Administrative Rules Division

PREFACE

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

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION
December 31, 2017

RULES

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

THE ADMINISTRATIVE CODE

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

ADMINISTRATIVE CODE SUPPLEMENTS

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

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

For example, the first supplement for the first quarter of 2017 is cited as Supp. 17-1.

HOW TO USE THE CODE

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

ARTICLES AND SECTIONS

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

HISTORICAL NOTES AND EFFECTIVE DATES

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

ARIZONA REVISED STATUTE REFERENCES

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

SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State's website, www.azsos.gov/services/legislative-filings.

EXEMPTIONS FROM THE APA

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

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

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

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

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

EXEMPTIONS AND PAPER COLOR

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

PERSONAL USE/COMMERCIAL USE

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

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 10. BOARD OF COSMETOLOGY

(Authority: A.R.S. § 32-501 et seq.)

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Sections R4-10-01 thru R4-10-19, repealed; Section R4-10-27 renumbered to R4-10-105; and Sections R4-10-101 thru R2-10-112 adopted effective April 9, 1996 (Supp. 96-2).

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Article 4, consisting of Sections R4-10-401 thru R4-10-404, adopted effective April 9, 1996 (Supp. 96-2).

Section

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ARTICLE 1. GENERAL PROVISIONS

Editor's Note: The Board of Cosmetology repealed or renumbered Sections with the old Administrative Code numbering scheme and adopted new Sections under the current numbering scheme (Supp. 96-2). The old and new Sections cannot be shown in numerical order because of the two Articles; therefore the old numbers are not shown here. Please refer to this Chapter as published in Revised Format 6-92 for historical note information on the old numbered Sections.

R4-10-101. Definitions

The definitions in A.R.S. §§ 32-501, 32-516, and 32-572 apply to this Chapter. Additionally, in this Chapter unless otherwise specified:

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, or
   f. Western Association of Schools and Colleges.
2. "Administrative completeness review" means the Board's process for determining that an applicant has provided all information and documents required by Board statute or rule for an application.
3. "Applicant" means an individual or any of the following seeking licensure by the Board:
   a. If a corporation, any two officers of the corporation;
   b. If a partnership, any two of the partners; or
   c. If a limited liability company, the designated corporate contact person, or if no contact person is designated, any two members of the limited liability company.
4. "Application packet" means the forms and documents the Board requires an applicant to submit.
5. "Certification of hours" means a document that states the total number of hours completed at a school, including:
   a. A written statement of the hours a student received in a licensed school, or credits a student received, signed by the administrator of the agency authorized to record hours in the jurisdiction in which the applicant received certified or accredited vocational or academic training, affixed with the agency's official seal; or
   b. If a student is transferring from one Arizona school to another under A.R.S. § 32-560, a transfer application that reflects the hours or credits a student received, signed by the administrator of the school where the applicant received certified or accredited training.
6. "Certification of licensure" means the status of the license, signed by the administrator of the agency authorized to issue cosmetology, hairstyling, nail technician, aesthetics, or instructor licenses in the jurisdiction in which the applicant received a license, affixed with the agency's official seal.
7. "Clinic means the area where a student practices cosmetology, hairstyling, nail technology, or aesthetics on the general public for a fee.
8. "Course" means an organized subject matter in which instruction is offered within a given period of time and for which credit toward graduation or certification is given.
9. "Credit" means one earned academic unit of study based on completing a high school's required number of class sessions per calendar week in a course or an earned academic unit of study based on attending a one-hour class session per calendar week at a community college, an accredited college or university, or a high school.
10. "Days" means calendar days.
11. "Double bracing" means using a stable base of support and two points of contact for the hand while performing a procedure.
12. "Establishment" means a business that functions as a school or a salon at least an average of 20 hours a week for the majority of the year.
13. "Graduation" or "graduated from a school" means completion of the criteria established by a cosmetology, hairstyling, aesthetics, or nail technology school for the course in which the applicant was enrolled including completion of the required curriculum hours.
14. "High school equivalency" means:
   a. A high school diploma from a school recognized by the basic education authority or the Department of Education in the jurisdiction in which the school is located,
   b. A total score of 45 points on a high school equivalency general educational development test or its equivalent as required by the Department of Education,
   c. An associate degree or 15 academic credits from a junior college recognized by the basic education authority in the jurisdiction in which the college is located, or
   d. Any degree from a college or university recognized by the basic education authority in the jurisdiction in which the college or university is located.
15. "Hour" means one clock hour.
16. "Instructor training" means the courses specified in R4-10-302.
17. "Licensed in another state of the United States or foreign country" means:
   a. A governmental regulatory agency in the state or country is authorized to examine the competency of individuals who graduate from a licensed cosmetology, hairstyling, nail technology, or aesthetics school, or instructors for these disciplines; and
   b. The governmental regulatory agency issues licenses over which the state or country has regulatory and disciplinary jurisdiction.
18. "Manager" means an individual licensed by the Board who is responsible for ensuring an establishment's compliance with A.R.S. §§ 32-501 et seq. and this Chapter.
19. "Model" means a person or a mannequin on whom an applicant performs demonstrations for the practical section of a licensing examination or lab.
20. "Owner" means an individual or entity that has a controlling legal or equitable interest and authority and is responsible for ensuring an establishment's compliance with A.R.S. § 32-501 et seq. and this Chapter.
21 "Patron" means any client of an establishment or student of a school.
22. "Personal knowledge" means actual observation of an individual who practiced aesthetics, cosmetology, hairstyling, or nail technology in any state or country.
23. "Practice" means engaging in the profession of aesthetics, cosmetology, hairstyling, nail technology, or instructor.
24. "Reciprocity" means the procedure for granting an Arizona license to an applicant who received the required hours from a school licensed in another state of the

United States or a foreign country or is currently licensed in another state of the United States or a foreign country.

25. "Substantive review" means the Board's process for determining whether an applicant for licensure meets the requirements for the license for which application is made including, if applicable, taking and passing an examination given by the Board.
26. "Tenth grade equivalency" means:
    a. No change
    b. Proof the prospective student is at least 18 years old. Satisfactory proof of age is shown by a government-issued driver's license or identification card, birth certificate, or passport; or
    c. No change
27. "Transfer application," as used in A.R.S. § 32-560, means an application that documents the transfer of a student from one Arizona cosmetology, hairstyling, nail technology, or aesthetics school to another and contains the student's name, address, identification number, telephone number, and number of hours of instruction received.

Historical Note
Adopted effective April 9, 1996 (Supp. 96-2). Amended 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). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

R4-10-102. Fees and Charges

A. Under the specific authority provided by A.R.S. § 32-507(A) and subject to R4-10-103(E), the Board establishes and shall collect the following fees:
1. Initial personal license: $70.00
2. Personal licensing renewal fees: $60.00
3. Delinquent personal license renewal: $90.00 ($60 for personal license renewal as specified under subsection (A)(4) plus $30 for delinquent renewal) for every two years or portion of two years that the license is inactive to a maximum of four years
4. Personal reciprocity license: $140.00
5. Salon initial license: $110.00
6. Salon renewal: $50.00
7. Salon delinquent renewal: $80.00
8. School license: $600.00
9. School renewal: $500.00
10. Delinquent school renewal: $600.00

B. An applicant for licensure by examination shall pay directly to the national professional organization with which the Board contracts the amount charged to administer and grade the written and practical examinations.

C. Under the specific authority provided by A.R.S. § 32-507(B) and subject to R4-10-103(E), the Board establishes and shall collect the following charges for the services provided:
1. Board administered educational classes: $25.00
2. Review of examination: $50.00
3. Re-grading of examination: $25.00
4. Certification of licensure or hours: $30.00
5. For use of an alternative method of payment: $3.00 per transaction
6. For copying public documents: 50¢ per page
7. For audiotapes, videotapes, computer discs, or other media used for recording sounds, images, or information: $15 per tape, disc, or other medium
8. For a list of licensees' names and addresses: 25¢ per name
9. Duplicate license: $20.00

D. As authorized by A.R.S. § 44-6852, the Board shall charge a service fee of $20.00 for the return of a dishonored check or the failure of any other means of payment to be honored plus the actual charges assessed by the financial institution dishonoring the check or other means of payment.

Historical Note
Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 9 A.A.R. 1050, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 21 A.A.R. 3441, effective January 30, 2016 (Supp. 15-4).

R4-10-103. Payment of Fees

A. A fee is not considered paid until the Board receives the amount required. The Board shall not provide services, administer examinations, or issue certifications or licenses until it receives the required fee.

B. The Board shall accept personal checks only for license renewals. If a check for a license renewal is returned because it is dishonored for any reason including insufficient funds, the renewal application is incomplete, and any license renewal that has been issued is void effective the date the Board mails written notice to the licensee that the license is void.

C. An applicant or licensee whose fee payment to the Board is dishonored for any reason including an insufficient funds check is not entitled to a further service, examination, certification, or license until the Board receives the following:
1. The amount of the fee for which the payment was dishonored;
2. The penalty provided in R4-10-102(21);
3. If applicable, the delinquent fee for each year or part of a year the license was inactive for the type of license to be renewed.

D. Fees are nonrefundable except if A.R.S. § 41-1077 applies.

E. The Board shall not refund fees tendered for $5.00 or less over the amount specified in R4-10-102, except the Board shall refund fees paid over the amount specified as the maximum fee in A.R.S. § 32-507.

Historical Note
Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 9 A.A.R. 1050, effective May 6, 2003 (Supp. 03-1).

R4-10-104. Application for License by Examination

A. An applicant for an aesthetics, cosmetology, hairstyling, nail technology, or instructor license by examination shall submit to the Board:
1. The fee required for an initial personal license in R4-10-102; and
2. An application provided by the Board that contains:
    a. A passport quality photo of the applicant;
    b. The applicant's name, address, telephone number, Social Security number, gender, and birth date;
    c. The name and address of each licensed school attended by the applicant;
    d. The name of course completed, the name of the school where completed, and the starting date and date of graduation;
    e. If previously licensed by the Board, type of license, license number, license expiration date, and the name used on the license;
    f. A statement of whether the applicant has ever had an aesthetics, cosmetology, hairstyling, nail technology, or instructor license suspended or revoked in any state of the United States or foreign country;

g. A statement by the applicant verifying the truthfulness of the information provided by the applicant; and
h. The applicant's signature.

B. In addition to complying with the requirements in subsection (A), an applicant for an aesthetics, cosmetology, hairstyling, or nail technology license by examination shall:
1. Comply with A.R.S. § 32-510, 32-511, 32-512, or 32-512.01 by submitting documentation of 10th grade equivalency; and
2. Comply with A.R.S. § 32-510, 32-511, 32-512, or 32-512.01 by submitting a copy of one of the following:
   a. If the applicant graduated from a course presented by a school licensed by the Board, a written statement signed by the administrator of the school that documents proof of graduation and completion of all required hours; or
   b. If the applicant attended more than one licensed school in Arizona, a copy of a transfer application or certification of hours from each school attended that includes the starting and ending dates, and a written statement signed by the administrator of each school that documents proof of the total number of hours completed at the school, and, if applicable, proof of graduation.

C. In addition to complying with the requirements in subsection (A), an applicant for an instructor license by examination shall:
1. Comply with A.R.S. § 32-531 by submitting the following:
   a. Documentation of required work experience;
   b. Proof of current licensure in the profession in which experience was gained;
   c. Proof of licensure during the period experience was gained; and
   d. Proof of attainment of 18 years of age; or
   e. Proof of high school equivalency.
2. If qualifying under A.R.S. § 32-531(3)(a), submit a copy of the following:
   a. Documentation of graduation from a Board-licensed school by a certification of graduation on a form supplied by the Board including the starting and ending dates, total number of hours completed, and signature of the administrator of the school; and
   b. If the applicant attended more than one licensed school in Arizona, a copy of a transfer application or certification of hours from each school attended, including the starting and ending dates, total number of hours completed, and signature of the administrator of the school.
3. Documentation of the work experience required by A.R.S. § 32-531 shall be signed by an owner or manager of a licensed salon, an individual, or a supplier of cosmetology products with personal knowledge of the applicant's licensed experience in the profession for which the applicant seeks an instructor license. The person providing the documentation verifying the applicant's experience shall also indicate the following:
   a. Profession in which applicant gained the experience;
   b. Starting and ending dates of applicant's experience in the profession;
   c. Name of licensed salon and address where applicant gained experience in the profession; and
   d. License number and name of the licensed individual completing the form; or
   e. Name, address, and telephone number of the individual completing the information.

Historical Note
Adopted effective April 9, 1996 (Supp. 96-2). Former Section R4-10-104 renumbered to R4-10-108; new Section adopted by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

R4-10-105. Application for License by Reciprocity
An applicant for an aesthetics, cosmetology, hairstyling, nail technology, or instructor license by reciprocity shall submit the applicable fee required in R4-10-102 and all of the following to the Board:
1. An application provided by the Board and signed by the applicant that contains:
   a. The applicant's name, address, telephone number, gender, passport quality photo, Social Security number, and birth date;
   b. If previously licensed by the Board, the type of license, license number, license expiration date, and the name used on the license; and
   c. A statement of whether the applicant has ever had an aesthetics, cosmetology, hairstyling, nail technology, or instructor license suspended or revoked in any state of the United States or foreign country;
2. A certification of hours and proof of graduation or licensure in another state of the United States or a foreign country that shows the number of hours received in a school or the initial and final dates of licensure.

Historical Note
Section R4-10-105 renumbered from former Section R4-10-27 and amended effective April 9, 1996 (Supp. 96-2). Former Section R4-10-105 renumbered to R4-10-109; new Section adopted 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). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

R4-10-106. Licensing Time-frames
A. The overall time-frame described in A.R.S. § 41-1072 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 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 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 an examination, approval or denial of school or salon license, or approval or denial of a license by reciprocity, when the Board receives an application packet; or
   b. For approval or denial of a license by examination, when the applicant takes an examination.
2. If an 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 notice of administrative completeness.
1. As part of the substantive review for a school license, the Board shall conduct an inspection that may require more than one visit to the school.
2. 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.
3. If an applicant meets the requirements of A.R.S. § 32-501 through § 32-575 and this Chapter, the Board shall send written notice of approval to the applicant. If an applicant is applying for approval to take an examination, the notice shall include the date, time, and place the applicant is scheduled to take an examination.
4. If an applicant does not meet the requirements of A.R.S. § 32-501 through § 32-575 and this Chapter, the Board shall send a written notice of denial to the applicant including a basis for the denial and an explanation of the applicant's right to appeal as prescribed in A.R.S. § 41-1076.

D. The Board shall consider an application withdrawn if within 180 days from the application submission date the applicant fails to:
1. Supply the missing information under subsection (B)(2) or (C)(2); or
2. Take an examination.

E. An applicant who does not wish an application withdrawn may request a denial in writing within 180 days from the application submission date.

F. An individual shall not practice as an aesthetician, cosmetologist, instructor, or nail technician until the individual receives and posts the license at the individual's place of employment.

G. If a time-frame's last day falls on a Saturday, Sunday, or a legal holiday, the Board shall consider the next business day the time-frame's last day.

Historical Note
Adopted effective April 9, 1996 (Supp. 96-2). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2).

R4-10-107. License Renewal

A. An aesthetician, cosmetologist, hairstylist, nail technician, or instructor licensee shall postmark or electronically submit an application for renewal to the Board on or before the licensee's birthday every two years.
1. If a licensee's birthday falls on a Saturday, Sunday, or legal holiday, the licensee may file the renewal application on the next business day following the licensee's birthday.
2. A renewal application consists of:
   a. A form provided by the Board that contains: the licensee's name, address, Social Security number, and signature or Personal Identification Number (PIN) supplied by the Board if filed electronically;
   b. A statement of whether the licensee has changed the licensee's name since the previous application and, if name has changed, a copy of a legal document, such as a marriage license or divorce decree, showing the name change; and
   c. The fee required in R4-10-102.

B. An establishment licensee shall annually postmark or electronically submit to the Board an application for renewal and the fee required in R4-10-102 on or before the license renewal date.
1. If the license renewal date falls on a Saturday, Sunday, or legal holiday, the licensee may file the application on the next business day following the license renewal date.
2. A renewal application consists of a form provided by the Board that contains:
   a. The establishment's name and license number; and
   b. If the owner is an individual or partnership, the signature and tax identification number of the owner; if the owner is a corporation, the signature of the authorized signer and the tax identification number of the corporation; if filed electronically, the Personal Identification Number (PIN) supplied by the Board may be used in place of the signature.

Historical Note
Adopted effective April 9, 1996 (Supp. 96-2). Former Section R4-10-107 renumbered to R4-10-110; new Section adopted by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4). 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).

R4-10-108. Pre-screening Review; Licensing Examination

A. A student planning to apply to the Board for licensure may, but is not required to, request that the Board complete a pre-screening review of whether the student is qualified to take the licensing examination. The student may request the pre-screening review before the student graduates from a licensed school but the student shall not be issued an examination date until the student has completed a minimum of:
1. 1450 hours of cosmetology training,
2. 750 hours of hairstyling training,
3. 500 hours of aesthetics or nail technology training, or
4. 350 hours of cosmetology, hairstyling, aesthetics, or nail technology instructor training.

B. After the Board completes the pre-screening review and determines the student has completed the number of hours specified in subsection (A), the Board or national professional organization with which the Board contracts to administer the licensing examination shall issue an examination date to the student. However, the Board shall not allow the student to take the examination until the student applies for licensure and provides a certification of graduation to the Board.

C. If a student who has been issued an examination date fails to apply for licensure and provide a certification of graduation by the examination date or fails to appear at the examination site at the scheduled examination time, the examination fee is forfeited.

D. A request for a pre-screening review is not an application for licensure and does not guarantee the Board will issue a license.

E. The Board or national professional organization with which the Board contracts to administer the licensing examination

shall provide written notice to an applicant of the date, time, and location for the examination.

F. An applicant shall provide photographic identification upon entering the examination site. The following U.S.-issued forms of identification are acceptable: passport, driver license, bank identification card, military identification, or other government-issued identification card.

G. The licensing examination consists of both a written and practical section. An applicant shall perform a live demonstration on a model during the practical section of the licensing examination. During the live demonstration, the applicant shall:

1. Provide the model required for the demonstration. If the applicant provides a live model for the demonstration, the live model shall not be a current or former student of aesthetics, cosmetology, or nail technology or a current or former licensee;
2. Provide all equipment, supplies, tools, or instruments required for the demonstration; and
3. Comply with all infection control and safety standards specified in R4-10-112, including those regarding blood spills. If an applicant fails to follow proper blood-spill procedures during the demonstration, the examination administrator shall dismiss the applicant from the examination and cause the examination fee to be forfeited.

H. If an applicant fails to appear for a licensing examination as scheduled, the applicant forfeits the examination fee. If an applicant arrives at an examination site after the scheduled examination begins, the examination administrator shall not allow the applicant to take the examination. An applicant may reschedule a missed examination by paying another examination fee.

I. An applicant may cancel a scheduled examination date once by providing notice of cancellation at least 48 hours before the examination start time. The Board does not require another examination fee to reschedule a canceled examination.

J. Neither the Board nor the examination administrator shall make examination materials available for inspection or copying by any person. A person shall not attempt to obtain or provide examination materials.

K. An applicant shall not bring and the examination administrator shall not allow written material or recording media to either the written or practical section of the licensing examination. The examination administrator may exclude from the written or practical section of the licensing examination any items the examination administrator believes may impede the fair administration or security of the examination. The examination administrator shall dismiss from the examination an applicant who seeks to impede the fair administration of the examination, or copies or asks for information from another applicant and cause the examination fee to be forfeited.

L. If an applicant passes the examination but fails to complete the licensure process within one year after the date of the examination, the Board shall void the examination scores.

M. If application is made for licensure by reciprocity, the Board shall accept a score on a written or practical examination from another jurisdiction if the examination:

1. Is the same national examination administered in Arizona,
2. The score obtained by the applicant is at least the same as the passing score required by the Board at the time the applicant took the examination in the other jurisdiction, and
3. The applicant provides the Board with documentation from the other jurisdiction verifying the passing score and that the score was received within one year before the application for licensure by reciprocity.

N. The Board or national professional organization with which the Board contracts to administer the licensing examination shall conduct:

1. The practical section of the licensing examination in English and an applicant shall submit answers in English;
2. The written section of the licensing examination in English and other languages specified by the national professional organization. An applicant may choose to take the written section of the licensing examination in any of the offered languages.

Historical Note

Adopted effective April 9, 1996 (Supp. 96-2). Former Section R4-10-108 renumbered to R4-10-111; new Section R4-10-108 renumbered from Section R4-10-104 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). Amended by final rulemaking at 22 A.A.R. 3329, effective November 4, 2016 (Supp. 16-4). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

R4-10-109. Repealed

Historical Note

Adopted effective April 9, 1996 (Supp. 96-2). Former Section R4-10-109 renumbered to R4-10-112; new Section R4-10-109 renumbered from Section R4-10-105 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Section repealed by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1).

R4-10-110. Reactivating an Inactive License

A. A cosmetology, hairstyling, nail technology, aesthetics, or instructor license that has been inactive for less than two years may be reactivated by paying the delinquent renewal fee.

B. A cosmetology, hairstyling, nail technology, aesthetics, or instructor license that has been inactive for more than two years, but less than five years, may be reactivated by the inactive licensee paying the delinquent renewal fee and paying for and completing the infection protection class and law review class, offered by the Board.

C. A cosmetology, hairstyling, nail technology, aesthetics, or instructor license that has been inactive for more than five years, but less than 10 years, may be reactivated by the inactive licensee if the licensee does all of the following:

1. Provides a certification of licensure;
2. Completes the infection protection class and law review class given by the Board;
3. Takes and passes the Board examination pertaining to the type of license formerly held; and
4. Pays for the classes required under subsection (C)(2) and the delinquent renewal fee.

D. If a cosmetology, hairstyling, nail technology, aesthetics, or instructor license has been inactive for more than 10 years, the inactive licensee shall comply with all application requirements in R4-10-104 before practicing or teaching cosmetology in Arizona.

Historical Note

Adopted effective April 9, 1996 (Supp. 96-2). Former Section R4-10-110 renumbered to Section R4-10-113; new Section R4-10-110 renumbered from Section R4-10-107 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).

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 antiseptic 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).

G. All circulating and non-circulating tubs or spas shall be cleaned as follows using the disinfectant in subsection (A)(5) or (6):
1. After each client or service, complete all of the following:
   a. Drain the tub;
   b. Clean the tub according to manufacturer's instructions, taking special care to remove all film, especially at the water line;
   c. Rinse the tub;
   d. Fill the tub with water and disinfectant as in subsection (A)(5) or (6); and
   e. Allow the disinfectant to stand for non-circulating tubs or to circulate for circulating tubs for the time specified in manufacturer's instructions.
2. At the end of the day, complete all of the following:
   a. Remove all filters, screens, drains, jets, and other removable parts;
   b. Scrub with a brush and soap or detergent until free from debris;
   c. Rinse;
   d. Completely immerse in the solution described in subsection (A)(5);
   e. Rinse;
   f. Air dry; and
   g. Replace the disinfected parts in the tubs or store in a disinfected, dry, covered container.

H. Personal cleanliness.
1. A licensee or student shall thoroughly wash his or her hands with soap and warm water or any equally effective cleansing agent immediately before providing services to each client, before checking a student's work on a client, or after smoking, eating, or using the restroom;
2. A licensee or student shall wear clothing and shoes;
3. A client's skin upon which services will be performed shall be washed with soap and warm water or wiped with disinfectant or waterless hand cleanser approved for use on skin before a nail technology service, including a pedicure service, is provided; and
4. A licensee or student shall wear clean, fluid-proof protective gloves while performing any service if any bodily discharge is present from the licensee, student, or client or if any discharge is likely to occur from the client because of services being performed.

I. Disease and infestation.
1. A licensee or student who has a contagious disease shall not perform services on a client until the licensee or student takes medically approved measures to prevent transmission of the disease; and
2. Services shall not be performed on an individual who has a contagious disease that may be transmitted by the performing of the services on the individual.

J. Client protection.
1. A client's clothing shall be protected from direct contact with shampoo bowls or headrests by the use of clean linens, capes, robes, or protective neck strips;
2. Infection control shall be maintained and services shall be performed safely to protect the licensee or student and client;
3. Double bracing shall be used around a client's eyes, ears, lips, fingers, and toes; and
4. A client shall receive a pre- and post-analysis that includes appropriate instructions for follow-up.

K. Care and storage of linens including towels, robes, and capes.
1. Clean linens shall be provided for each client and laundered after each use;
2. Soiled linens shall be stored in a ventilated receptacle;
3. Laundering shall include disinfecting linens by using detergent and bleach; and
4. Clean linens shall be stored in closed containers or closets.

L. Care and storage of products including liquids, creams, powders, cosmetics, chemicals, and disinfectants.
1. All products shall be stored in a container that is clean and free of corrosion and labeled to identify contents, in compliance with state and local laws and manufacturer's instruction;
2. All products containing poisonous substances shall be distinctly marked;
3. When only a portion of a cosmetic product is to be used, the portion shall be removed from the container in a way that does not contaminate the remaining product; and
4. Once dispensed, a product shall not be returned to the original container.

M. Prohibited hazardous substances and use of products.
1. An establishment shall not have on the premises cosmetic products containing hazardous substances banned by the U.S. Food and Drug Administration (FDA) for use in cosmetic products, including liquid methyl methacrylate monomer and methylene chloride; and
2. Product shall be used only in a manner approved by the FDA.

N. Care of headrests, shampoo bowls, and treatment tables.
1. Headrests of chairs and treatment tables shall be disinfected at least daily and treatment tables covered with a clean linen or paper sheet for each client;
2. Shampoo bowls and neck rests shall be cleansed with soap and warm water or other detergent after each use and kept in good repair; and
3. Shampoo neck rests shall be disinfected with a solution described in subsection (A)(5) or (A)(6) before each use.

O. Prohibited devices, tools, or chemicals; invasive procedures.
1. Except as provided in this subsection and subsection (O)(2), all of the following devices, tools, or chemicals are prohibited from being present in or used in a salon:
   a. A devise, tool, or chemical that is designed or used to pierce the dermis; and
   b. A low-frequency, or low-power ultrasonic, or sonic device except one intended for skin cleansing, exfoliating, or product application.
2. A salon or licensee that provides an invasive procedure, using a device, tool, or chemical described in subsection (O)(1), that is otherwise allowed under Arizona law shall ensure that the performance of the procedure complies with statutes and rules governing the procedure, training, or supervision as required by the relevant, regulatory authorities.

P. Skin peeling.
1. Except as provided in subsections (O)(1) and (O)(2), only the non-living, uppermost layer of skin, known as the epidermis, may be removed by any method or means and only for the purpose of beautification;
2. A skin removal technique or practice that affects the dermal layer of the skin is prohibited;
3. Skin removal products shall not be mixed or combined except as required by manufacturer instructions and approved by the FDA; and
4. Only commercially available products for the removal of epidermis for the purpose of beautification shall be used.

Q. Restricted use tools and instruments.
1. Nippers shall be used only to remove loose cuticles; and
2. Pre-sterilized, disposal lancets shall be used only to dilate follicles and release sebaceous debris from the follicle.

R. Cleanliness and repair of the establishment shall be maintained according to the following guidelines.
1. After each client, hair and nail clippings shall immediately be discarded;
2. All areas of the establishment, including storerooms and passageways, shall be well lighted, ventilated, and free from infectious agents;
3. Floors, walls, woodwork, ceilings, furniture, furnishings, and fixtures shall be clean and in good repair;
4. Shampoo bowls shall be clean and disinfected by using a disinfectant discussed in subsection (A)(5) or (A)(6) and drains shall be free running;
5. Counters and all work areas shall be disinfected after each client by using a disinfectant discussed in subsection (A)(5) or (A)(6); and
6. Waste or refuse shall be removed timely so there is no accumulation.

S. Building standards.
1. There shall be a direct entrance from the outside, not through living quarters, into the establishment;
2. If connected to a residence, all passageways between the living quarters and the establishment shall have a door that remains closed during business hours;
3. The establishment shall not be used for residential or other living purposes;
4. The establishment shall have a restroom for employees' and clients' use during business hours that has a wash basin, running water, liquid soap, and disposable towels; is kept clean and sanitary at all times; is in close enough proximity to the salon to ensure safety for cosmetology procedures during use; and is open and available for use by employees and clients of the salon;
5. Any excess material stored in a restroom shall be in a locked cabinet;
6. The establishment shall have hot and cold running water;
7. A mobile unit shall have sufficient water at all times; and
8. The establishment shall have a natural or mechanical ventilation and air filtration system that provides free flow of air to each room, prevents the build-up of emissions and particulates, keeps odors and diffusions from chemicals and solutions at a safe level, and provides sufficient air circulation and oxygen.

T. General requirements.
1. The establishment shall have a first-aid kit that contains, at a minimum, small bandages, gauze, antiseptic, and a blood-spill kit that contains disposable bags, gloves, and hazardous waste stickers;
2. No bird or animal, except fish aquariums and service animals, are allowed in the establishment; and
3. The establishment shall comply with federal and state requirements.

Historical Note
Section R4-10-112 renumbered from former Section R4-10-33 and amended effective April 9, 1996 (Supp. 96-2). Former Section R4-10-112 renumbered to Section R4-10-115; new Section R4-10-112 renumbered from Section R4-10-109 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 2083, effective July 5, 2008 (Supp. 08-2).

R4-10-113. Establishment Management

A. The manager of each establishment shall ensure that:
1. Licenses, notices, and the Board's most recent inspection sheet are prominently displayed;
2. The establishment and all licensees in a salon, school, or a mobile service area have current licenses;
3. Infection control and safety standards are maintained.

B. The salon and school owner and salon and school manager or director shall be responsible for all violations enumerated in subsection (A), occurring within the salon, school, or mobile service areas.

C. If a salon owner rents or leases space within the salon to a person who obtains a separate salon license, that second licensee and their salon manager and the owner shall each be responsible for all violations of requirements enumerated in subsection (A) occurring within the second licensee's licensed portion of the salon, and are each responsible for the common areas.

Historical Note
New Section R4-10-113 renumbered from Section R4-10-110 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2).

R4-10-114. Disciplinary Action

A. Licensees shall permit an inspector or Board representative to inspect the premises of any salon or school, or other location identified by a complaint or the Board, alleging the location is operating a salon or school.

B. Board action is required to dismiss a complaint.

Historical Note
New Section R4-10-114 renumbered from Section R4-10-111 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2).

R4-10-115. Rehearing or Review of Decisions

A. Except as provided in subsection (G), any party in a contested case before the Board who is aggrieved by a decision rendered in such case may file with the Board, not later than 15 calendar days after service of the decision, a written motion for rehearing or review of the decision specifying particular grounds therefor. For purposes of this subsection, a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party's last known residence or place of business.

B. A motion for rehearing or review may be amended at any time before it is ruled upon by the Board. A response may be filed within 10 calendar days after service of such motion or amended motion by any party. The Board may require the filing of written briefs 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 agency or its hearing officer or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
2. Misconduct of the Board or its hearing officer or prevailing party;
3 Accident or surprise which could not have been prevented by ordinary prudence;
4. Newly discovered material evidence which 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. A decision which is not justified by the evidence or is contrary to law.

D. Not later than 10 calendar days after the Board's receipt of a motion for rehearing or review, the Board may affirm or mod-

ify the decision or grant a rehearing or review to any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing or review shall specify with particularity the ground or grounds on which the rehearing or review is granted, and the rehearing or review shall cover only those matters so specified.

E. Not later than 15 calendar 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 it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case the order granting such a rehearing or review shall specify the grounds therefor.

F. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 10 calendar days after such service, serve opposing affidavits, which period may be extended for an additional period not exceeding 20 calendar days by the Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.

G. If in a particular 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 impractical, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for rehearing or review. An application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions.

H. For purposes of this Section, the terms "contested case" and "party" shall be defined as provided in A.R.S. § 41-1001.

Historical Note
New Section R4-10-115 renumbered from Section R4-10-112 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2).

Table 1. Time-frames (in days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Approval to Take an Examination	A.R.S. §§ 32-514, 32-515, 32-533	90	60	30
License by Examination	A.R.S. §§ 32-510, 32-511, 32-512, 32-531	60	30	30
License by Reciprocity	A.R.S. §§ 32-513, 32-532	60	30	30
School License	A.R.S. § 32-551	90	30	60
License Renewal	A.R.S. §§ 32-517, 32-535, 544, 32-564	75	45	30
Salon License	A.R.S. §§ 32-541, 32-542	90	30	60
License Reactivation	A.R.S. § 32-518	30	15	15

Historical Note
New Table adopted by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2).

ARTICLE 2. SCHOOLS

Editor's Note: The Board of Cosmetology repealed or renumbered Sections with the old Administrative Code numbering scheme and adopted new Sections under the current numbering scheme (Supp. 96-2). The old and new Sections cannot be shown in numerical order because of the two Articles; therefore the old numbers are not shown here. Please refer to this Chapter as published in Revised Format 6-92 for historical note information on the old numbered Sections.

R4-10-201. Application for a School License; Renewal

A. An applicant for a school license shall submit the documents required in A.R.S. § 32-551 and:

1. An application on a form provided by the Board, signed by the applicant, and notarized that contains:
   a. The applicant's name, address, federal tax identification number, and telephone number;
   b. If a partnership, each partner's name and address and an identification of whether a limited or general partner;
   c. If a corporation, the state of incorporation and the name, title, and address of at least two officers of the corporation;
   d. The name under which the school will be operated as registered with the Secretary of State;
   e. The name and Board-issued license number of the instructor in charge of the school;
   f. If an existing school, the date the applicant will be assuming ownership; and
   g. If a new school, the scheduled date for opening the school;
2. If a partnership, a copy of the partnership agreement;
3. If a corporation, the articles of incorporation and a Certificate of Good Standing from the Corporation Commission;
4. A signed statement that the establishment has the equipment required by statute and rule for the school;
5. An unexpected contract form required by A.R.S. § 32-558;

6. A schedule that includes the hours of each day and each day of a calendar week during which the school will be open for instruction;
7. A proposed schedule of classes to be taught at the school;
8. The name, address, and telephone number of the bonding company and a copy of the bond;
9. A copy of all school policies and procedures;
10. A school catalog that contains the information required by A.R.S. § 32-559 and:
    a. The number of days during course enrollment that are necessary to complete the hours for the course;
    b. The days and hours of operation, vacation periods, and holidays;
    c. A listing of policies regarding leaves of absence and vacation approval for students;
11. Demonstrate evidence of compliance with A.R.S. §§ 32-551 through 32-575 and these rules through a school inspection conducted by the Board; and
12. The fee required in R4-10-102.

B. In addition to the requirements in R4-10-107, a licensee shall submit the following when renewing a license:
1. The most recent school catalog that:
    a. Indicates where any modifications, additions, or deletions from the previously submitted catalog may be found;
    b. Contains an index that shows where the information required by A.R.S. § 32-559 is located in the catalog;
    c. Contains the name of each accrediting or approving organization; and
    d. Provides a signed statement that the establishment has the equipment required by statute and rule for the school.
2. A subject description for each new course and its schedule, if applicable;
3. A new operating schedule if changes will occur beginning with the new license year;
4. The name and address of any new statutory agent if the change will take effect with the new license year;
5. The name and license number of the current licensed instructor in charge of the school; and
6. The name, address, and telephone number of the bonding company, the bond number, the expiration date of the bond, and a copy of the bond.

C. The owner of a school shall submit to the Board the terms and conditions of any management contract entered into for the school after the contract is executed;

D. Within five days after a change occurs during the year, the owner of a school shall submit to the Board the subject description of any new course; the name of any new statutory agent; or any change to the catalogue, generic student contract, policies, procedures, hours of operation, or bond.

Historical Note
Adopted effective April 9, 1996 (Supp. 96-2). Section repealed; new Section adopted 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).

R4-10-202. School Closure

A. For purposes of A.R.S. § 32-563, the Board may consider a school to be closed if it fails for five consecutive school days to provide instruction in accordance with its schedule of operations on file with the Board.
1. All enrolled students and employees shall be notified by the school in writing of a pending closure at least five calendar days before closure of the school, unless the time of such closure could not have been anticipated. A copy of the notice shall be sent to the Board at the time it is delivered to the students and employees. The students' and employees' personal belongings, including equipment, tools, and implements shall be released to each student or employee immediately upon request.
2. Student records as specified by A.R.S. § 32-563 shall be sent to the Board within 10 calendar days after the school closure, including:
    a. Copies of hour sheets documenting all student hours and the current time cards or time records received by the student after the last monthly report before the school closure as specified by R4-10-204;
    b. A copy of the file of each student who was enrolled the last school day prior to closure as specified by R4-10-204. If a teachout was arranged with another school which agreed to complete the training, the student's file shall be transferred to that school; and
    c. A written statement signed by each enrolled student verifying the school's compliance with subsection (A)(1) as it applies to students.

B. Failure to comply with subsection (A) may be grounds for refusal to issue a school license to an owner, manager, director, or instructor of the school at the time of the school closure.

Historical Note
Adopted effective April 9, 1996 (Supp. 96-2).

R4-10-203. General School Requirements

A. An aesthetics, cosmetology, hairstyling, or nail technology school shall ensure the school complies with R4-10-112 and has the following minimum facilities, equipment, supplies, and materials:
1. One area of instruction for every 20 students;
2. A licensed instructor as manager or director;
3. A desk, table and chair, or other instructional fixtures and facilities for each student during theory instruction;
4. Filing cabinets to hold all school and student records;
5. An instruction board in each room used for instruction;
6. At least two cubic feet of an individual locked area with a different locking device for each enrolled student and each instructor to store personal objects and training kits;
7. A sink area for each 50 students in attendance for the preparation, mixing, and dispensing of supplies and chemicals, and for the disinfection of small tools or instruments;
8. At least one restroom that meets the requirements of R4-10-112;
9. Separate receptacles for garbage and soiled linens; and
10. One container for wet disinfectant for each student performing aesthetics and nail technology.

B. The school shall furnish equipment, tools, instruments, materials, and supplies needed to perform assignments and for instructional purposes, except that the school may require each student to furnish small tools or instruments. All equipment, tools, and materials shall be salon quality and maintained in good repair at all times.

C. The school shall have a library for student use which contains at least the following materials relating to the courses offered by the school:
1. Standard dictionary;
2. Medical dictionary;
3. Anatomy chart on bones, muscles, nerves, hands, arms, nails, veins, arteries, circulatory system, hair, and skin;
4. Three current periodicals on the art and science of cosmetology;

5. Current cosmetology instruction manuals or textbooks;
6. Current Arizona Cosmetology statutes and rules; and
7. A cosmetology dictionary.

D. Each school shall maintain a complete file on all current curriculum requirements.

E. A school shall not pay an enrolled student for time while the student is taking classes or receiving credit.

F. A licensed school may offer a postgraduate or advanced continuing education aesthetics, cosmetology, hairstyling, or nail technology course to currently licensed individuals without a licensed instructor present and to students currently enrolled in the school with a licensed instructor present.
1. A school shall not report post-graduate credit hours to the Board or apply the hours toward graduation.
2. Currently enrolled students shall not perform services upon a person without an instructor present.
3. A student file is not required for licensed individuals.
4. Each licensee shall have the licensee's current Board-issued license number onsite.

G. An individual licensed by the Board may re-enroll in a licensed school for a refresher course as a current student. Credit hours for training received shall be submitted by the school to the Board.

H. A school shall establish a periodic grading schedule and keep student transcripts current.

I. A school shall schedule a minimum of four hours of theory classes each week for each full-time student and a minimum of two hours of theory classes each week for each part-time student.

J. A school shall teach safety and infection control measures relating to each subject in conjunction with that subject.

K. A school shall not solicit students for enrollment at other school sites.

L. While teaching, instructors shall wear a tag indicating the instructor's name and courses taught.

M. A school shall ensure compliance with the following:
1. A student shall not attend school more than 56 hours in any one week.
2. A student shall only operate safe equipment in good repair.
3. A student of aesthetics, cosmetology, hairstyling, or nail technology performs services within the enrolled course, upon the public or fellow students, only in the presence of a licensed instructor and, except for shampooing, only after completing the basic training specified in R4-10-303, R4-10-304, R4-10-304.1, or R4-10-305.
4. A school shall not prevent or discourage a student from making a complaint to the Board.
5. A school shall not dismiss a student from a scheduled theory instruction or written or practical examination to perform clinical services for the public;
6. While in school, each student shall wear a tag indicating the student's name and the course in which the student is enrolled; and
7. If the school has a distant classroom, the school shall ensure that equipment for each classroom is the same as that required for each course of instruction in the school; and:
   a. Private postsecondary facilities shall not extend the school facilities beyond .5 miles apart as verified by Global Positioning System map readings;
   b. Public educational facilities shall not extend the school beyond the school designated campus;
   c. A duplicate Board-issued school license shall be posted in each distant facility;
   d. Duplicate instructor licensees are not required; and
   e. Clinic, retail, all public services, and appointments by the public are prohibited.

Historical Note
Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

R4-10-204. School Records

A. A school shall maintain a student's records at the school where the student is enrolled. The Board may inspect the records at any time the school is open.

B. When a student transfers from one school to another, the school from which the student is transferring shall:
1. Keep a copy of the student's transcript,
2. Forward one copy to the student and another copy to the Board within three days of the date of transfer, and
3. Withdraw the student on the school records and the monthly report submitted to the Board.

C. Each school shall keep:
1. A complete and accurate record of the time devoted by each student to the enrolled course of study;
2. A complete and accurate record that shows the school's basis for certification of the student hours. A school shall certify only those hours of training the student receives in that school or hours the school accepts as received in another state or country;
3. A complete and accurate individual student file for each student enrolled containing:
   a. Contract and enrollment agreement;
   b. Financial aid transcript;
   c. Proof of 10th grade equivalency for a student enrolled in an aesthetics, cosmetology, hairstyling, or nail technology course or proof of high school equivalency or 18 years of age for a student enrolled in an instructor course;
   d. Identification number;
   e. Proof of one year of licensed work experience for a student instructor;
   f. A statement signed by a school administrator and the student that provides a list of the supplies contained in the kit provided to the student. The contract shall set forth the contents of the kit including:
      i. The price of items contained in the kit;
      ii. When the items shall be distributed;
      iii. The manufacturer of the products;
      iv. The retail value of the kit; and
      v. A statement that if substitutions occur after the contract is signed, the substitutions shall be of comparable value; and
   g. A record of completed hours, including proof of cosmetology, hairstyling, nail technology, aesthetics, or instructor hours earned in another state or country and accepted by the school; and
4. Complete and accurate academic transcripts and attendance and hour records or time cards.

D. The school shall electronically deliver to the Board a complete and accurate monthly report no later than the 10th day of each month. The monthly report shall include:
1. For each student enrolled since the prior monthly report only:
   a. Name;
   b. Student identification number;
   c. Enrollment date;
   d. Address;

e. Telephone number;
f. Type of educational documentation that meets the requirements of R4-10-104;
g. Proof of hours received from another Board-licensed school, or a school in another state, or country, and certified by the school, if applicable;
h. Proof of crossover hours necessary to qualify for R4-10-306, if applicable; and
i. Birth date.

2. The enrollment category of each student;
3. The name, license number, and work schedule of the instructor in charge of the school, and name of the custodian of records;
4. The name, license number, and work schedule of each instructor employed by the school;
5. The signature of the instructor who prepares and certifies that the report is correct;
6. The name of student instructors, the scheduled attendance, and the Board-issued license number for each student instructor;
7. For each demonstration given, the name of the demonstrator, the name of the observing instructor, the name of the process or product demonstrated, the number of students in attendance, and the name of the course in which the demonstration was given;
8. Hours received by each student for the prior month, the current month, and total cumulative hours. The school shall not amend total hours without satisfactory proof of error;
9. Signature of each student verifying approval of the certified hours;
10. The school's certification of the students who meet the graduation requirements of the school, including the day, month, and year of graduation; and
11. The notation "transferred," "withdrawn," or "leave of absence" for students who discontinue training, and the day, month, and year training was discontinued. The school shall provide certification to the student within one week of the hours earned by the student before the student withdraws or takes a leave of absence.

E. A school shall credit a student with additional hours earned after graduation if the student completes the required hours for graduation, registers for the Board examination, and stays in school until the date of the examination.

Historical Note
Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

R4-10-205. Aesthetic School Requirements

A. Schools that provide aesthetics 600-hour training for students, 350-hour training for instructors, or both, shall provide the following minimum facilities, equipment, supplies, and materials in addition to that required by R4-10-203 and R4-10-204:
1. A work station for each student in attendance to perform aesthetics services to the public, each having;
   a. A facial chair or table;
   b. A table top that is 12" x 18" or larger;
   c. A dry, disinfected, covered container to store disinfected tools and instruments, and
   d. A labeled receptacle for contaminated tools or instruments.
2. One steamer machine for each group of four students in attendance during lab and two students in attendance during clinic;
3. One microdermabrasion machine to be used at a non-invasive level;
4. One magnifying lamp of at least 5 diopters for each group of two students in attendance during lab and each group of four students in attendance during clinic;
5. Cleansers;
6. Massage medium;
7. Toner;
8. Exfolients and masks; and
9. Depilatories.

B. Each school shall provide a student training kit for each enrolled aesthetics student. The kit shall contain at a minimum, the following:
1. One standard textbook for professional aestheticians;
2. One copy of Arizona cosmetology statutes and rules;
3. One disinfected, covered container to store disinfected tools and instruments as specified by R4-10-112; and
4. A container for contaminated tools or instruments.

Historical Note
Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

R4-10-206. Cosmetology School Requirements

A. Schools that provide cosmetology 1600-hour training for students, 350-hour training for instructors, or both, shall provide the following minimum facilities, equipment, supplies, and materials in addition to that specified by R4-10-203 and R4-10-204:
1. A work station for each student in attendance performing cosmetology services to the public for a fee, each having:
   a. A mirror that is at least 18" by 30" when performing services on a client;
   b. A table top or counter;
   c. A client chair;
   d. A dry, disinfected, covered receptacle to store disinfected tools and instruments; and
   e. A container for contaminated tools or instruments;
2. One shampoo basin for each group of 10 students in attendance during lab or clinic instruction;
3. One hand-held hair dryer for each student in attendance during lab or clinic instruction;
4. One hooded dryer for each group of 20 students in attendance during lab or clinic instruction;
5. One high-frequency Tesla or violet-ray unit, including a facial and scalp electrode, for each group of 20 students in attendance during practical instruction;
6. Two electric clippers in the school;
7. Depilatories;
8. Chemical hair straighteners;
9. One nail technology table with a 12" x 18" or larger top for each group of 10 students in attendance during practical instruction;
10. A facial work station for each group of 10 students in attendance and receiving lab or clinic aesthetics instruction;
11. A receptacle, large enough to completely immerse two feet for each group of 10 students in attendance during lab or clinic nail technology instruction;
12. Two nail drills for filing and buffing in the school; and
13. Nail products for acrylics, gels, tips, wraps, and polishing.

B. Each school shall provide a student training kit for each enrolled student a nonreturnable student training kit. The kit shall contain at a minimum, the following:

1. One standard textbook for professional cosmetologists;
2. One copy of Arizona cosmetology statutes and rules;
3. One disinfected, covered container to store disinfected tools and instruments; and
4. A container for contaminated tools or instruments.

Historical Note
Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

R4-10-206.1. Hairstyling School Requirements

A. A school that provides hairstyling 1000-hour training for students, 350-hour training for instructors, or both, shall ensure the minimum facilities, equipment, supplies, and materials listed under R4-10-206(A)(1) through (6) are provided in addition to those specified under R4-10-203 and R4-10-204.

B. A school shall ensure a nonreturnable student training kit, containing at least the following, is provided to each enrolled hairstyling student:
1. Reasonable access to an online or standard textbook for professional hairstylists;
2. Reasonable access to or a hard copy of the Arizona Board of Cosmetology statutes and rules;
3. One disinfected, covered container to store disinfected tools and instruments as specified under R4-10-112; and
4. A container for contaminated tools and instruments as specified under R4-10-112.

Historical Note
New Section made by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

R4-10-207. Nail Technology School Requirements

A. A school that provides nail technology 600-hour training for students, 350-hour training for instructors, or both, shall provide the following minimum facilities, tools, instruments, equipment, supplies, and materials, in addition to those required by R4-10-203 and R4-10-204:
1. A work station to perform nail technology services for the public for each student in attendance containing:
   a. A nail technology table with a top 32” x 16” or larger;
   b. A client chair;
   c. A nail technology chair or stool;
   d. A disinfected, covered container to store disinfected tools and instruments as specified in R4-10-112;
   e. A container with wet disinfectant as specified in R4-10-112;
   f. A container for soiled tools or instruments as specified in R4-10-112;
   g. A waste receptacle as specified in R4-10-112; and
   h. A disinfectant for blood or body-fluid exposure as specified in R4-10-112.
2. One container large enough to completely immerse two feet, for every five students in attendance during practical training;
3. Nail products for acrylics, gels, tips, wraps, and polishing; and
4. One ultraviolet light.

B. Each enrolled nail technology student shall have a training kit containing:
1. One simulated hand;
2. Disinfected tools and instruments including pusher, nipper, file or porous emery boards, tweezer, nail brush, and finger bowl;
3. One covered container to store disinfected tools and implements as specified by R4-10-112;
4. A container for soiled tools and instruments as specified in R4-10-112;
5. A current instruction manual or textbook of nail technology and Arizona cosmetology laws and rules;
6. Artificial nail enhancement kit with remover, wrap kit, two dappen dishes, polish kit, nail forms, finishing tools and instruments, and one brush product applicator; and
7. One electric nail file.

Historical Note
Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4).

R4-10-208. Combined School Requirements

A. A licensed school shall ensure that the following hours are taught to a student enrolled in the specific curriculum before allowing the student to graduate:
1. Aesthetics course - 600 hours,
2. Aesthetics instructor course - 350 hours,
3. Cosmetology course - 1600 hours,
4. Cosmetology instructor course - 350 hours,
5. Hairstyling course – 1000 hours,
6. Hairstyling instructor course – 350 hours,
7. Nail technology course - 600 hours, and
8. Nail technology instructor course - 350 hours.

B. A school that provides training in all of the above courses shall have the minimum records, facilities, equipment, supplies, and materials required by under:
1. R4-10-203,
2. R4-10-204,
3. R4-10-205 except subsection (A)(1) is one work station for each two aesthetics students in attendance,
4. R4-10-206,
5. R4-10-206.1, and
6. R4-10-207 except subsection (A)(1) is one work station for each two nail technology students in attendance.

C. A school that provides the curriculum specified in subsections (A)(3) through (A)(8) only shall have the minimum records, facilities, equipment, supplies, and materials required under:
1. R4-10-203,
2. R4-10-204,
3. R4-10-206,
4. R4-10-206.1, and
5. R4-10-207 except subsection (A)(1) is one work station for each two nail technology students in attendance.

D. A school that provides the curriculum specified in subsections (A)(1) through (A)(6) only shall have the minimum records, facilities, equipment, supplies, and materials required under:
1. R4-10-203,
2. R4-10-204,
3. R4-10-205 except subsection (A)(1) is one work station for each two aesthetics students in attendance,
4. R4-10-206, and
5. R4-10-206.1.

E. A school that provides the curriculum specified in subsections (A)(1), (A)(2), (A)(7) and (A)(8) only shall have the minimum records, facilities, equipment, supplies, and material required under:
1. R4-10-203,
2. R4-10-204,
3. R4-10-205, and
4. R4-10-207.

Historical Note
Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

R4-10-209. Demonstrators; Exclusions

A. A person who does not hold an instructor license shall not teach in a school but may demonstrate to enrolled students any process, product, or appliance when an instructor is present and observing the demonstration.

B. When demonstrating on a model, the demonstrations shall be confined to an explanation of the products, procedures, and appliances being promoted.

Historical Note
Adopted effective April 9, 1996 (Supp. 96-2).

ARTICLE 3. STUDENTS

R4-10-301. Instruction; Licensed Individuals

Licensed schools that provide instruction for licensed individuals pursuant to this Article shall:

1. Keep a record of the date, time, title, and name of the provider of the course along with the attendee's name and license number;
2. Ensure that the instruction consists of professional development related to scope of practice as specified by A.R.S. § 32-501; and
3. Ensure that hours are not granted toward licensing unless it is part of the approved course and provided by or in the presence of a licensed instructor.

Historical Note
Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 14 A.A.R. 2083, effective July 5, 2008 (Supp. 08-2).

R4-10-302. Instructor Curriculum Required Hours

A. A school shall ensure each student in an aesthetics, cosmetology, hairstyling, or nail technology instructor course completes 350 curriculum hours that includes the following:

1. Orientation and review of the Arizona Board of Cosmetology statutes and rules;
2. Theory, preparation, and practice curriculum development. This includes:
   a. Developing and using educational aids;
   b. Practical and written presentation principles;
   c. Classroom management evaluation, assessment, and remediation methods;
   d. Diversity in learning including cultural differences;
   e. Methods of teaching;
   f. Professional development including ethics; and
   g. Alternative learning;
3. Classroom and clinic oversight.

B. A school may allow a student in an instructor course to satisfy, in part, curriculum hours required under subsection (A)(2) by completing a course at an accredited college or university or an educational institution described under R4-10-101(14)(c) and (d). Hours obtained under this subsection are subject to the following limits:

1. No more than nine credit hours for cosmetology, hairstyling, or aesthetics;
2. No more than six credit hours for nail technology; and
3. Each college credit hour equals no more than 30 of the clock hours required under subsection (A).

C. All instruction given by a student instructor shall be under the direct supervision and observation of a licensed instructor.

D. A student instructor shall be counted as a student for the purpose of determining the maximum allowed ratio of 40 students during a theory class and 20 students during a lab or clinic for each licensed instructor in the school.

E. A student instructor shall not instruct students or check student services performed on the public until the student instructor has received at least 80 hours of basic instructor training.

Historical Note
Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

R4-10-303. Aesthetics Curriculum Required 600 Hours

A. Each student in an aesthetics course shall complete the following curriculum:

1. Theory of aesthetics, infection control, anatomy, physiology and histology of the body, diseases and disorders, and Arizona cosmetology laws and rules; and
2. Clinical and laboratory aesthetics including theory that involves all skin types:
   a. Principles and practices of infection control and safety;
   b. Recognition of diseases and the treatment of disorders of the skin;
   c. Interpersonal skills and professional ethics;
   d. Clinical and laboratory practice that includes face and body;
   e. Morphology and treatment of skin, including face and body, by hand and machine;
   f. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
   g. Aesthetics machines, tools, and instruments and their related uses;
   h. Alternative skin technology;
   i. Pre- and post-client consultation, documentation, and analysis;
   j. Spa body modalities;
   k. Exfoliation modalities;
   l. Body and face massage and manipulations;
   m. Body and facial hair removal except by electrolysis;
   n. Introduction to electricity and light therapy for cosmetic purposes including laser/Intense Pulsed Light (IPL) procedures and devices;
   o. Cosmetic enhancement applications; and
   p. Required industry standards and ecology, including monitor duties.

B. An aesthetics school shall not receive remuneration for a student performing clinical services to the public until the student has received at least 120 hours of aesthetics training; and

C. Each student shall be evaluated for progress and provided suggested remediation of deficiencies.

Historical Note
Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 2083, effective July 5, 2008 (Supp. 08-2).

R4-10-304. Cosmetology Curriculum Required 1600 Hours

A. Each student in a cosmetology course shall complete the following curriculum:

1. Theory of cosmetology, infection control, anatomy, physiology and histology of the body, electricity, diseases and disorders, and Arizona cosmetology laws and rules; and

2. Clinical and laboratory cosmetology including theory that involves nails, hair, and skin:
   a. Principles and practices of infection control and safety;
   b. Recognition of diseases and the treatment of disorders of the hair, skin, and nails;
   c. Morphology and treatment of hair, skin, and nails;
   d. Interpersonal skills and professional ethics;
   e. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
   f. Cosmetology machines, tools, and instruments and their related uses;
   g. Chemical texturizing;
   h. Changing existing hair color;
   i. Hair and scalp care;
   j. Fundamentals of hairstyling including braiding and extensions;
   k. Body, scalp, and facial massage and manipulations;
   l. Hair cutting fundamentals;
   m. Fundamental aesthetics of the body and face;
   n. Fundamentals of nail technology;
   o. Clinical and laboratory practice that includes hair, skin, and nails;
   p. Alternative hair, skin, and nail technology;
   q. Pre- and post-client consultation, documentation, and analysis;
   r. Body and facial hair removal except by electrolysis;
   s. Introduction to electricity and light therapy for cosmetic purposes including laser/Intense Pulsed Light (IPL) procedures and devices;
   t. Cosmetology technology; and
   u. Required industry standards and ecology, including monitor duties.

B. A cosmetology school shall not receive remuneration for a student performing any clinical services, except shampooing, to the public until the student has received at least 300 hours of cosmetology training; and

C. Each student shall be evaluated for progress and provided suggested remediation of deficiencies.

Historical Note
Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 2083, effective July 5, 2008 (Supp. 08-2).

R4-10-304.1. Hairstyling Curriculum Required 1000 Hours

A. Each student in a hairstyling course shall complete the following curriculum:
1. Theory of hairstyling, infection control, anatomy, diseases and disorders, and Arizona Board of Cosmetology statutes and rules; and
2. Clinical and classroom instruction in hairstyling including theory that involves hair:
   a. Principles and practices of infection control and safety;
   b. Recognition of diseases and the treatment of disorders of the hair and scalp;
   c. Morphology and treatment of hair;
   d. Interpersonal skills and professional ethics;
   e. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
   f. Hairstyling machines, tools, and instruments and their uses;
   g. Chemical texturizing;
   h. Changing existing hair color;
   i. Hair and scalp care;
   j. Fundamentals of hairstyling including braiding and extensions;
   k. Neck and scalp massage and manipulations;
   l. Hair cutting fundamentals;
   m. Clinical and classroom practice that includes hair;
   n. Alternative hair technology;
   o. Client pre- and post-service consultation, documentation, and analysis;
   p. Hairstyling technology; and
   q. Required industry standards and ecology, including monitor duties.

B. A school shall not receive remuneration for a hairstyling student performing clinical services, except shampooing, for the public until the student has received at least 300 hours of hairstyling training; and

C. A school shall ensure each student is evaluated for progress and suggestions are provided to the student for remediating deficiencies.

Historical Note
New Section made by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

R4-10-305. Nail Technology Curriculum Required 600 Hours

A. Each student in a nail technology course shall complete the following curriculum:
1. Theory of nail technology; infection control; diseases and disorders of the nails and skin; anatomy; physiology and histology of the limbs, nails, and skin structures; and Arizona state cosmetology laws and rules; and
2. Clinical and laboratory nail technology including theory that involves nails, skin, and limbs:
   a. Principles and practices of infection control and safety;
   b. Recognition of diseases and the treatment of disorders of the nail and skin;
   c. Massage and manipulation of the limbs;
   d. Interpersonal skills and professional ethics;
   e. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
   f. Nail technology machines, tools, and instruments and their related uses;
   g. Clinical and laboratory practice that includes nails, skin, and limbs;
   h. Pre- and post-client consultation, documentation, and analysis;
   i. Manicuring, including use of nippers;
   j. Pedicuring, including use of nippers;
   k. Artificial nail enhancements (application and removal);
   l. Alternative nail technology;
   m. Electric file use;
   n. Pedicure spa modalities;
   o. Exfoliation modalities on limbs or the body; and
   p. Required industry standards and ecology, including monitor duties.

B. A nail technology school shall not receive remuneration for students performing clinical services to the public until the student has received at least 80 hours of nail technology; and

C. Each student shall be evaluated for progress and provided suggested remediation of deficiencies.

Historical Note
Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4).

R4-10-306. Curricula Hours

A. A school shall ensure hours of training received in an aesthetics, cosmetology, hairstyling, or nail technology course are not applied toward hours required to obtain an instructor's license.

B. A school shall ensure hours of training received in an instructor course are not applied toward hours required to obtain an aesthetician, cosmetologist, hairstylist, or nail technician license. Hours received in an instructor course may apply toward hours required to reactivate an aesthetics, cosmetology, hairstyling, or nail technology license if the instructor hours are received after inactive status occurs.

C. When evaluating an application for licensure, the Board shall allow the following hours to apply toward licensing:
1. 100% of the hours of training received in a nail technology course toward a cosmetologist license;
2. 100% of the hours of training received in an aesthetics course toward a cosmetologist license;
3. 100% of the hours of training received in a combined aesthetics and nail technology course toward a cosmetologist license to a maximum of 600 hours;
4. 100% of the hours of training received in a hairstyling course toward a cosmetologist license;
5. 100% of the hours of training received in a cosmetology course toward a hairstylist license;
6. 15% of the hours of training received in a cosmetology course toward a nail technician license;
7. 15% of the hours of training received in a cosmetology course toward an aesthetician license;
8. 33% of the hours of training received in a nail technology course toward an aesthetician license;
9. 66% of the hours of training received in an aesthetics course toward a nail technologist license;
10. 50% of the hours of training received in a barber course toward a cosmetologist license;
11. 200 hours of training received for a registered nurse (RN) or clinical nurse specialist (CNS) license toward an aesthetician license;
12. 100% of the hours of training received by a licensed cosmetologist in a nail technology instructor course toward an aesthetics instructor license. The Board shall require the remaining hours needed for an aesthetics instructor license to be obtained in an aesthetics or cosmetology instructor course;
13. 100% of the hours of training received by a licensed cosmetologist in a nail technology instructor course toward a cosmetology instructor license. The Board shall require the remaining hours needed for a cosmetology instructor license to be obtained in a cosmetology instructor course;
14. 100% of the hours of training received by a licensed cosmetologist in an aesthetics instructor course toward a cosmetology instructor license. The Board shall require the remaining hours needed for a cosmetology instructor license to be obtained in a cosmetology instructor course;
15. 100% of the hours of training received in a barber instructor course toward a cosmetology instructor license. The Board shall require the remaining hours needed for a cosmetology instructor license to be obtained in a cosmetology instructor course. For the purpose of qualifying for the cosmetology instructor examination specified under A.R.S. § 32-531, the Board shall accept one year of licensed barber experience as one year of licensed cosmetology experience; and
16. Hours transferred to another course shall be used only once.

D. A school shall ensure that when a student completes a course of instruction, the cumulative hours for the student equal, at a minimum, those specified in this Article, as applicable.

E. Infection control, disinfection procedures, and safety issues shall be taught with every subject and every procedure.

F. Alternative learning hours are hours that a school may authorize to enable a student to pursue knowledge of cosmetology in an alternative format or location other than a salon. A school shall not credit a student with more than 20% of the total hours required for graduation, earned during enrollment at the school, as alternative learning hours.

G. A school that provides alternative format or location in subsection (F) shall include details of the format and location in the school policy and procedures in the school catalog.

H. Up to 16 hours of field trips may be granted toward licensing if the field trips for which those hours were granted are part of the approved course of instruction and are provided by or in the presence of a licensed instructor.

I. If a school physically closes while providing curricula in an alternative format or location or while conducting a field trip, the school shall:
1. Post a notice that is visible to the public and students; and
2. Send a notice to the Board indicating the times and location where the curricula is being conducted.

J. A student instructor may obtain lab (clinic) hours in a licensed school other than the licensed school in which the student instructor is enrolled if the student:
1. Has available proof of enrollment in a licensed school to show to a Board inspector, and
2. Earns no more than the lab (clinic) hours required by R4-10-302.

Historical Note
Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 2083, effective July 5, 2008 (Supp. 08-2). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

ARTICLE 4. SALONS

R4-10-401. Application for a Salon License

An applicant for a salon license shall submit:
1. An application on a form provided by the Board that contains:
   a. The applicant's name, address, telephone number, federal tax identification number, and signature;
   b. If the applicant is a partnership, each partner's name, address, and an identification of whether each is a limited or general partner;
   c. If a corporation, the state of incorporation and the name, title, and address of each officer of the corporation and the statutory agent;
   d. The name of the salon as registered with the Secretary of State;
   e. If a location change, the previous address;
   f. A history of the salon including:
      i. If the location was previously licensed by the Board, the name of the previous establishment;
      ii. The name of each business operating at the salon address; and
      iii. A statement of whether a cosmetology license of the applicant, any partner of the applicant, or any corporate officer has ever been suspended or revoked by any state or foreign country.

2. If a corporation, the articles of incorporation and a Certificate of Good Standing from the Corporation Commission;
3. If a partnership, a copy of the partnership agreement;
4. A signed statement that the establishment is in compliance with all Board statutes and rules and has all of the following in the salon:
   a. Wet disinfectant;
   b. A dry, closed, disinfected container to store disinfected tools and instruments;
   c. A sink or shampoo bowl with hot and cold running water that is not also used as a dispensary or restroom sink as required by R4-10-403;
   d. A station;
   e. A restroom; and
   f. Notice posted for activities performed in the salon but not regulated by the Board; and
5. The fee required in R4-10-102.

Historical Note
Adopted effective April 9, 1996 (Supp. 96-2). Section repealed; new Section adopted 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).

R4-10-402. Changes Affecting a Salon License

A. An owner shall apply for a new salon license when:
1. The salon address changes;
2. The name of a salon changes;
3. The controlling ownership in the corporation is transferred or the corporation is reorganized; or
4. The corporation, limited liability company, or partnership has a change of any corporate officer, partner, or statutory agent.

B. The salon owner and manager shall ensure that a Board-issued license, indicating proper ownership, is posted in the salon before opening for business.

Historical Note
Former Section R4-10-402 renumbered to R4-10-403; new Section adopted 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).

R4-10-403. Salon Requirements and Minimum Equipment

A. A salon shall perform services for the public according to the type of license issued.

B. Salons shall have enough equipment, materials, supplies, tools, and instruments to ensure infection control and safety for the public and employees.

C. A salon shall ensure the salon has:
1. No change
2. If the salon is a cosmetology or hairstyling salon, at least one shampoo bowl and one hair dryer, which may be a blow dryer; and
3. If the salon is an aesthetics or nail technology salon, at least one sink in addition to the restroom and dispensary sinks.

D. A salon shall ensure aestheticians, cosmetologists, hairstylists, and nail technicians have enough equipment, materials, supplies, tools, and instruments to provide services, control infection, and disinfect between clients.

Historical Note
Adopted April 9, 1996 (Supp. 96-2). Former Section R4-10-403 renumbered to R4-10-404; new Section R4-10-403 renumbered from Section R4-10-402 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). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

R4-10-404. Mobile Services

A. If mobile services are provided as an extension of a licensed salon the mobile service shall advertise using the licensed name of the salon. The licensed salon owner and manager shall ensure that the mobile services comply with the Board's statutes and rules.
1. A salon providing mobile cosmetology, hairstyling, nail technology, or aesthetics services shall ensure licenses are posted as required under R4-10-111.
2. A salon shall make client appointments through the licensed salon using an appointment book that lists the appointments and locations where services are performed.
3. Mobile services are subject to inspection by the Board at any time.
4. If a retrofitted mobile vehicle is used to provide mobile services, the salon owner and manager shall ensure that the vehicle has the same equipment as specified by R4-10-403 and complies with safety and infection control requirements specified by R4-10-112.
5. If mobile services are provided in a location other than a retrofitted mobile vehicle, the salon owner and manager shall ensure that equipment is disinfected before use and stored as specified in R4-10-112.

B. If a retrofitted motor vehicle is used exclusively as a mobile facility that is dispatched from a business address, the owner and manager of the mobile facility shall:
1. Comply with all salon requirements;
2. Comply with all infection control and equipment requirements;
3. Maintain a complete and current list of appointment locations at the business address and display the list in a location listed on the salon application that is available to an inspector at all times when the retrofitted motor vehicle is open for business; and
4. Comply with other statutes and rules of the Board.

Historical Note
Adopted April 9, 1996 (Supp. 96-2). Former Section R4-10-404 renumbered to R4-10-405; new Section R4-10-404 renumbered from Section R4-10-403 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). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

R4-10-405. Shampoo Assistants

A. People who are not licensed by the Board may be hired as shampoo assistants to shampoo and apply cream rinse to an individual's hair, comb the hair to remove tangles, and remove rollers and clippies.

B. Shampoo assistants shall not apply conditioners, reconstructors, hair color, permanent wave solution or neutralizer, or remove rods, tint, relaxers, or other solutions from the hair.

Historical Note
New Section R4-10-405 renumbered from Section R4-10-404 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2).

As of September 20, 2019

32-501. Definitions

In this chapter, unless the context otherwise requires:

1. "Aesthetician" means a person who is licensed to practice skin care pursuant to this chapter.

2. "Aesthetics" means any one or a combination of the following practices if they are performed for cosmetic purposes:

(a) Massaging, cleansing, stimulating, manipulating, exercising, beautifying or applying oils, creams, antiseptics, clays, lotions or other preparations, either by hand or by mechanical or electrical appliances.

(b) Arching eyebrows or tinting eyebrows and eyelashes.

(c) Removing superfluous hair by means other than electrolysis or threading.

3. "Board" means the board of cosmetology.

4. "Cosmetic purposes" means for the purpose of beautifying, preserving or conferring comeliness, excluding therapeutic massage and manipulations.

5. "Cosmetologist" means a person who is licensed to practice cosmetology pursuant to this chapter.

6. "Cosmetology" means any one or a combination of the following practices if they are performed for cosmetic purposes:

(a) Massaging, cleansing, stimulating, manipulating, exercising, beautifying or applying oils, creams, antiseptics, clays, lotions or other preparations, either by hand or by mechanical or electrical appliances.

(b) Arching eyebrows or tinting eyebrows and eyelashes.

(c) Removing superfluous hair by means other than electrolysis or threading.

(d) Nail technology.

(e) Hairstyling.

7. "Electrical appliances" means devices that use electrical current and includes lasers and IPL devices as defined in section 32-516.

8. "Hairstyling" means either of the following:

(a) Cutting, clipping or trimming hair.

(b) Styling, arranging, dressing, curling, waving, permanent waving, straightening, cleansing, singeing, bleaching, dyeing, tinting, coloring or similarly treating hair.

9. "Hairstylist" means a person who is licensed to practice hairstyling pursuant to this chapter.

10. "Instructor" means a person who is licensed to teach cosmetology, aesthetics, nail technology or hairstyling, or any combination thereof, pursuant to this chapter.

11. "Mentor" means a cosmetologist who is approved by the board to train a person in a department of economic security-approved apprenticeship program in cosmetology in an establishment that is licensed by the board.

12. "Nail technician" means a person who is licensed to practice nail technology pursuant to this chapter.

13. "Nail technology" means any of the following:

(a) Cutting, trimming, polishing, coloring, tinting, cleansing or otherwise treating a person's nails.

(b) Applying artificial nails.

(c) Massaging and cleaning a person's hands, arms, legs and feet.

14. "Salon" means any of the following:

(a) An establishment that is operated for the purpose of engaging in the practice of cosmetology, aesthetics, nail technology or hairstyling, or any combination of the listed practices.

(b) An establishment together with a retrofitted motor vehicle for exclusive use as a mobile facility for the purpose of engaging in the practice of cosmetology, aesthetics, nail technology or hairstyling, or any combination of the listed practices, that is operated and dispatched through the establishment.

(c) A retrofitted motor vehicle exclusively used as a mobile facility for the purpose of engaging in the practice of cosmetology, aesthetics, nail technology or hairstyling, or any combination of the listed practices, that is operated and dispatched from a business that has a physical street address that is on file with the board.

15. "School" means an establishment that is operated for the purpose of teaching cosmetology, aesthetics, nail technology or hairstyling, or any combination of the listed practices.

16. "Threading" means a service that results in the removal of hair from its follicle from around the eyebrows and from other parts of the face with the use of a single strand of cotton thread and an over-the-counter astringent, if the service does not use chemicals of any kind, wax or any implements, instruments or tools to remove hair.

32-502. Board of cosmetology; members; appointment; qualifications; terms

A. The board of cosmetology is established consisting of the following seven members who are appointed by the governor:

1. Two cosmetologists who have been actively practicing in this state for at least three years immediately preceding appointment.

2. One nail technician who has been actively practicing in this state for at least three years immediately preceding appointment.

3. One instructor who has been actively practicing in this state for at least three years immediately preceding appointment.

4. One school owner.

5. Two public members who are not and have never been associated with the cosmetology or nail technology industry, licensed as a cosmetologist or nail technician or involved in the manufacture of cosmetology or nail technology products.

B. The term of office for members is three years beginning and ending June 22.

C. The governor may remove board members for neglect of duty, malfeasance or misfeasance.

32-503. Organization; meetings; personnel; compensation

A. The board shall annually elect a chairman, vice-chairman and secretary-treasurer from among its membership.

B. The board shall hold at least one regular meeting monthly and may hold other meetings at times and places it designates.

C. Subject to title 41, chapter 4, article 4, the board may employ the following personnel as it deems necessary to carry out the purposes of this chapter and designate their duties:

1. An executive director.

2. A supervisor of examinations who is an instructor licensed pursuant to this chapter and has worked at least two of the five years immediately preceding employment as an instructor in a school licensed pursuant to this chapter.

3. Examiners who are not employed as instructors in any school licensed pursuant to this chapter.

4. Persons to provide investigative, professional and clerical assistance.

5. Consultants to assist the board in the performance of its duties.

6. Other personnel.

D. Members of the board are eligible to receive compensation as determined pursuant to section 38-611 for each day of actual service in the business of the board. The board shall compensate its executive director and other personnel as determined pursuant to section 38-611.

32-504. Powers and duties

A. The board shall:

1. Adopt rules that are necessary and proper for the administration of this chapter, including sanitary and safety requirements for salons and schools and sanitary and safety standards for the practice of cosmetology, aesthetics, nail technology and hairstyling.

2. Administer and enforce this chapter and rules adopted pursuant to this chapter.

3. Either prepare, administer and grade practical and written examinations or contract with a national professional organization for cosmetology selected by the board to prepare, administer and grade practical and written examinations.

4. Make and maintain a record of its acts and proceedings, including the issuance, denial, renewal, suspension or revocation of licenses and public reproofs of licensees.

5. Evidence its official acts by the signature of the chairman or vice-chairman of the board or a representative designated by the board.

6. Keep records of the board open to public inspection at all reasonable times.

7. Make an annual report to the governor on or before October 1 of each year covering its official acts and financial transactions during the preceding fiscal year and making recommendations it deems necessary.

8. Prescribe minimum school curriculum requirements for cosmetologists, aestheticians, nail technicians, hairstylists and instructors.

9. Prescribe standards and requirements for the provision of salon services through mobile units and in customer locations.

10. Approve a cosmetologist as a mentor based on the cosmetologist's record of compliance with this chapter. The board may not condition the approval on the cosmetologist's payment of an additional fee or completion of an additional requirement.

B. The board may:

1. Inspect the premises of any salon or school during business hours.

2. Delegate authority to its executive director to issue licenses to applicants who meet the requirements of this chapter.

32-505. Board of cosmetology fund

A. The board of cosmetology fund is established. Except as provided in subsection C of this section, before the end of each calendar month, pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies from whatever source which come into the possession of the board in the state general fund and deposit the remaining ninety per cent in the board of cosmetology fund.

B. Except as provided in section 32-573, subsection G, monies deposited in the board of cosmetology fund are subject to section 35-143.01.

C. Monies from civil penalties received pursuant to section 32-571 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

32-506. Nonapplicability of chapter

This chapter does not apply to the following persons while in the proper discharge of their professional duties:

1. Medical practitioners who are licensed pursuant to this title if the practices treat physical or mental ailments or disease.

2. Commissioned physicians and surgeons who are serving in the armed forces of the United States or other federal agencies.

3. Persons who are licensed pursuant to chapter 3 or 12 of this title.

4. Students who are attending schools licensed pursuant to this chapter while they are on school premises during school hours.

5. Persons employed by theatrical groups who apply makeup, oils and cosmetics.

6. Persons who sell makeup, oils and cosmetics and who apply such products during the process of selling such products.

7. Shampoo assistants who shampoo hair under the direction of a cosmetologist or hairstylist licensed pursuant to this chapter.

8. Services performed by and for persons who are in the custody of the state department of corrections.

9. Persons who apply makeup, oils and cosmetics to patients in a hospital, nursing home or residential care institution with the consent of the patient and the hospital, nursing home or residential care institution.

10. Persons who provide a service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking or braiding if the service does not include the application of dyes, reactive chemicals or other preparations to alter the color of the hair or to straighten, curl or alter the structure of the hair.

11. Persons who provide threading.

12. Persons who provide tanning services by means of airbrushing, tanning beds or spray tanning.

13. Persons who apply makeup, including eyelash enhancements. This paragraph does not apply if a person is engaging in the practice of aesthetics or cosmetology. A person who is exempt pursuant to this paragraph shall post a sign in a conspicuous location in the person's place of business notifying the public that the person's services are not regulated by the board.

14. Persons who dry, style, arrange, dress, curl, hot iron or shampoo and condition hair if the service does not include applying reactive chemicals to permanently straighten, curl or alter the structure of the hair

and if the person takes and completes a class relating to sanitation, infection protection and law review that is provided by the board or its designee. This paragraph does not apply if a person is engaging in the practice of aesthetics or cosmetology. A person who is exempt pursuant to this paragraph shall post a sign in a conspicuous location in the person's place of business notifying the public that the person's services are not regulated by the board.

15. Persons who are participating in a department of economic security-approved apprenticeship program in cosmetology as described in section 32-511 while working with a mentor in an establishment that is licensed by the boa

32-507. Fees

A. The board shall establish and collect fees not to exceed the following:

1. Written examination, one hundred dollars.

2. Practical examination, one hundred dollars.

3. Application for initial personal license, a one-time fee of eighty-three dollars.

4. Application for personal reciprocity license, a one-time fee of one hundred fifty dollars.

5. Application for salon license, one hundred twelve dollars.

6. Application for school license, six hundred dollars.

7. Application for certification of licensure or hours, thirty dollars.

8. Personal license renewal, seventy-six dollars to be paid once every two years pursuant to section 32-517 or 32-535.

9. Personal license delinquent renewal, sixty dollars.

10. Salon license renewal, fifty dollars.

11. Salon license delinquent renewal, eighty dollars.

12. School license renewal, five hundred dollars.

13. School license delinquent renewal, six hundred dollars.

14. Delinquent penalties for each year or portion of a year for which the license was inactive.

15. Computer printouts of names of licensees, twenty-five cents per name.

16. Duplicate license, thirty dollars.

17. Dishonored checks, twenty dollars.

18. Copying charges, one dollar per page. For audiotapes, videotapes, computer discs or other mediums used for recording sounds, images or information, fifteen dollars per tape, disc or other medium.

19. Board-administered educational classes, one hundred dollars.

20. Review of examination, fifty dollars.

21. Regrading of examinations, twenty-five dollars.

22. Service charges for persons who pay with alternative payment methods, including credit cards, charge cards, debit cards and electronic transfers, not to exceed the cost of the alternative payment method.

B. The board may charge additional fees for:

1. Documents and publications provided by the board.

2. Services that the board deems appropriate to carry out its intent and purpose. These additional fees shall not exceed the costs of rendering the services.

C. The board shall only issue a duplicate license on receipt of a written request that states the reason for the request for a duplicate license.

32-510. Aestheticians; applications; qualifications

A person is entitled to receive an aesthetician's license if the person:

1. Submits to the board an application for an aesthetician's license on a form supplied by the board.

2. Does either of the following:

(a) Completes and receives appropriate credits for at least two years of high school education or its equivalent as prescribed by the board in its rules and submits to the board satisfactory evidence that the person is at least sixteen years of age.

(b) Submits to the board satisfactory evidence that the person is at least eighteen years of age.

3. Submits to the board satisfactory evidence of either of the following:

(a) That the person is a graduate of an aesthetician school in another state or country that has substantially the same requirements as this state for schools licensed pursuant to this chapter.

(b) That the person is a graduate of an aesthetician course consisting of at least six hundred hours of training in a school licensed pursuant to this chapter.

4. Passes the examination for an aesthetician's license.

5. Pays the prescribed fees for an aesthetician's license.

32-511. Cosmetologists; applications; qualifications

A person is entitled to receive a cosmetologist license if the person:

1. Submits to the board an application for a cosmetologist license on a form supplied by the board.

2. Does either of the following:

(a) Completes and receives appropriate credits for at least two years of high school education or its equivalent as prescribed by the board in its rules and submits satisfactory evidence that the person is at least sixteen years of age.

(b) Submits to the board satisfactory evidence that the person is at least eighteen years of age.

3. Submits to the board satisfactory evidence of any of the following:

(a) That the person is a graduate of a cosmetology course consisting of at least sixteen hundred hours of training in a school licensed pursuant to this chapter.

(b) That the person is a graduate of a cosmetology school in another state or country that had at the time of the person's graduation substantially the same requirements as this state for schools licensed pursuant to this chapter.

(c) That the person completed a United States department of labor-approved or a department of economic security-approved apprenticeship program in cosmetology that includes at least two hundred fifty hours of infection protection and law review instruction. The person shall complete the instruction prescribed by this subdivision through either:

(i) A school that is licensed pursuant to this chapter or a school or program in another state that has, in the board's opinion, licensure requirements that are substantially equivalent to the requirements of this state.

(ii) A department of economic security-approved apprenticeship program.

4. Passes the examination for a cosmetologist license.

5. Pays the prescribed fees.

32-512. Nail technicians; applications; qualifications

A person is entitled to receive a license to practice nail technology if the person does all of the following:

1. Submits to the board an application for a nail technician license on a form supplied by the board.

2. Does either of the following:

(a) Completes and receives appropriate credits for at least two years of high school education or its equivalent as prescribed by the board in its rules and submits satisfactory evidence that the person is at least sixteen years of age.

(b) Submits to the board satisfactory evidence that the person is at least eighteen years of age.

3. Submits to the board satisfactory evidence of either of the following:

(a) That the person graduated from a nail technology school in another state or country that had at the time of the person's graduation substantially the same requirements as this state for schools licensed pursuant to this chapter.

(b) That the person completed a nail technician course consisting of at least six hundred hours of training in a school licensed pursuant to this chapter.

4. Pays the prescribed fees for a nail technician license.

5. Passes the examination for a nail technician license.

32-512.01. Hairstylists; applications; qualifications

A person is entitled to receive a license to practice hairstyling if the person does all of the following:

1. Submits to the board an application for a hairstylist license on a form supplied by the board.

2. Either:

(a) Completes and receives appropriate credits for at least two years of high school education or its equivalent as prescribed by the board in its rules and submits satisfactory evidence that the person is at least sixteen years of age.

(b) Submits to the board satisfactory evidence that the person is at least eighteen years of age.

3. Submits to the board satisfactory evidence that the person either:

(a) Graduated from a hairstyling school in another state or country that had at the time of the person's graduation substantially the same requirements as this state for schools licensed pursuant to this chapter.

(b) Completed a hairstylist course consisting of at least one thousand hours of training in a school licensed pursuant to this chapter.

4. Pays the prescribed fees for a hairstylist license.

5. Passes the examination for a hairstylist license.

32-513. Reciprocity

Notwithstanding sections 32-510, 32-511, 32-512 and 32-512.01, a person is entitled to receive a cosmetologist, aesthetician, nail technician or hairstylist license if the person does all of the following:

1. Submits to the board an application for a cosmetologist, aesthetician, nail technician or hairstylist license on a form supplied by the board.

2. Submits to the board satisfactory evidence that the person is licensed in another state or country.

3. Takes and completes a class relating to infection protection and law review that is provided by the board or its designee. The board shall determine the amount of the fees for the class. The applicant shall pay the fees directly to the board or its designee.

4. Pays the prescribed reciprocity license fees.

32-514. Examinations

A. The board or a national professional organization for cosmetology selected by the board shall administer written and practical examinations for a cosmetologist, aesthetician, nail technician, hairstylist or instructor license. The examinations shall test for requisite knowledge and skills in the technical application of cosmetology services.

B. The board or a national professional organization for cosmetology selected by the board shall inform each applicant of the examination results.

C. The board shall make an accurate record of each examination.

32-515. Reexaminations

A. An applicant who fails an examination for a license pursuant to this article is entitled to a reexamination.

B. If an applicant fails either part of the examination, the applicant shall only retake the part of the examination that the applicant failed.

C. If one year or more elapses between an applicant's initial examination and reexamination, the applicant shall take both the written and practical parts of the examination.

D. An applicant desiring to be reexamined shall:

1. Apply to the board, if the board is administering the examination, on forms it prescribes and furnishes or to a national professional organization selected by the board to administer the examination.

2. Pay the prescribed examination fee.

32-516. Aestheticians; cosmetologists; cosmetic laser and IPL device use; certification; fees; definitions

A. An aesthetician or a cosmetologist who wishes to perform cosmetic laser procedures and procedures using IPL devices must:

1. Apply for and receive a certificate from the department.

2. Comply with the requirements of this section and department rules.

3. Successfully complete forty hours of didactic training as required by department rules at a department-certified training program. The program shall provide a provisional certificate to the applicant verifying the successful completion of the didactic training.

4. For hair removal, complete hands-on training that is supervised by a health professional who is acting within the health professional's scope of practice or by a laser technician who has a minimum of one hundred hours of hands-on experience per procedure. The health professional or laser technician must be present in the room during twenty-four hours of hands-on use of lasers or IPL devices. The supervising health professional or laser technician shall verify that the aesthetician or cosmetologist has completed the training and supervision as prescribed by this section.

5. For other cosmetic laser and IPL device procedures, complete a minimum of an additional twenty-four hours of hands-on training of at least ten cosmetic procedures for each type of specific procedure that is supervised by a health professional who is acting within the health professional's scope of practice or by a laser technician who has a minimum of one hundred hours of hands-on experience per procedure. The health professional or laser technician must be present in the room during twenty-four hours of hands-on use of lasers or IPL devices. The supervising health professional or laser technician shall verify that the aesthetician or cosmetologist has completed the training and supervision as prescribed by this section.

6. Submit to the department the provisional certificate from the training program and certification by the health professional or laser technician who directly supervised the applicant in the room during the hands-on training.

B. The department shall issue a laser technician certificate authorizing the aesthetician or cosmetologist to use lasers and IPL devices if the applicant has completed the training for hair removal or lasers and IPL devices for other cosmetic procedures, as applicable, and shall maintain a current register of those laser technicians in good standing and whether certification is for hair removal only or other cosmetic procedures as well. The department may establish a fee for the registration of aestheticians or cosmetologists as laser technicians and the issuance of certificates pursuant to this subsection. The department shall deposit monies collected pursuant to this subsection in the laser safety fund established by section 32-3234.

C. An aesthetician or a cosmetologist who has been certified as a laser technician by the department may use a laser or IPL device:

1. For hair removal under the indirect supervision of a health professional whose scope of practice permits the supervision.

2. For cosmetic purposes other than hair removal if the aesthetician or cosmetologist is directly supervised by a health professional whose scope of practice permits the supervision and the aesthetician or cosmetologist has been certified in those procedures.

D. The board shall investigate any complaint from the public or from another board or agency regarding a licensed aesthetician or cosmetologist who performs cosmetic laser procedures or procedures using IPL devices pursuant to this section. The board shall report to the department any complaint it receives about the training or performance of an aesthetician or a cosmetologist who is certified as a laser technician.

E. An aesthetician or a cosmetologist who used laser and IPL devices before November 24, 2009 may continue to do so if the aesthetician or cosmetologist received a certificate pursuant to this section before October 1, 2010.

F. For the purposes of this section:

1. "Department" means the department of health services.

2. "Directly supervised" means a health professional who is licensed in this state and whose scope of practice allows the supervision supervises the use of a laser or IPL device for cosmetic purposes while the health professional is present at the facility where and when the device is being used.

3. "Health professional" means a person who is licensed pursuant to either:

(a) Chapter 11, article 2 of this title and who specializes in oral and maxillofacial surgery.

(b) Chapter 13, 14, 15, 17 or 25 of this title.

4. "Indirect supervision" means supervision by a health professional who is licensed in this state, whose scope of practice allows the supervision and who is readily accessible by telecommunication.

5. "IPL device" means an intense pulse light class II surgical device certified in accordance with the standards of the department for cosmetic procedures.

6. "Laser" means any device that can produce or amplify electromagnetic radiation with wavelengths in the range of one hundred eighty nanometers to one millimeter primarily by the process of controlled stimulated emission and certified in accordance with the standards for the department for cosmetic procedures.

7. "Laser technician" means a person who is or has been certified by the department pursuant to its rules and chapter 32, article 2 of this title.

32-517. License renewal

A. Except as provided in section 32-4301, a cosmetologist, an aesthetician, a nail technician or a hairstylist shall renew the person's license on or before the person's birthday once every two years.

B. A cosmetologist, an aesthetician, a nail technician or a hairstylist shall submit an application for renewal accompanied by the prescribed renewal fee in order to renew the person's license.

C. A cosmetologist, an aesthetician, a nail technician or a hairstylist who fails to renew the person's license on or before the person's birthday shall also pay the prescribed delinquent renewal penalty in order to renew the license.

32-518. Inactive licenses; reactivation; suspension

A. A license that is not renewed pursuant to section 32-517 automatically reverts to inactive status.

B. A licensee may reactivate an inactive license:

1. If a license has been inactive for less than one year, by paying the prescribed delinquent renewal penalty.

2. If a license has been inactive for one year or more but less than ten years, by paying the prescribed delinquent renewal penalty and submitting proof of satisfying educational requirements prescribed by the board in its rules.

C. A license that has been inactive for ten years is automatically suspended.

D. A licensee shall not practice under an inactive license.

32-531. Instructors; applications; qualifications

A person is entitled to receive a license to teach cosmetology, aesthetics, nail technology or hairstyling in a school if the person does all of the following:

1. Submits to the board an application for an instructor license on a form prescribed by the board.

2. Either:

(a) Holds a diploma from a high school or its equivalent as prescribed by the board in its rules and submits to the board satisfactory evidence that the person is at least sixteen years of age.

(b) Submits to the board satisfactory evidence that the person is at least eighteen years of age.

3. Is a licensed cosmetologist, aesthetician, nail technician or hairstylist, is applying for an instructor license to teach a subject in which the person is licensed and has practiced for at least one year in the profession for which the person is applying for an instructor license and has received the following hours of instructor training:

(a) For a cosmetologist instructor, three hundred fifty hours.

(b) For an aesthetics instructor, three hundred fifty hours.

(c) For a nail technician instructor, three hundred fifty hours.

(d) For a hairstylist instructor, three hundred fifty hours.

4. Passes the examination for an instructor license.

5. Pays the prescribed fees.

32-532. Instructor reciprocity

Notwithstanding section 32-531, a person is entitled to receive a license to teach cosmetology, aesthetics, nail technology or hairstyling in a school if the person submits to the board an application for an instructor license on a form prescribed by the board, pays the prescribed fees and complies with one of the following:

1. Is a current licensed cosmetologist, aesthetician, nail technician or hairstylist instructor in another state or country.

2. Does all of the following:

(a) Either:

(i) Submits to the board satisfactory evidence that the person is at least eighteen years of age.

(ii) Holds a diploma from a high school or its equivalent as prescribed by the board in its rules and submits to the board satisfactory evidence that the person is at least sixteen years of age.

(b) Is a licensed cosmetologist, aesthetician, nail technician or hairstylist in another state or country.

(c) Completes instructor training in another state or country that has instructor education requirements that are at least substantially equivalent to those of this state.

(d) Passes the examination for an instructor license.

(e) Has five years of licensed industry experience within the ten years preceding application.

(f) Meets requirements as prescribed by the board in its rules.

32-533. Instructor examinations; reexaminations

A. An examination for an instructor license shall be written and practical.

B. The board shall inform each applicant of the applicant's examination results in writing.

C. The board shall make an accurate record of each examination.

D. An applicant who fails any part of the examination twice shall attend a school licensed pursuant to this chapter for two hundred fifty hours of instructor training.

E. An applicant desiring to be reexamined shall apply to the board on forms it prescribes and furnishes and pay the prescribed examination fee.

32-535. Instructor license renewal

A. Except as provided in section 32-4301, an instructor shall renew the instructor's license on or before the instructor's birth date once every two years.

B. An instructor shall submit an application for renewal accompanied by the prescribed renewal fee in order to renew the instructor's license.

C. An instructor who fails to renew the instructor's license on or before the instructor's birth date as prescribed by this section shall also pay the prescribed delinquent renewal penalty in order to renew the license.

32-536. Instructor practice; instruction

A. An instructor may practice in the category of practice he is licensed to practice in a salon licensed pursuant to this chapter.

B. An instructor shall teach only in the area he is licensed by the board to teach.

32-537. Instructor; inactive licenses; reactivation; suspension

A. An instructor license that is not renewed pursuant to section 32-535 automatically reverts to inactive status.

B. A licensee may reactivate an inactive license:

1. If a license has been inactive for less than one year, by paying the prescribed delinquent renewal penalty.

2. If a license has been inactive for one year or more but less than ten years, by paying the prescribed delinquent renewal penalty and submitting proof of satisfying educational requirements prescribed by the board in its rules.

C. A license that has been inactive for ten years is automatically suspended.

D. A licensee shall not practice under an inactive license.

32-541. Salon requirements

A. A person is entitled to receive a license to operate a salon if the person:

1. Submits to the board an application for a salon license on a form supplied by the board.

2. Pays the prescribed fee.

B. The safety and sanitary requirements specified by the board in its rules shall be requirements while a salon is operating.

C. Each salon shall have an individual designated as the manager of the salon.

32-542. Salon inspections

The board shall inspect salons on a regular basis as it deems necessary.

32-543. Required display

Salons shall display the following in a conspicuous location that is readily observable by any patron:

1. The current salon license.

2. The current licenses for cosmetologists, aestheticians, nail technicians or hairstylists practicing in the salon.

3. The latest inspection sheet.

32-544. Salon license renewal

A. Except as provided in section 32-4301, a salon license is renewable each year on or before the anniversary date of the first license by meeting all the requirements for a salon license and paying the prescribed renewal fee.

B. A salon owner who fails to renew the owner's salon license each year by the anniversary date of the license shall apply pursuant to section 32-541 and pay the prescribed fee and delinquent renewal penalty.

32-545. Change of ownership or location; change of trade name

A. A salon shall not change from the name of one licensee to another or from one location to another or change its trade name without filing a new application and paying the prescribed fee.

B. A salon owner shall notify the board in writing within ten days after any change of ownership of the salon or change in the salon's location or trade name and pay the prescribed fee.

32-551. School licenses; applications; requirements

A person is entitled to a license to operate a school if:

1. The person pays the prescribed fee.

2. The person furnishes a surety bond in the amount of ten thousand dollars approved by the board and executed by a corporate bonding company authorized to do business in this state. The bond shall be for the benefit of and subject to the claims of the state for failure to comply with the requirements of this chapter and any student who fails to receive the full course of instruction required under this chapter.

3. The person submits to the board under oath an application for a school license on a form supplied by the board and other documentation required by the board in its rules.

4. The proposed school passes an inspection by the board before it opens.

32-552. Change of ownership or location; change of trade name

A. A school shall not change from the name of one licensee to another or from one location to another or change its trade name without filing a new application and paying the prescribed fee.

B. A school owner shall notify the board in writing within ten days after any change of ownership of the school or change in the school's location or trade name, submit a new license application for the school and pay the prescribed fee.

32-553. Instruction staff

A. Instructors shall not apply their time to private practice with or without compensation in a school.

B. Students shall be under the constant supervision of an instructor.

32-554. Required display

Schools shall display the following in a conspicuous location:

1. The current school license.

2. The current licenses of instructors teaching in the school.

3. The latest inspection sheet.

32-555. Equipment

A school shall contain sufficient equipment as prescribed by the board in its rules.

32-556. Separation of schools from other businesses

A school of any type, including a cosmetology school or otherwise, shall not be conducted with any other business, including a salon. A school of any type, including a cosmetology school or otherwise, and another business shall be separated by walls of permanent construction and not have doors or openings between them. A cosmetology school may offer for sale cosmetology products and related articles.

32-557. Services for the public; restrictions

A. Students may render services to the public only under the direct supervision of an instructor.

B. The following notice shall be posted in a conspicuous place within the school in letters large enough to be read across the length of the room, "school of cosmetology - work done exclusively by students."

C. A student in a school shall not receive a salary or commission from the school for any cosmetology, aesthetics, nail technology or hairstyling services while enrolled in the school as a student.

D. A school shall post a price list for services rendered to the public that is large enough to be easily read from a distance of ten feet.

32-558. Student-school contracts

A private school is required to execute a contract between itself and a student in duplicate. The form of the contract shall be approved by the board. A contract between a school and a student shall bear the signature of a school official and the student or parent or guardian if the student is under eighteen years of age. A fully executed copy of the contract shall be given to the student and the school shall keep the original copy.

32-559. School catalogs

A. A private school shall submit a copy of its official catalog to the board for board approval.

B. A private school catalog shall contain the following:

1. Name and address of the school.

2. Date of publication.

3. Admission requirements and procedures used by the school.

4. Number of hours of training required for licensure.

5. A brief outline of the curriculum offered by the school.

6. A description of the school's general physical facilities and equipment.

7. Policies relating to tardiness, absences, make-up work, conduct, termination and other rules of the school.

8. The grading system, including a definition of credit units if any.

9. The type of document awarded on graduation from the school.

32-560. Transfer procedures

A student who desires to transfer from one school to another shall execute an application for transfer form prescribed by the board. The transferring school shall complete the application for transfer in triplicate and forward the requested information to the board within three days after the student executes the application for transfer.

32-561. Student records

A school shall keep records as prescribed by the board in its rules on file for each student enrolled or reenrolled in a school for a regular course, postgraduate course or additional hours.

32-562. School inspections

The board shall inspect schools on a regular basis as it deems necessary.

32-563. School closings

A. Within five days after a school closes it shall notify the board by certified mail of the closure.

B. Within ten days after a school closes it shall forward all student records to the board.

32-564. School license renewal

A. Except as provided in section 32-4301, school licenses are renewable on or before June 30 of every year by meeting all the requirements for a school license and paying the prescribed renewal fee.

B. A school owner who fails to renew his school license by June 30 of every year shall apply pursuant to section 32-551 and pay the prescribed fee and delinquent renewal penalty.

32-565. Schools; postsecondary education institutions

A school must be recognized as a postsecondary educational institution if both of the following apply:

1. The school admits as regular students only individuals who have earned a recognized high school diploma or the equivalent of a recognized high school diploma or who are beyond the age of compulsory education as provided by section 15-802.

2. The school is licensed by name by the board under this chapter to offer one or more training programs beyond the secondary school level.

32-571. Disciplinary action

The board may take any one or a combination of the following disciplinary actions:

1. Revoke a license.

2. Suspend a license.

3. Impose a civil penalty in an amount not to exceed two thousand dollars.

4. Impose probation requirements best adapted to protect the public safety, health and welfare including requirements for restitution payments to patrons.

5. Publicly reprove a licensee.

6. Issue a letter of concern.

32-572. Grounds for disciplinary action or refusal to issue or renew license; definition

A. The board may take disciplinary action or refuse to issue or renew a license for any of the following causes:

1. Continued performance of cosmetology, aesthetics, nail technology or hairstyling services by a person knowingly having an infectious or communicable disease.

2. Conviction of a crime.

3. Commission of an act involving dishonesty, fraud or deceit with the intent to substantially benefit oneself or another or substantially injure another.

4. Malpractice or incompetency.

5. Knowingly advertising by means of false, misleading, deceptive or fraudulent statements through communication media.

6. Violating any provision of this chapter or any rule adopted pursuant to this chapter.

7. Making oral or written false statements to the board.

8. Repeated failure to correct infractions of safety and sanitary requirements prescribed by the board in its rules.

9. Failing to comply with an order of the board.

B. A conviction of a crime or act shall not be a cause of refusal to issue or renew a license unless the crime or act is substantially related to the qualifications, functions or duties of the license for which application is made.

C. The expiration, cancellation, suspension or revocation of a license or a licensee's voluntary surrender of a license does not deprive the board of jurisdiction to do any of the following:

1. Proceed with an investigation of a licensee.

2. Proceed with an action or disciplinary proceeding against a licensee.

3. Suspend or revoke a license.

4. Deny the renewal or right of renewal of a license.

D. For the purposes of this section, "conviction" means a plea or verdict of guilty or a conviction following a plea of no contest.

32-573. Procedure for disciplinary action; appeal

A. The board on its own motion may investigate any information that appears to show the existence of any of the causes set forth in section 32-572. The board shall investigate the report of any person that appears to show the existence of any of the causes set forth in section 32-572. A person who reports pursuant to this section and who provides the information in good faith is not subject to liability for civil damages as a result.

B. If, after completing its investigation, the board finds that the evidence is not of sufficient seriousness to merit direct action against a license, it may take either of the following actions:

1. Dismiss if, in the opinion of the board, the evidence is without merit.

2. File a letter of concern if, in the opinion of the board, while there is insufficient evidence to support direct action against the license there is sufficient evidence for the board to notify the licensee that continuation of the activities that led to the information or report being made to the board may result in action against the licensee's license.

C. If, in the opinion of the board, it appears the information or report is or may be true, the board shall request an informal interview with the licensee concerned. The interview shall be requested by the board in writing, stating the reasons for the interview and setting a date not less than ten days from the date of the notice for conducting the interview.

D. If, after an informal interview, the board finds that the evidence warrants suspension or revocation of a license issued pursuant to this chapter, imposition of a civil penalty or public reproof or if the licensee under investigation refuses to attend the informal interview, a complaint shall be issued and formal proceedings shall be initiated. All proceedings pursuant to this subsection shall be conducted in accordance with title 41, chapter 6, article 10.

E. A licensee who has been notified pursuant to subsection D of this section of charges pending against the licensee shall file with the board an answer in writing to the charges not more than thirty days after the licensee receives the complaint. If the licensee fails to answer in writing within this time, it is deemed an admission by the licensee of the acts charged in the complaint and the board may take disciplinary action allowed by this chapter without a hearing.

F. If the board finds that the evidence is not of sufficient seriousness to merit suspension or revocation of a license issued pursuant to this chapter, imposition of a civil penalty or public reproof it may take the following actions:

1. Dismiss if, in the opinion of the board, the evidence is without merit.

2. File a letter of concern if, in the opinion of the board, while there is insufficient evidence to support direct action against the license there is sufficient evidence for the board to notify the licensee that continuation of the activities which led to the information or report being made to the board may result in action against the licensee's license.

3. Impose probation requirements.

G. If a licensee violates this chapter or a rule adopted pursuant to this chapter, the board may assess the licensee with the board's reasonable costs and expenses, including attorney fees, incurred in conducting the investigation and administrative hearing. All monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in a separate account in the board of cosmetology fund established by section 32-505. The board may only use these monies to defray its expenses in connection with investigation related training and education, disciplinary investigations and all costs related to administrative hearings. Notwithstanding section 35-143.01 the separate account monies may be spent without legislative appropriation.

H. 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.

32-574. Unlawful acts; violation; classification

A. A person shall not:

1. Perform or attempt to perform cosmetology, aesthetics, nail technology or hairstyling without a license in that category issued pursuant to this chapter, or practice in a category in which the person does not hold a license.

2. Display a sign or in any way advertise or hold oneself out as a cosmetologist, aesthetician, nail technician or hairstylist or as being engaged in the practice or business of cosmetology, aesthetics, nail technology or hairstyling without being licensed pursuant to this chapter.

3. Knowingly make a false statement on an application for a license pursuant to this chapter.

4. Permit an employee or another person under the person's supervision or control to perform cosmetology, aesthetics, nail technology or hairstyling without a license issued pursuant to this chapter.

5. Practice or attempt to practice cosmetology, aesthetics, nail technology or hairstyling in any place other than in a salon licensed pursuant to this chapter unless the person is requested by a customer to go to a place other than a salon licensed pursuant to this chapter and is sent to the customer from the salon, except that a person who is licensed pursuant to this chapter may practice, without the salon's request, cosmetology, aesthetics, nail technology or hairstyling in a health care facility, hospital, residential care institution, nursing home or residence of a person requiring home care because of an illness, infirmity or disability.

6. Obtain or attempt to obtain a license by the use of money other than the prescribed fees or any other thing of value or by fraudulent misrepresentation.

7. Provide any service to a person having a visible disease, pediculosis or open sores suggesting a communicable disease until the person furnishes a statement signed by a physician who is licensed pursuant to chapter 13 or 17 of this title stating that the disease or condition is not in an infectious, contagious or communicable stage.

8. Operate a salon or school without being licensed pursuant to this chapter.

9. Violate any provision of this chapter or any rule adopted pursuant to this chapter.

10. Ignore or fail to comply with a board subpoena.

11. Use the title of "aesthetician", "cosmetologist", "nail technician" or "hairstylist" or any other title or term likely to be confused with "aesthetician", "cosmetologist", "nail technician" or "hairstylist" in any advertisement, statement or publication unless that person is licensed pursuant to this chapter.

12. Teach cosmetology, aesthetics, nail technology or hairstyling in this state unless the person is licensed as an instructor pursuant to article 3 of this chapter.

B. An instructor shall not render cosmetology, aesthetics, nail technology or hairstyling services in a school unless the services are directly incidental to the instruction of students.

C. A person who violates this section is guilty of a class 1 misdemeanor.

32-575. Injunctions

The board, the attorney general, a county attorney or any other person may apply to the superior court in the county in which acts or practices of any person which constitute a violation of this chapter or the rules adopted pursuant to this chapter are alleged to have occurred for an order enjoining those acts or practices.

32-576. Confidentiality

A. Examination materials, records of examination grading and performance and transcripts of educational institutions are confidential and are not subject to inspection pursuant to title 39, chapter 1, article 2.

B. All investigation files are confidential and are not subject to inspection pursuant to title 39, chapter 1, article 2 until the matter is final. The licensee shall be informed of the investigation. The public may

obtain information that discloses that an investigation is being conducted and the general nature of the investigation.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 10. BOARD OF COSMETOLOGY

PREAMBLE

1. Articles, Parts, and Sections Affected	**Rulemaking Action**
R4-10-101	Amend
R4-10-102	Amend
R4-10-105	Amend
R4-10-108	Amend
R4-10-110	Amend
R4-10-111	Amend
R4-10-112	Amend
R4-10-114	Amend
R4-10-201	Amend
R4-10-202	Amend
R4-10-203	Amend
R4-10-204	Amend
R4-10-205	Amend
R4-10-206	Amend
R4-10-206.1	Amend
R4-10-207	Amend
R4-10-208	Amend
R4-10-209	Amend
R4-10-210	New Section
R4-10-301	Amend
R4-10-302	Amend
R4-10-303	Amend
R4-10-304	Amend
R4-10-304.1	Amend
R4-10-305	Amend
R4-10-306	Amend
R4-10-401	Amend

R4-10-402	Amend
R4-10-403	Amend
R4-10-404	Amend
R4-10-405	Amend

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. § 32-504(A)(1)

Implementing statute: A.R.S. §§ 32-501, 32-504, 32-512.01, 32-513, 32-517, 32-531, 32-532, 32-543, 32-551, 32-572, and 32-574

3. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening: XX A.A.R. XX

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

Name: Kimberly Scoplitte, Executive Director

Address: 1740 W. Adams, Suite 4400
Phoenix, AZ 85007

Telephone: 480-784-4632

Fax: 480-784-4962

E-mail: kscoplitte@azboc.gov

Web site: www.boc.az.gov

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

This rulemaking continues the work started in a rulemaking approved by the Council on October 3, 2017. In this rulemaking, the Board amends rules to make them consistent with statute (See A.R.S. §§ 41-1080 and 41-1092.09), Board practice, and industry standards. It also makes changes identified as needed in a 5YRR approved by the Council on August 5, 2016, and makes the rules consistent with current rulemaking standards. Because the Board lacks authority to approve an applicant to take an examination, the time frame for that approval is deleted. The time frame for an application for licensure by examination is increased to match the deleted time frame. The rulemaking includes a new fee that is specifically authorized under A.R.S. § 32-507. The Board is also making amendments to address recent statutory changes dealing with training by apprenticeship (See Laws 2019, Chapter 109) and licensure by universal recognition (See Laws 2019, Chapter 55). An exemption from EO2019-01 was provided for this rulemaking by Emily Rajakovich in an e-mail dated February 26,

2019. A final approval from the governor's office of the NPR was provided by Trista Guzman Glover in an e-mail dated July 20, 2020.

6. 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 Board does not intend to review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

7. 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

8. The preliminary summary of the economic, small business, and consumer impact:

The Board expects the economic impact of the rulemaking to be minimal because there are no substantive changes to the current rules. The Board, licensees, and applicants will benefit from having rules that are clear, concise, and understandable and consistent with statute. The Board made some changes to reduce the regulatory burden for applicants and licensees. These include:

- Obtaining e-mail addresses and encouraging electronic submission of documents;
- Allowing online access to study materials rather than requiring hard copies;
- Allowing virtual learning as a means to teach and learn the theory portion of cosmetology classes;
- Accepting money orders and credit cards rather than only checks for payment of fees;
- Deleting the requirement that an application to operate a school be notarize;
- Increasing the amount of time a license can be inactive and then reactivated without applying for a new license;
- Deleting burdensome requirements regarding personal and establishment cleanliness;
- Deleting burdensome requirement for a school licensee to submit a new operating schedule at the time of license renewal;
- Deleting burdensome requirements for a school licensee regarding filing cabinets and personal storage for students and instructors;
- Deleting burdensome requirements for a school licensee regarding student records;
- Deleting burdensome requirements specifying the size of tables and mirrors in a school;
- Deleting restrictions regarding having a salon in a residence.

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: Kimberly Scoplitte, Executive Director

Address: 1740 W. Adams, Suite 4400
Phoenix, AZ 85007

Telephone: 480-784-4632

Fax: 480-784-4962

E-mail: kscoplitte@azboc.gov

Web site: www.boc.az.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

An oral proceeding regarding the proposed rules will be held as follows:

Date: Wednesday, September 23, 2020

Time: 9:00 A.M.

Location: The oral proceeding will occur virtually. To participate, call 1-628-400-4597 and when prompted, enter the passcode 349 045 137#

11. 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:

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 (See A.R.S. §§ 32-510, 32-511, 32-512, 32-512.01, 32-531, 32-541, and 32-551) 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:

There is no federal law directly applicable to the subject of this rulemaking. The U.S. Environmental Protection Agency requires certain disinfectants be registered and this rulemaking requires licensees to use EPA-registered disinfectants; 42 U.S.C. 7412 establishes a list of hazardous air pollutants and R4-10-112(M) is consistent with the list; and 34 CFR Part 600 establishes procedures used to determine whether an educational institution qualifies to participate in certain programs. A school operated by a school licensee under R4-10-201 is qualified.

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.

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

None

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 10. BOARD OF COSMETOLOGY

ARTICLE 1. GENERAL PROVISIONS

Section

R4-10-101. Definitions

R4-10-102. Fees and Charges

R4-10-105. Application for License by Reciprocity; Application for License by Universal Recognition

R4-10-108. Pre-screening Review; Licensing Examination

R4-10-110. Reactivating an Inactive License

R4-10-111. Display of Licenses and Signs

R4-10-112. Infection Control and Safety Standards

R4-10-114. ~~Disciplinary Action~~ Board Inspection

ARTICLE 2. SCHOOLS

Section

R4-10-201. Application for a ~~School~~ License to Operate a School; Renewal

R4-10-202. School Closure

R4-10-203. General School Requirements

R4-10-204. School Records

R4-10-205. Aesthetic School Requirements

R4-10-206. Cosmetology School Requirements

R4-10-206.1. Hairstyling School Requirements

R4-10-207. Nail Technology School Requirements

R4-10-208. Combined School Requirements

R4-10-209. Demonstrators; Exclusions

R4-10-210. Changes Affecting a License to Operate a School

ARTICLE 3. STUDENTS

Section

R4-10-301. Instruction; Licensed Individuals

R4-10-302. Instructor Curriculum Required Hours

R4-10-303. Aesthetics Curriculum Required 600 Hours

R4-10-304. Cosmetology Curriculum Required 1600 Hours

R4-10-304.1. Hairstyling Curriculum Required 1000 Hours
R4-10-305. Nail Technology Curriculum Required 600 Hours
R4-10-306. Curricula Hours

ARTICLE 4. SALONS

R4-10-401. Application for a ~~Salon~~ License to Operate a Salon
R4-10-402. Changes Affecting a ~~Salon~~ License to Operate a Salon
R4-10-403. Salon Requirements and Minimum Equipment
R4-10-404. Mobile Services
R4-10-405. Shampoo Assistants

ARTICLE 1. GENERAL PROVISIONS

R4-10-101. Definitions

The definitions in A.R.S. §§ 32-501, 32-516, and 32-572 apply to this Chapter. Additionally, in this Chapter unless otherwise specified:

1. "Accredited" means approved by ~~the:~~ any regional or national accreditation organization.
   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, or~~
   f. ~~Western Association of Schools and Colleges.~~
2. "Administrative completeness review" means the Board's process for determining that an applicant has provided all information and documents required by Board statute or rule for an application.
3. "Applicant" means an individual or any of the following seeking licensure by the Board:
   a. If a corporation, any two officers of the corporation;
   b. If a partnership, any two of the partners; or
   c. If a limited liability company, the designated corporate contact person, or if no contact person is designated, any two members of the limited liability company.
4. "Application packet" means the forms and documents the Board requires an applicant to submit.
5. "Bracing" means to use a support that helps to steady or strengthen while performing a procedure.

~~5.~~6. "Certification of hours" means a document that states the total number of hours completed at a school, including:
   a. A written statement of the hours or credits a student received in ~~a~~ the licensed school, ~~or credits a student received,~~ signed by the administrator of the agency authorized to record hours in the jurisdiction in which the applicant received certified or accredited vocational or academic training, affixed with the agency's official seal; or
   b. If a student is transferring from one Arizona school to another under A.R.S. § 32-560, a transfer application that reflects the hours or credits a student received, signed by the administrator of the school where the applicant received certified or accredited training.

~~6.~~7. "Certification of licensure" means the status of the license, signed by the administrator of the agency authorized to issue cosmetology, hairstyling, nail technician, aesthetics, or instructor licenses in the jurisdiction in which the applicant received a license, affixed with the agency's official seal.

8. "Classroom" means an area in which instruction or demonstration is provided regarding theory and practice on models.

~~7.~~9. "Clinic means the area where a student practices cosmetology, hairstyling, nail technology, or aesthetics on the general public for a fee.

~~8.~~10. "Course" means an organized subject matter in which instruction is offered within a given period of time and for which credit toward graduation or certification is given.

~~9.~~11. "Credit" means one earned academic unit of study based on:

a. ~~completing~~ Completing a high school's required number of class sessions per calendar week in a course; or ~~an earned academic unit of study based on attending~~

b. Attending a one-hour class session per calendar week at a community college, an accredited college or university, or a high school.

12. "Crossover hours" means hours of training obtained by a licensed aesthetician, cosmetologist, hair stylist, or nail technician that a school licensee accepts as hours of training required for licensure in a different profession.

~~10.~~13. "Days" means calendar days.

~~11. "Double bracing" means using a stable base of support and two points of contact for the hand while performing a procedure.~~

~~12. "Establishment" means a business that functions as a school or a salon at least an average of 20 hours a week for the majority of the year.~~

~~13.~~14. "Graduation" or "graduated from a school" means completion of the criteria established by a cosmetology, hairstyling, aesthetics, or nail technology school for the course in which the applicant was enrolled including completion of the required curriculum hours.

~~14.~~15. "High school equivalency" means:

a. A high school diploma from a school recognized by the basic education authority or the Department of Education in the jurisdiction in which the school is located,

b. A ~~total~~ passing score ~~of 45 points~~ on a high school equivalency general educational development test or its equivalent as required by the Department of Education,

c. An associate degree or 15 academic credits from a junior college recognized by the basic education authority in the jurisdiction in which the college is located, or

d. Any degree from a college or university recognized by the basic education authority in the jurisdiction in which the college or university is located.

~~15.~~16. "Hour" means one clock hour.

~~16.~~17. "Instructor training" means the courses specified in R4-10-302.

~~17.~~18. "Licensed in another state of the United States or foreign country" means:

a. A governmental regulatory agency in the state or country is authorized to examine the competency of individuals who graduate from a licensed cosmetology, hairstyling, nail technology, or aesthetics school, or instructors for these disciplines; and
b. The governmental regulatory agency issues licenses over which the state or country has regulatory and disciplinary jurisdiction.

19. "Licensed salon or licensed school" means an establishment for which the Board has issued a license to a person under A.R.S. § 32-541 or 32-551, as applicable.

~~18.~~20. "Manager" means an individual ~~licensed by the Board~~ who is responsible for ensuring an ~~establishment's compliance~~ establishment complies with A.R.S. §§ 32-501 et seq. and this Chapter.

~~19.~~21. "Model" means ~~a person~~ an individual or ~~a~~ mannequin on ~~whom~~ which an applicant performs demonstrations for the practical section of a licensing examination ~~or lab~~.

~~20. "Owner" means an individual or entity that has a controlling legal or equitable interest and authority and is responsible for ensuring an establishment's compliance with A.R.S. § 32-501 et seq. and this Chapter.~~

~~21. "Patron" means any client of an establishment or student of a school.~~

22. "Personal knowledge" means actual observation of an individual who practiced aesthetics, cosmetology, hairstyling, or nail technology in any state or country.

23. "Practice" means engaging in the profession of aesthetics, cosmetology, hairstyling, nail technology, or instructor.

24. "Reciprocity" means the procedure for granting an Arizona license to an applicant who received the required hours from a school licensed in another state of the United States or a foreign country or is currently licensed in another state of the United States or a foreign country.

25. "Salon suite" means multiple individually operated and licensed salons that share a physical address except for suite number.

~~25.~~26. "Substantive review" means the Board's process for determining whether an applicant for licensure meets the requirements for the license for which application is made including, if applicable, taking and passing an examination ~~given~~ required by the Board.

~~26.~~27. "Tenth grade equivalency" means:
a. Ten high school credits, including two in English, from any school recognized by the basic education authority or the Department of Education in the jurisdiction in which the credits were obtained;
b. Proof the prospective student is at least 18 years old. Satisfactory proof of age is shown by a government-issued driver's license or identification card, birth certificate, or passport; or

c. High school equivalency.

~~27.~~28. "Transfer application," as used in A.R.S. § 32-560, means an application that documents the transfer of a student from one Arizona cosmetology, hairstyling, nail technology, or aesthetics school to another and contains the student's name, address, identification number, telephone number, and number of hours of instruction received.

29. "Virtual learning" means the use of technology to teach students who may or may not be physically present in a classroom.

R4-10-102. Fees and Charges

A. Under the specific authority provided by A.R.S. § 32-507~~(A)~~ and subject to R4-10-103~~(E)~~, the Board establishes and shall collect the following fees:

1. Initial personal license: ~~$70.00~~ $60.00
2. Personal licensing renewal fees: $60.00
3. Delinquent personal license renewal: ~~$90.00 (~~$60 for personal license renewal as specified under subsection ~~(A)(4)~~ (A)(2) plus $30 for delinquent renewal~~)~~ for every two years or portion of two years that the license is inactive to a maximum of ~~four~~ 10 years
4. Personal reciprocity or universal recognition license: ~~$140.00~~ $60.00
5. Salon initial license: $110.00
6. Salon renewal: $50.00
7. Salon delinquent renewal: $80.00
8. School license: $600.00
9. School renewal: ~~$500.00~~ $250.00
10. Delinquent school renewal: ~~$600.00~~ $350.00

B. An applicant for licensure by examination shall pay directly to the national professional organization with which the Board contracts the amount charged to administer and grade the written and practical examinations.

C. Under the specific authority provided by A.R.S. § 32-507(B) and subject to R4-10-103(E), the Board establishes and shall collect the following charges for the services provided:

1. Board administered educational classes: $25.00
2. ~~Review of examination: $50.00~~
3. ~~Re-grading of examination: $25.00~~

~~4.~~2. Certification of licensure or hours: $30.00

~~5.~~3. For use of an alternative method of payment: $3.00 per transaction

~~6.~~4. For copying public documents: 50¢ per page

~~7.~~5. For audiotapes, videotapes, computer discs, or other media used for recording sounds, images, or information: $15 per tape, disc, or other medium

~~8.~~6. For a list of licensees' names and addresses: 25¢ per name

~~9.~~7. ~~Duplicate~~ Board-issued duplicate license: ~~$20.00~~ $10.00

8. Issuing an updated license following receipt of a notice of salon-suite change: $20

D. As authorized by A.R.S. § 44-6852, the Board shall charge a service fee of $20.00 for the return of a dishonored check or the failure of any other means of payment to be honored plus the actual charges assessed by the financial institution dishonoring the check or other means of payment.

R4-10-103. Payment of Fees

A. A fee is not considered paid until the Board receives the amount required. The Board shall not provide services, administer examinations, or issue certifications or licenses until it receives the required fee.

B. The Board shall accept personal ~~checks~~ check, money order, or credit card only ~~for license renewals~~.

C. If a check for a license renewal is returned because it is dishonored ~~for any reason including insufficient funds~~, the renewal application is incomplete, and any license renewal ~~that has been~~ issued is void effective the date the Board mails written notice to the licensee that the license is void.

~~C.~~**D.** An applicant or licensee whose fee payment to the Board is dishonored for any reason, including ~~an~~ insufficient funds, ~~check~~ is not entitled to a further service, ~~examination,~~ certification, or license until the Board receives the following:

1. The amount of the fee for which the payment was dishonored;
2. The ~~penalty~~ service charge provided in R4-10-102~~(21)~~ (D); and
3. If applicable, the delinquent fee for each year or part of a year the license was inactive for the type of license to be renewed.

~~D.~~**E.** Fees are nonrefundable except if A.R.S. § 41-1077 applies.

~~E.~~**F.** The Board shall not refund fees tendered for $5.00 or less over the amount specified in R4-10-102, except the Board shall refund fees paid over the amount specified as the maximum fee in A.R.S. § 32-507.

R4-10-104. Application for License by Examination

A. An applicant for an aesthetics, cosmetology, hairstyling, nail technology, or instructor license by examination shall submit to the Board:

1. The fee required for an initial personal license in R4-10-102; and
2. An application provided by the Board that contains:
   a. A passport quality photo of the applicant;
   b. The applicant's name, address, e-mail address, telephone number, Social Security number, gender, and birth date;
   c. The name and address of each licensed school attended by the applicant;
   d. The name of course completed, the name of the school where completed, and the starting date and date of graduation;
   e. If previously licensed by the Board, type of license, license number, license expiration date, and the name used on the license;
   f. A statement of whether the applicant has ever had an aesthetics, cosmetology, hairstyling, nail technology, or instructor license suspended or revoked in any state of the United States or foreign country;
   g. A statement by the applicant verifying the truthfulness of the information provided by the applicant; and
   h. The applicant's signature.; and
3. Documentation specified under A.R.S. § 41-1080 indicating the applicant's presence in the United States is authorized under federal law.

B. In addition to complying with the requirements in subsection (A), an applicant for an aesthetics, cosmetology, hairstyling, or nail technology license by examination shall:

1. Comply with A.R.S. § 32-510, 32-511, 32-512, or 32-512.01 by submitting documentation of 10th grade equivalency; and
2. Comply with A.R.S. § 32-510, 32-511, 32-512, or 32-512.01 by submitting a copy of one of the following:
   a. If the applicant graduated from a course presented by a school licensed by the Board, a written statement signed by the administrator of the school that documents proof of graduation and completion of all required hours; or
   b. If the applicant attended more than one licensed school in Arizona, a copy of a transfer application or certification of hours from each school attended that includes the starting and ending dates, and a written statement signed by the administrator of each school that documents proof of the total number of hours completed at the school, and, if applicable, proof of graduation.;

c. If the applicant completed an apprenticeship program as described under A.R.S. § 32-511(3)(c), ensure the Department of Economic Security provides notice to the Board that the applicant completed the described program; and

d. Comply with R4-10-102 regarding examination fees.

C. In addition to complying with the requirements in subsection (A), an applicant for an instructor license by examination shall:

1. Comply with A.R.S. § 32-531 by submitting the following:
   a. Documentation, as specified in subsection (C)(3), of required work experience;
   b. Proof of current licensure in the profession in which work experience was gained;
   c. Proof of licensure during the period work experience was gained; and
   d. Proof of attainment of 18 years of age; or
   e. Proof of high school equivalency.
2. If qualifying under A.R.S. § 32-531(3)(a), submit a copy of the following:
   a. ~~Documentation of graduation from a Board-licensed school by a certification~~ Certification of graduation from a licensed school, on a form supplied by the Board, including the starting and ending dates, total number of hours completed, and signature of the administrator of the school; and
   b. If the applicant attended more than one licensed school in Arizona, a copy of a transfer application or certification of hours from each school attended, including the starting and ending dates, total number of hours completed, and signature of the administrator of the school~~.~~; and
3. Documentation of the work experience required by A.R.S. § 32-531, which shall be signed by an owner or manager of a licensed salon, an individual, or a supplier of cosmetology products with personal knowledge of the applicant's licensed experience in the profession for which the applicant seeks an instructor license. The person providing the documentation verifying the applicant's experience shall also indicate the following:
   a. Profession in which applicant gained the experience;
   b. Starting and ending dates of applicant's experience in the profession;
   c. Name of licensed salon and address where applicant gained experience in the profession; and
   d. License number and name of the licensed individual completing the form; or
   e. Name, address, and telephone number of the individual ~~completing~~ providing the information.

R4-10-105. Application for License by Reciprocity; Application for License by Universal Recognition

A. An applicant for an aesthetics, cosmetology, hairstyling, nail technology, or instructor license by reciprocity shall submit the applicable fee required in R4-10-102 and all of the following to the Board:

1. An application provided by the Board and signed by the applicant that contains:
   a. The applicant's name, address, e-mail address, telephone number, gender, ~~passport quality photo,~~ Social Security number, and birth date;
   b. A passport quality photo of the applicant;
   ~~b.~~c. If previously licensed by the Board, the type of license, license number, license expiration date, and the name used on the license; ~~and~~
   ~~c.~~d. A statement of whether the applicant has ever had an aesthetics, cosmetology, hairstyling, nail technology, or instructor license suspended or revoked in any state of the United States or foreign country; and
   e. A statement by the applicant verifying the truthfulness of the information provided by the applicant;
2. A certification of hours and proof of graduation or licensure in another state of the United States or a foreign country that shows the number of hours received in a school or the initial and final dates of licensure~~.~~; and
3. Documentation specified under A.R.S. § 41-1080 indicating the applicant's presence in the United States is authorized under federal law.

B. An applicant for an aesthetics, cosmetology, hairstyling, nail technology, or instructor license by universal recognition, as described at A.R.S. § 32-4302, shall submit the applicable fee required in R4-10-102 and all of the following to the Board:

1. An application provided by the Board and signed by the applicant that contains:
   a. The applicant's name, address, e-mail address, telephone number, gender, Social Security number, and birth date;
   b. A passport quality photo of the applicant; and
   c. A statement by the applicant verifying the truthfulness of the information provided by the applicant;
2. A list of all states in which the applicant is currently licensed and certification from the licensing states that the applicant's license is in good standing;
3. Proof of Arizona residency; and

4. Documentation specified under A.R.S. § 41-1080 indicating the applicant's presence in the United States is authorized under federal law.

R4-10-106. Licensing ~~Time-frames~~ Time Frames

A. The overall, administrative completeness, and substantive review ~~time-frame~~ time frames described in A.R.S. § 41-1072 for each type of ~~approval~~ license granted by the Board ~~is set forth~~ are listed in Table 1. The applicant and ~~the~~ Executive Director of the Board may agree in writing to extend the overall ~~time-frame~~ time frame. The substantive review ~~time-frame~~ time frame may not be extended by more than 25~~%~~ percent of the overall ~~time-frame~~ time frame.

B. ~~The administrative completeness 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~~ time frame begins~~:~~

~~a. For approval to take an examination, approval or denial of school or salon license, or approval or denial of a license by reciprocity,~~ when the Board receives an application packet~~;~~ ~~or~~

~~b. For approval or denial of a license by examination, when the applicant takes an examination~~.

~~2.~~1. If an 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~~ time frame and the overall ~~time-frame~~ 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.~~2. If an application packet is complete, the Board shall send a written notice of administrative completeness to the applicant.

~~4.~~3. If the Board grants a license ~~or approval~~ during the ~~time provided to assess~~ administrative completeness time frame, 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~~ time frame begins on the postmark date of notice of administrative completeness.

1. As part of the substantive review for a ~~school~~ license to operate a school, the Board shall conduct an inspection that may require more than one visit to the school.
2. During the substantive review ~~time-frame~~ time frame, the Board may make one comprehensive written request for additional information or documentation. If the applicant has applied for licensure by examination, the Board shall request evidence of passing the examination required

under R4-10-108. The ~~time-frame~~ 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.

3. If an applicant meets the requirements of A.R.S. ~~§ 32-501 through § 32-575~~ Title 32, Chapter 5 and this Chapter, the Board shall send written notice ~~of approval~~ granting a license to the applicant. ~~If an applicant is applying for approval to take an examination, the notice shall include the date, time, and place the applicant is scheduled to take an examination.~~
4. If an applicant does not meet the requirements of A.R.S. ~~§ 32-501 through § 32-575~~ Title 32, Chapter 5 and this Chapter, the Board shall send a written notice ~~of denial~~ denying a license to the applicant. The Board shall include in the notice of denial ~~including a~~ the basis for the denial and an explanation of the applicant's right to appeal ~~as prescribed in~~ under A.R.S. ~~§ 41-1076~~ Title 41, Chapter 6, Article 10.

D. The Board shall consider an application withdrawn if within 180 days from the application submission date the applicant fails to~~:~~

~~1.~~ ~~Supply~~ supply the missing information under subsection ~~(B)(2)~~ (B)(1) or (C)(2)~~; or~~

~~2. Take an examination~~.

~~**E.** An applicant who does not wish an application withdrawn may request a denial in writing within 180 days from the application submission date.~~

~~**F.**~~**E.** An individual shall not practice as an aesthetician, cosmetologist, hairstylist, instructor, or nail technician until the individual receives and posts the license at the individual's place of employment.

~~**G.**~~**F.** If ~~a time-frame's~~ the last day of a time frame falls on a Saturday, Sunday, or a legal holiday, the Board shall consider the next business day the ~~time-frame's~~ last day of the time frame.

R4-10-107. License Renewal

A. An aesthetician, cosmetologist, hairstylist, nail technician, or instructor licensee shall postmark or electronically submit an application for renewal to the Board on or before the licensee's birthday every two years.

1. If a licensee's birthday falls on a Saturday, Sunday, or legal holiday, the licensee may file the renewal application on the next business day following the licensee's birthday.
2. A renewal application consists of:

a. A form provided by the Board that contains~~:~~ the licensee's name, address, e-mail address, Social Security number, and signature ~~or Personal Identification Number (PIN) supplied by the Board if filed electronically~~;

b. A copy of a government-issued identification containing a photograph of the licensee;

c. If the documentation previously submitted under R4-10-104(A)(3) or R4-10-105(3) did not establish citizenship in the United States or was not a non-expiring work authorization, documentation specified under A.R.S. § 41-1080 that the licensee's presence in the United States continues to be authorized under federal law;

~~b.~~d. A statement of whether the licensee has changed the licensee's name since the previous application and, if name has changed, a copy of a legal document, such as a marriage license or divorce decree, showing the name change; and

~~c.~~e. The fee required in R4-10-102.

B. An establishment licensee shall annually postmark or electronically submit to the Board an application for renewal ~~and the fee required in R4-10-102~~ on or before the license renewal date.

1. If the license renewal date falls on a Saturday, Sunday, or legal holiday, the licensee may file the application on the next business day following the license renewal date.
2. A renewal application consists of:
   a. ~~a~~ A form provided by the Board that contains:
   ~~a.~~ i. The establishment's name ~~and license number~~;
   ii. The licensee's license number; and
   ~~b.~~ iii. If the ~~owner~~ licensee is an individual or partnership, the signature and tax identification number of the ~~owner~~ licensee~~;~~ or if the ~~owner~~ licensee is a corporation or limited liability company, the signature of the authorized signer and the tax identification number of the corporation or limited liability company; ~~if filed electronically, the Personal Identification Number (PIN) supplied by the Board may be used in place of the signature.~~ and
   b. The fee required in R4-10-102.

R4-10-108. Pre-screening Review; Licensing Examination

A. A student planning to apply to the Board for licensure may, but is not required to, request that the Board complete a pre-screening review of whether the student is qualified to take the licensing examination. The student may request the pre-screening review before the student graduates from a licensed school but the student shall not be issued an examination date until the student has completed a minimum of:

1. 1450 hours of cosmetology training,

2. 750 hours of hairstyling training,
3. 500 hours of aesthetics or nail technology training, or
4. 350 hours of cosmetology, hairstyling, aesthetics, or nail technology instructor training.

B. After the Board completes the pre-screening review and determines the student has completed the number of hours specified in subsection (A), the Board or national professional organization with which the Board contracts to administer the licensing examination shall issue an examination date to the student. However, the Board shall not allow the student to take the examination until the student applies for licensure and provides a certification of graduation to the Board.

C. If a student who has been issued an examination date fails to apply for licensure and provide a certification of graduation by the examination date or fails to appear at the examination site at the scheduled examination time, the examination fee is forfeited.

D. A request for a pre-screening review is not an application for licensure and does not guarantee the Board will issue a license.

E. The Board or national professional organization with which the Board contracts to administer the licensing examination shall provide written notice to an applicant of the date, time, and location for the examination.

F. An applicant shall provide photographic identification ~~upon~~ when entering the examination site. The following U.S.-issued forms of identification are acceptable: passport, driver license, bank identification card, military identification, or other government-issued identification card.

G. The licensing examination consists of both a written and practical section. An applicant shall perform a live demonstration on a model during the practical section of the licensing examination. ~~During the live demonstration, the applicant shall:~~

~~1. Provide the model required for the demonstration. If the applicant provides a live model for the demonstration, the live model shall not be a current or former student of aesthetics, cosmetology, or nail technology or a current or former licensee;~~

~~2. Provide all equipment, supplies, tools, or instruments required for the demonstration; and~~

~~3. Comply with all infection control and safety standards specified in R4-10-112, including those regarding blood spills. If an applicant fails to follow proper blood-spill procedures during the demonstration, the examination administrator shall dismiss the applicant from the examination and cause the examination fee to be forfeited.~~

H. If an applicant fails to appear for a licensing examination as scheduled, the applicant forfeits the examination fee. If an applicant arrives at an examination site after the scheduled examination begins, the examination administrator shall not allow the applicant to take the examination. An applicant may reschedule a missed examination by paying another examination fee.

I. An applicant may cancel a scheduled examination date once by providing notice of cancellation at least 48 hours before the examination start time. The Board does not require another examination fee to reschedule a canceled examination.

J. Neither the Board nor the examination administrator shall make examination materials available for inspection or copying by any person. A person shall not attempt to obtain or provide examination materials.

K. An applicant shall not bring and the examination administrator shall not allow written material or recording media to either the written or practical section of the licensing examination. The examination administrator may exclude from the written or practical section of the licensing examination any items the examination administrator believes may impede the fair administration or security of the examination. The examination administrator shall dismiss from the examination an applicant who seeks to impede the fair administration of the examination, or copies or asks for information from another applicant and cause the examination fee to be forfeited.

L. If an applicant passes the examination but fails to complete the licensure process within one year after the date of the examination, the Board shall void the examination scores.

M. If application is made for licensure by reciprocity, the Board shall accept a score on a written or practical examination from another jurisdiction if the examination:

1. Is the same national examination administered in Arizona,
2. The score obtained by the applicant is at least the same as the passing score required by the Board at the time the applicant took the examination in the other jurisdiction, and
3. The applicant provides the Board with documentation from the other jurisdiction verifying the passing score and that the score was received within one year before the application for licensure by reciprocity.

N. The Board or national professional organization with which the Board contracts to administer the licensing examination shall conduct~~:~~

~~1.~~ ~~The~~ the practical section of the licensing examination in English and an applicant shall submit answers in English~~;~~.

~~2.~~ The written section of the licensing examination ~~in English and other~~ is conducted in languages specified by the national professional organization~~. An~~ and chosen by the applicant ~~may choose to take the written section of the licensing examination in any of the offered languages~~.

R4-10-110. Reactivating an Inactive License

A. A cosmetology, hairstyling, nail technology, aesthetics, or instructor license that has been inactive for less than two years may be reactivated by paying the delinquent renewal fee.

B. A cosmetology, hairstyling, nail technology, aesthetics, or instructor license that has been inactive for more than two years, but less than ~~five~~ 10 years, may be reactivated by the inactive licensee paying the delinquent renewal fee, as described in R4-10-102(A)(3), and paying for and completing the infection protection class and law review class, offered by the Board.

~~**C.** A cosmetology, hairstyling, nail technology, aesthetics, or instructor license that has been inactive for more than five years, but less than 10 years, may be reactivated by the inactive licensee if the licensee does all of the following:~~

~~1. Provides a certification of licensure;~~

~~2. Completes the infection protection class and law review class given by the Board;~~

~~3. Takes and passes the Board examination pertaining to the type of license formerly held; and~~

~~4. Pays for the classes required under subsection (C)(2) and the delinquent renewal fee.~~

~~**D.**~~**C.** If a cosmetology, hairstyling, nail technology, aesthetics, or instructor license has been inactive for more than 10 years, the inactive licensee shall pay 10 years of delinquent renewal fees and comply with all application requirements in R4-10-104 before practicing or teaching cosmetology in Arizona.

R4-10-111. Display of Licenses and Signs

A. ~~The~~ An establishment licensee shall ensure the name on ~~an~~ the establishment's ~~exterior~~ sign, advertising, and publications ~~shall be~~ is the same as the name on the ~~establishment~~ license to operate the establishment issued by the Board. The establishment's ~~exterior~~ sign shall ~~contain lettering at least 2 1/2 inches in height~~ be prominently posted.

B. A school licensee shall: ~~prominently~~

1. Prominently post a ~~class~~ course schedule that lists the names of instructors and ~~classes~~ courses~~.~~; and
2. ~~The school shall display~~ Display the licenses of the school licensee and ~~instructor licenses~~ all instructors near the school entrance, visible to the public.

C. A salon licensee shall:

1. ~~prominently~~ Prominently post the license of the salon ~~license~~ licensee, and
2. ~~ensure~~ Ensure that the personal license of each licensee performing services in the salon is posted at the licensee's work station.

D. A licensee performing mobile services shall prominently display in the area where mobile services are provided:

1. ~~a duplicate~~ A photocopy of the licensee's personal license or the licensee's Board-issued, wallet-size license card, and ~~establishment~~

2. A photocopy of the Board-issued license to operate a salon or Board-issued, wallet-size license card to operate a salon ~~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~~ If applicable, a salon licensee shall prominently post a ~~notice~~ sign that reads: "These ~~of salon~~ services ~~that~~ are not regulated by the Arizona Board of Cosmetology" and include a list services provided but not regulated ~~and that are provided at the salon~~.

R4-10-112. Infection Control and Safety Standards

A. An establishment licensee shall ensure the establishment ~~have~~ has and ~~maintain~~ maintains the following minimum equipment and supplies:

1. Non-leaking, solid-side waste receptacles with liners, which ~~shall be~~ are emptied, cleaned, and disinfected daily;
2. Ventilated, covered, containers for soiled linens including towels and capes;
3. ~~Closed~~ Covered, clean containers or cabinets to hold clean linens including towels and capes;
4. ~~A covered~~ 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.~~a. Is set up with disinfectant solution at all times the establishment is open, and
   ~~c.~~b. Is changed as determined by the manufacturer's instructions or when visibly cloudy or contaminated; and
5. An Environmental Protection Agency (EPA)-registered bactericidal, virucidal, or fungicidal, ~~and pseudomonacidal (formulated for hospitals)~~ disinfectant effective against HIV and human hepatitis B virus, 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. A licensee or student shall disinfect non-electrical equipment by

1. ~~Non-electrical equipment shall be disinfected by cleaning~~ 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~~ storing tools and instruments. A licensee or student shall:

1. ~~A~~ Place a tool or ~~implement~~ instrument that has been used on a client or soiled in any manner ~~shall be placed~~ in a covered ~~properly labeled~~ receptacle that is labeled "dirty"; and
2. ~~A~~ Place a disinfected ~~implement~~ instrument ~~shall be stored~~ in a disinfected, dry, covered container that is labeled "ready to use" and ~~isolated~~ isolate the disinfected instrument from contaminants.

D. Procedure for disinfecting electrical equipment, which shall be in good repair, before each use. A licensee or student shall disinfect electrical equipment by:

1. ~~Remove~~ Removing all foreign matter from the equipment;
2. ~~Clean~~ Cleaning and ~~spray~~ spraying or ~~wipe~~ wiping with ~~a~~ an EPA-registered bactericidal, virucidal, or fungicidal disinfectant, compatible with electrical equipment, as required in subsection (A)(5) ~~or (A)(6)~~, ensuring the electrical equipment is in contact with the disinfectant for the time specified on the disinfectant label;
3. Storing the disinfected electrical equipment in a clean place separated from cords for the electrical equipment; and

~~3.~~4. ~~Disinfect~~ If the electrical equipment has removable parts, disinfecting the removed parts as described in subsection (B).

E. Tools, instruments, and supplies. A licensee or student shall:

1. ~~All~~ Dispose of 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~~ by placing them in a waste receptacle immediately after use;
2. ~~Disinfected~~ Not store or carry disinfected tools and instruments ~~shall not be stored~~ in a leather or cloth ~~storage~~ pouch or pocket;
3. ~~A~~ Dispose of a sharp cosmetology tool or ~~implement that is to be disposed of shall be sealed~~ instrument by sealing the tool or instrument in a rigid, puncture-proof container and ~~disposed~~ disposing ~~of~~ in a manner that keeps licensees, students, ~~and~~ clients, and sanitation workers safe;
4. ~~An instrument or supply shall not be carried in or on a garment while practicing in the establishment;~~

~~5.~~4. ~~Clips~~ Not place clips or other tools and instruments ~~shall not be placed~~ in ~~mouths~~ the mouth, ~~pockets~~ pocket, or other ~~unsanitized holders~~ holder that cannot be cleaned and disinfected;

~~6.~~5. ~~Pencil~~ Sharpen pencil cosmetics ~~shall be sharpened~~ before each use and clean and disinfect the sharpener after each use; and

~~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.~~6. 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 blood or other body fluids during a service, ~~licensees and students~~ a licensee or student shall stop the service and:

1. ~~Before returning to service,~~ If the wound is on the licensee's or student's hand, the licensee or student shall:
   a. ~~clean~~ Clean the wound with an antiseptic solution;
~~2.~~ b. Cover the wound with a sterile bandage; and
~~3.~~ c. ~~If the wound is on a licensee's or student's hand in an area that can be covered by~~ Cover the wounded area with 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.~~2. ~~Blood-stained~~ Discard all 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.~~3. ~~All~~ Disinfect all equipment, tools, and instruments that ~~have come~~ came in contact with blood or other body fluids ~~shall be disinfected~~ as discussed in subsections ~~(A)(6)~~ (A)(5) and (B); and
~~6.~~4. ~~Electrical~~ Disinfect electrical equipment ~~shall be disinfected~~ as discussed in subsection (D).

G. ~~All~~ An establishment licensee shall ensure all circulating and non-circulating tubs or spas ~~shall be~~ are cleaned as follows ~~using the disinfectant in subsection (A)(5) or (6)~~:

1. After each client or service, complete all of the following:
   a. Drain the tub;
   b. Clean the tub according to manufacturer's instructions, taking special care to remove all film, especially at the water line;
   c. Rinse the tub;
   d. Fill the tub with water and disinfectant as in subsection (A)(5) ~~or (6)~~; and
   e. Allow the disinfectant to stand for non-circulating tubs or to circulate for circulating tubs for the time specified in manufacturer's instructions.
2. At the end of the day, complete all of the following:

1. Drain the tub;

~~a.~~2. Remove all filters, screens, drains, jets, and other removable parts;

~~b.~~3. Scrub all removed parts with a brush and soap or detergent until free from debris;

~~c.~~4. Rinse the removed parts;

~~d.~~5. Completely immerse the removed parts in the ~~solution described in~~ disinfectant listed under subsection (A)(5);

~~e.~~6. Rinse the tub;

~~f. Air dry; and~~

~~g.~~7. Replace the disinfected parts ~~in the tubs or store in a disinfected, dry, covered container.~~;

8. Fill the tub with clean water and the amount of disinfectant proper for the volume of water;

9. Circulate the water and disinfectant for the full contact time listed on the manufacturer's label. If the tube does not have jets, allow the water and disinfectant to stand for the full contact time listed on the manufacturer's label; and

10. Drain the tub.

H. Personal cleanliness. A licensee or student shall:

1. ~~A licensee or student shall thoroughly~~ Thoroughly wash his or her hands with soap and warm water or any equally effective ~~cleansing agent~~ hand sanitizer immediately before providing services to each client, before checking a student's work on a client, or after smoking, eating, or using the restroom;

~~2. A licensee or student shall wear clothing and shoes;~~

~~3.~~2. ~~A client's skin upon which services will be performed shall be washed~~ Wash a client's skin on which services will be performed with soap and warm water or ~~wiped~~ wipe the skin with ~~disinfectant or~~ waterless hand ~~cleanser~~ sanitizer approved for use on skin before a nail technology service, including a pedicure service, is provided; and

~~4.~~3. ~~A licensee or student shall wear~~ Wear clean, fluid-proof, single-use, protective gloves while performing any service if any bodily discharge is present from the licensee, student, or client or if any discharge is likely to occur from the client because of services being performed. Discard gloves immediately after use.

I. Disease and infestation. A licensee or student shall not perform a service on an individual:

~~1. A licensee or student who has a contagious disease shall not perform services on a client until the licensee or student takes medically approved measures to prevent transmission of the disease; and~~

~~2.~~1. ~~Services shall not be performed on an individual who~~ Who has a contagious disease that may be transmitted by the performing of the ~~services~~ service on the individual; or

2. Who is exhibiting a sign of infection such as reddened, erupted, or open skin.

J. Client protection. A licensee or student shall:

1. ~~A~~ Protect a client's clothing ~~shall be protected~~ from direct contact with shampoo bowls or headrests by ~~the use of~~ using clean linens, capes, robes, or protective neck strips;
2. ~~Infection~~ Maintain infection control ~~shall be maintained~~ and perform services ~~shall be performed~~ safely ~~to protect the licensee or student and client~~;
3. ~~Double~~ Use bracing ~~shall be used~~ around a client's eyes, ears, lips, fingers, and toes; and
4. ~~A~~ Provide a client ~~shall receive~~ a pre- and post-analysis that includes appropriate instructions for follow-up.

K. Care and storage of linens including towels, robes, and capes. An establishment licensee shall ensure:

1. Clean linens ~~shall be~~ are provided for each client and laundered after each use;
2. Soiled linens ~~shall be~~ are stored in a ventilated receptacle;
3. Laundering ~~shall include~~ includes ~~disinfecting~~ washing linens ~~by~~ using detergent and bleach; and
4. Clean linens ~~shall be~~ are stored in ~~closed~~ covered containers or closets.

L. Care and storage of products including liquids, creams, powders, cosmetics, chemicals, and disinfectants. An establishment licensee shall ensure:

1. All products ~~shall be~~ are stored in a container that is clean and free of corrosion, ~~and~~ labeled to identify contents, and in compliance with state and local laws and manufacturer's instruction;
2. All products containing poisonous substances ~~shall be~~ are distinctly marked;
3. When only a portion of a cosmetic product is to be used, the portion ~~shall be~~ is removed from the container in a way that does not contaminate the remaining product; and
4. Once dispensed, a product ~~shall not be~~ is not returned to the original container.

M. Prohibited hazardous substances and use of products. An establishment licensee shall ensure

1. ~~An establishment shall not have on the premises~~ No cosmetic products containing hazardous substances banned by the U.S. Food and Drug Administration (FDA) for use in cosmetic products, including liquid methyl methacrylate monomer and methylene chloride, are on the establishment premises; ~~and~~
2. ~~Product shall be~~ All products are used only in a manner approved by the FDA, EPA, or other regulatory agency; and
3. Instructions on the manufacturer's label are followed at all times.

N. Care of headrests, shampoo bowls, and treatment tables. An establishment licensee shall ensure:

1. Headrests of chairs and treatment tables ~~shall be~~ are disinfected at least daily; ~~and treatment~~
2. Treatment tables are covered with a clean linen or paper sheet for each client;
~~2.~~3. Shampoo bowls and neck rests ~~shall be cleansed~~ are cleaned with soap and warm water or other detergent and disinfected after each use and kept in good repair; and

~~3.~~4. Shampoo neck rests ~~shall be~~ are disinfected with a solution ~~described in~~ listed under subsection (A)(5) ~~or (A)(6)~~ before each use.

O. Prohibited devices, tools, or chemicals; invasive procedures. An establishment licensee shall ensure:

1. Except as provided in this subsection and subsection (O)(2), all of the following devices, tools, or chemicals are ~~prohibited from being~~ not present in or used in a salon:
   a. A devise, tool, or chemical ~~that is~~ designed or used to pierce the dermis; and
   b. A low-frequency, or low-power ultrasonic, or sonic device except one intended for skin cleansing, exfoliating, or product application.
2. A ~~salon or~~ licensee that provides an invasive procedure, using a device, tool, or chemical described in subsection (O)(1), that is otherwise allowed under Arizona law, complies ~~shall ensure that the performance of the procedure complies~~ with statutes and rules governing the procedure, training, or supervision as required by the relevant, regulatory authorities.

P. Skin peeling. A licensee shall:

1. Except as provided in ~~subsections (O)(1) and~~ subsection (O)(2), remove only the non-living, uppermost layer of skin, known as the epidermis, ~~may be removed~~ by any method or means and only for the purpose of beautification;
2. ~~A~~ Not use a skin removal technique or practice that affects the dermal layer of the skin ~~is prohibited~~;
3. ~~Skin removal products shall not be mixed~~ Not mix or ~~combined~~ combine skin removal products except as required by manufacturer instructions and approved by the FDA; and
4. ~~Only~~ Use only commercially available products for the removal of epidermis for the purpose of beautification ~~shall be used~~.

Q. Restricted use tools and instruments. A licensee shall use:

1. ~~Nippers shall be used~~ Nippers only to remove loose cuticles; and
2. Pre-sterilized, disposal lancets ~~shall be used~~ only to dilate follicles and release sebaceous debris from the follicle.

R. ~~Cleanliness~~ An establishment licensee shall maintain cleanliness and repair of the establishment ~~shall be maintained~~ according to the following guidelines~~.~~:

1. ~~After each client,~~ Discard hair and nail clippings ~~shall~~ immediately ~~be discarded~~ after each client;
2. ~~All areas of the establishment, including storerooms and passageways, shall be well lighted, ventilated, and free from infectious agents;~~
3. ~~Floors, walls, woodwork, ceilings, furniture, furnishings, and fixtures shall be clean and in good repair;~~

4.2. ~~Shampoo~~ Clean and disinfect shampoo bowls ~~shall be clean and disinfected by~~ using a disinfectant ~~discussed in~~ listed under subsection (A)(5) ~~or (A)(6)~~ and ensure drains ~~shall be~~ are free running;

5.3. ~~Counters~~ Disinfect counters and all work areas ~~shall be disinfected~~ after each client by using a disinfectant discussed in subsection (A)(5) ~~or (A)(6); and~~

~~6. Waste or refuse shall be removed timely so there is no accumulation~~.

S. ~~Building~~ An establishment licensee, including the licensee of a salon in a residence, shall ensure compliance with the following building standards~~.~~:

1. There ~~shall~~ is ~~be a direct~~ an entrance into the establishment from the outside. If the establishment is a salon in a residence, the entrance may be~~, not~~ through living quarters~~, into the establishment~~;

~~2. If connected to a residence, all passageways between the living quarters and the establishment shall have a door that remains closed during business hours;~~

3.2. ~~The~~ Except for a salon in a residence, an establishment shall not be used for residential or other living purposes;

4.3. The establishment ~~shall have~~ has a restroom open and available for employees' and clients' use during business hours. The restroom ~~that~~ has a wash basin, running water, liquid soap, and disposable towels; is kept clean and sanitary at all times; and is in close enough proximity to the ~~salon~~ establishment to ensure safety for cosmetology procedures during use; ~~and is open and available for use by employees and clients of the salon;~~

5.4. ~~Any excess~~ Extra material stored in ~~a~~ the establishment restroom ~~shall be in a~~ is locked in a cabinet;

6.5. The establishment, including a mobile unit, ~~shall have~~ has sufficient hot and cold running water;

~~7. A mobile unit shall have sufficient water at all times;~~ and

8.6. The establishment ~~shall have~~ has a natural or mechanical ventilation and air filtration system that provides free flow of air to each room, prevents the build-up of emissions and particulates, keeps odors and diffusions from chemicals and solutions at a safe level, and provides sufficient air circulation and oxygen.

T. ~~General~~ An establishment licensee shall ensure compliance with the following general requirements.

1. ~~The establishment shall have a~~ A first-aid kit that contains, at a minimum, ~~small~~ bandages, gauze, antiseptic, and antibiotic cream; is present in the establishment and easily accessible; ~~and a blood-spill kit that contains disposable bags, gloves, and hazardous waste stickers~~;
2. ~~No bird or animal, except~~ Only fish in aquariums and service animals, are allowed in the establishment; and
3. The establishment ~~shall comply~~ complies with federal and state requirements.

R4-10-113. Establishment Management

A. The manager of ~~each~~ an establishment shall ensure ~~that~~:

1. Licenses, notices, and the Board's most recent inspection sheet are prominently displayed;
2. The establishment and all licensees in a salon, school, or a mobile service area have current licenses;
3. Infection control and safety standards are maintained.

B. The Board shall hold the ~~salon and school owner~~ establishment licensee and ~~salon and school~~ manager or director ~~shall be~~ responsible for all violations of requirements enumerated in subsection (A)~~, occurring~~ that occur within the ~~salon, school, or mobile service areas~~ establishment.

C. If a salon ~~owner~~ licensee rents or leases space within the salon to a person who obtains a separate ~~salon~~ license to operate a salon, the Board shall hold the ~~that~~ second licensee and ~~their salon~~ manager ~~and the owner shall each be~~ responsible for all violations of requirements enumerated in subsection (A) ~~occurring~~ that occur within the portion of the salon the second ~~licensee's licensed portion of the salon, and are each responsible for the common areas~~ licensee is licensed to operate.

R4-10-114. ~~Disciplinary Action~~ Board Inspection

A. ~~Licensees~~ A licensee or manager of an establishment shall permit ~~an~~ a Board inspector or ~~Board~~ representative to inspect the premises of ~~any salon or school~~ the establishment regardless of whether the establishment has been identified in a complaint.

B. ~~, or other location identified by a complaint or the~~ A Board~~,~~ inspector or representative may inspect the premises of a location alleged to be ~~alleging the location is~~ operating as a salon or school without a license from the Board.

~~B.~~C. Board action is required to dismiss a complaint.

R4-10-115. Rehearing or Review of ~~Decisions~~ a Board Decision

A. ~~Except as provided in subsection (G), any party in a contested case before the Board who is aggrieved by a decision rendered in such case may file with the Board, not later than 15 calendar days after service of the decision, a written motion for rehearing or review of the decision specifying particular grounds therefor. For purposes of this subsection, a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party's last known residence or place of business.~~ The Board shall provide for a rehearing or review of its decisions under A.R.S. Title41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.

B. Except as provided in subsection (H), a party is required to file a motion for rehearing or review of a Board decision, within 30 calendar days after service of the decision, to exhaust the party's administrative remedies.

~~B.~~C. A motion for rehearing or review may be amended at any time before it is ruled ~~upon~~ on by the Board. A response may be filed within ~~10~~ 15 calendar days after service of ~~such~~ a motion or amended motion by any party. The Board may require the filing of written briefs ~~upon~~ regarding the issues raised in the motion and may provide for oral argument.

~~C.~~D. ~~A~~ The Board may grant 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 agency or its hearing officer or the prevailing party,~~ or any order or abuse of discretion~~, whereby~~ that deprived the moving party ~~was deprived~~ of a fair hearing;
2. Misconduct of the Board or its staff, ~~or its~~ an administrative hearing officer, or the prevailing party;
3 Accident or surprise ~~which~~ that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence ~~which~~ 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 during the progress of the proceedings; or
7. A decision ~~which~~ that is not justified by the evidence or is contrary to law.

~~D.~~E. ~~Not later than 10 calendar days after the Board's receipt of a motion for rehearing or review, the~~ The Board may affirm or modify the decision or grant a rehearing or review to any of the parties ~~and~~ on all or part of the issues for any of the reasons ~~set forth~~ in subsection ~~(C)~~ (D). ~~An order granting a rehearing or review~~ The Board shall specify ~~with particularity~~ the ~~ground or~~ particular grounds ~~on which the rehearing or review is granted, and the rehearing or review shall cover only those matters so specified~~ for any order modifying a decision or granting a rehearing or review. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order. If a rehearing is granted, the Board shall hold the rehearing within 60 days after the date on the order granting the rehearing.

~~E.~~F. ~~Not~~ No later than ~~15~~ 30 calendar days after the date of a decision ~~is rendered~~ and after giving the parties notice and an opportunity to be heard, the Board may, on its own initiative, order a rehearing or review of its decision for any reason for which it might have granted a rehearing or review on motion of a party. ~~After giving the parties or their counsel notice and an opportunity to be heard on~~

~~the matter, the~~ The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. ~~In either case the~~ An order granting ~~such~~ a rehearing or review shall specify the grounds ~~therefor~~ on which the rehearing or review is granted.

~~F.~~G. When a motion for rehearing or review is based ~~upon~~ on affidavits, they shall be served with the motion. An opposing party may, within ~~10~~ 20 calendar days after ~~such~~ service, serve opposing affidavits~~, which period~~ . This time may be extended for an additional period not exceeding 20 calendar days by the Board ~~for~~ when there is a showing of good cause ~~shown~~ or ~~by~~ written stipulation of the parties. Reply affidavits may be permitted.

~~G.~~H. If ~~in a particular decision~~ the Board makes a specific ~~findings that the immediate effectiveness of the decision is necessary for the immediate preservation of the~~ finding that a particular decision needs to be effective immediately to preserve public peace, health, or safety and that a rehearing or review of the decision is impractical, unnecessary, or contrary to the public interest, the Board may issue the decision ~~may be issued~~ as a final decision without an opportunity for rehearing or review. ~~An application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions.~~

~~H.~~ I. ~~For purposes of this Section, the terms "contested case" and "party" shall be defined as provided in A.R.S. § 41-1001.~~ A Board order is final on expiration of the time for filing a motion for review or rehearing or on denial of a motion for review or rehearing, whichever is later. A party that has exhausted the party's administrative remedies may appeal a final order of the Board under A.R.S. Title 12, Chapter 7, Article 6.

J. A person that files a complaint with the Board against a licensee:

1. Is not a party to:
   a. A Board administrative action, decision, or proceeding; or
   b. A court proceeding for judicial review under A.R.S. Title 12, Chapter 7, Article 6;and
2. Is not entitled to seek rehearing or review of a Board action or decision under this Section.

Table 1. ~~Time-frames~~ Time Frames (in days)

Type of Approval	Statutory Authority	Overall ~~Time-frame~~ Time Frame	Administrative Completeness ~~Time-frame~~ Time Frame	Substantive Review ~~Time-frame~~ Time Frame
~~Approval to Take an Examination~~	~~A.R.S. §§ 32-514, 32-515, 32-533~~	~~90~~	~~60~~	~~30~~

License by Examination	A.R.S. §§ 32-510, 32-511, 32-512, 32-512.01, 32-531	~~60~~ 90	~~30~~ 60	30
License by Reciprocity or Universal Recognition	A.R.S. §§ 32-513, 32-532, 32-4302	60	30	30
School License	A.R.S. § 32-551	90	30	60
License Renewal	A.R.S. §§ 32-517, 32-535, 544, 32-564	75	45	30
Salon License	A.R.S. §§ 32-541, 32-542	90	30	60
License Reactivation	A.R.S. § 32-518	30	15	15

ARTICLE 2. SCHOOLS

R4-10-201. Application for a ~~School~~ License to Operate a School; Renewal

A. An applicant for a ~~school~~ license to operate a school shall submit the documents required in A.R.S. § 32-551 and:

1. An application, on a form provided by the Board, which is signed by the applicant~~,~~ and ~~notarized that contains~~ provides the following information:
   a. The applicant's name, address, e-mail address, federal tax identification number, and telephone number;
   b. If the applicant is a partnership, each partner's name, ~~and~~ address, and an identification of whether each is a limited or general partner;
   c. If the applicant is a corporation, the state of incorporation and ~~the~~ name, title, and address of at least two officers of the corporation and the statutory agent;
   d. If the applicant is a limited liability company, name and address of each member, manager, and statutory agent;

e. If the applicant is an Arizona school district or community college:

i. Office address of the school district or community college, and

ii. Number of the school district and name of the superintendent, or

iii. Name of the community college dean;

~~d.~~f. The name under which the school will be operated as registered with the Arizona Secretary of State;

~~e.~~g. The name and Board-issued license number of the instructor in charge of the school;

~~f.~~h. If an existing school, the date the applicant will be assuming ownership; ~~and~~

~~g.~~i. If a new school, the scheduled date for opening the school; and

j. A statement by the applicant verifying the truthfulness of the information provided by the applicant;

2. ~~If a partnership, a copy of the partnership agreement;~~ The following evidence of business organization, as applicable:

a. Copy of the partnership agreement for a partnership,

b. Copy of the articles of incorporation and a Certificate of Good Standing from the Arizona Corporation Commission for a corporation, or

c. Copy of the articles of organization for a limited liability company.

~~3. If a corporation, the articles of incorporation and a Certificate of Good Standing from the Corporation Commission;~~

~~4.~~3. A signed statement that the establishment has the equipment required by statute and rule for ~~the~~ a school;

~~5.~~4. An ~~unexpected~~ unexecuted student-school contract form, as required ~~by~~ under A.R.S. § 32-558;

~~6.~~5. ~~A~~ An operating schedule that includes the hours of each day and each day of a calendar week during which the school will be open for instruction;

~~7.~~6. A proposed schedule of ~~classes~~ courses to be taught at the school;

~~8.~~7. The name, address, e-mail address, and telephone number of ~~the~~ a bonding company, as required under A.R.S. § 32-551, and a copy of the bond;

~~9.~~8. A copy of all school policies and procedures;

~~10.~~9. A school catalog that contains the information required ~~by~~ under A.R.S. § 32-559 and:

a. The number of days during course enrollment ~~that are~~ necessary to complete the course hours ~~for the course~~;

b. The days and hours of operation, vacation periods, and holidays;

c. ~~A listing of policies~~ Policies regarding leaves of absence, refunds, and vacation approval for students;

~~11.~~10. Demonstrate evidence of compliance with A.R.S. §§ 32-551 through 32-575 and these rules through a school inspection conducted by the Board; and

~~12.~~11. The fee required in R4-10-102.

B. In addition to the requirements in R4-10-107, when renewing a license, a licensee shall submit ~~the following when renewing a license~~:

1. ~~The most recent school catalog that~~ A statement that indicates:
   a. ~~Indicates where any~~ Any modifications, additions, or deletions ~~from~~ to the previously submitted catalog ~~may be found~~;
   b. ~~Contains an index that shows where the information required by A.R.S. § 32-559 is located in the catalog~~ Any changes that have occurred regarding the school's accrediting or approving organization; and
   c. ~~Contains the name of each accrediting or approving organization; and~~ The school continues to maintain all equipment required by statute and rule;
   ~~d. Provides a signed statement that the establishment has the equipment required by statute and rule for the school.~~
2. A subject description for each new course ~~and its schedule~~, if applicable;
3. ~~A new operating schedule if changes will occur beginning with the new license year;~~
4. ~~3.~~ The name, ~~and~~ address, and e-mail address of ~~any~~ a new statutory agent if the statutory agent will change ~~will take effect~~ beginning with the new license year;
5. ~~4.~~ The name and license number of the ~~current licensed~~ instructor in charge of the school; and
6. ~~5.~~ The name, address, e-mail address, and telephone number of the bonding company, the bond number, ~~the~~ expiration date of the bond, and a copy of the bond.

C. The ~~owner of a~~ school licensee shall submit to the Board the terms and conditions of any management contract entered into for the school after the contract is executed;

D. Within five days after a change occurs during the license year, the ~~owner of a~~ school licensee shall submit to the Board ~~the~~ a subject description of any new course; the name of any new statutory agent; ~~or any~~ a description of a change to the ~~catalogue,~~ catalog or school policies, procedures, or hours of operation, ~~generic~~ a copy of the student-school contract, ~~policies, procedures, hours of operation,~~ or a copy of the bond.

R4-10-202. School Closure

A. For purposes of A.R.S. § 32-563, the Board may consider a school to be closed if ~~it~~ the school licensee fails for five consecutive school days to ~~provide~~ ensure instruction is provided in accordance with ~~its~~ the schedule of operations on file with the Board.

1. ~~All~~ The school licensee shall notify all enrolled students and employees ~~shall be notified by the school~~ in writing of a pending closure at least five calendar days before closure of the school, unless the time of ~~such~~ closure could not have been anticipated. A copy of the notice shall be sent to the Board at the time it is delivered to ~~the~~ students and employees.
2. The licensee of a closed school shall release students' and employees' personal belongings, including equipment, tools, and ~~implements shall be released to each student or employee~~ instruments immediately ~~upon request~~ when requested.
~~2.~~3. ~~Student records as specified by~~ As required under A.R.S. § 32-563, the licensee of a closed school shall ~~be sent~~ electronically deliver or otherwise send the following student records to the Board within 10 calendar days after the school ~~closure, including~~ closes:
   a. ~~Copies~~ As specified in R4-10-204, copies of hour sheets documenting all student hours and the current time cards or time records received by the student after the last monthly report before the school ~~closure~~ closed ~~as specified by R4-10-204~~;
   b. ~~A~~ As specified in R4-10-204, a copy of the file of each student who was enrolled the last school day ~~prior to~~ before closure ~~as specified by R4-10-204~~. If a ~~teachout~~ teach-out was arranged with another school ~~which agreed to complete the training~~, the licensee of the closed school shall transfer the student's file ~~shall be transferred~~ to that school; and
   c. A written statement signed by each enrolled student verifying the ~~school's~~ school licensee's compliance with subsection (A)(1) as it applies to students.

B. ~~Failure~~ The Board shall consider failure to comply with subsection (A) ~~may be~~ as possible grounds for refusal to issue a school license to an owner, manager, director, or instructor of the school at the time of ~~the school~~ closure.

R4-10-203. General School Requirements

A. ~~An~~ The licensee of an aesthetics, cosmetology, hairstyling, or nail technology school shall ensure the school complies with R4-10-112 and has the following minimum facilities, equipment, supplies, and materials:
1. One area of instruction for every 20 students;
2. A licensed instructor as manager or director;
3. A desk~~,~~ or table and chair, or other instructional fixtures and facilities for each student during theory instruction;
4. ~~Filing cabinets to hold all school and student records;~~
~~5.~~4. ~~An instruction~~ A board ~~in each room used for~~ on which to write or post materials during instruction;

~~6.~~5. ~~At least two cubic feet of an individual locked area with a different locking device for each enrolled student and each instructor to store personal objects and training kits~~ A secured area for personal items of students and instructors ;

~~7.~~6. A sink area for each 50 students in attendance for the preparation, mixing, and dispensing of supplies and chemicals, and for the disinfection of small tools or instruments;

~~8.~~7. At least one restroom that meets the requirements of R4-10-112; and

~~9.~~8. Separate receptacles for garbage and soiled linens~~; and~~

~~10. One container for wet disinfectant for each student performing aesthetics or nail technology~~.

B. The school licensee shall furnish equipment, tools, instruments, materials, and supplies needed to perform assignments and for instructional purposes, except ~~that the school may require~~ each student may be required to furnish small tools or instruments. ~~All~~ The school licensee shall ensure all equipment, tools, and materials ~~shall be~~ are salon quality and maintained in good repair at all times.

C. The school licensee shall ~~have~~ ensure students have access to the following materials whether in a school library ~~for student use which contains at least the following materials relating to the courses offered by the school~~ or electronically:

1. Standard dictionary;
2. Medical dictionary;
3. Anatomy chart on bones, muscles, nerves, hands, arms, nails, veins, arteries, circulatory system, hair, and skin;
4. Three current periodicals on the art and science of cosmetology;
5. Current cosmetology instruction manuals or textbooks;
6. Current Arizona Board of Cosmetology statutes and rules; and
7. A cosmetology dictionary.

D. ~~Each~~ The school licensee shall maintain at the school a complete file on all current curriculum requirements.

E. ~~A~~ The school licensee shall not pay an enrolled student for time while the student is taking ~~classes~~ courses or receiving credit.

F. ~~A licensed~~ The school licensee may offer a postgraduate or advanced continuing education aesthetics, cosmetology, hairstyling, or nail technology course to currently licensed individuals without a licensed instructor present and to students currently enrolled in the school with a licensed instructor present.

~~1.~~ ~~A~~ The school licensee shall not report ~~post-graduate~~ postgraduate credit hours to the Board or apply the hours toward graduation.

~~2.~~**G.** ~~Currently~~ The school licensee shall not allow enrolled students ~~shall not~~ to perform services ~~upon~~ on a person without ~~an~~ a licensed instructor present.

~~3. A student file is not required for licensed individuals.~~

~~4. Each licensee shall have the licensee's current Board-issued license number onsite.~~

~~**G.**~~H. ~~An~~ A school licensee may enroll an individual licensed by the Board ~~may re-enroll~~ in ~~a licensed~~ the school for a refresher course as a current student~~. Credit~~ and shall submit to the Board a record of hours ~~for training~~ received ~~shall be submitted by the school to the Board~~ in the refresher course.

~~**H.**~~**I.** A school licensee shall establish a periodic grading schedule and ~~keep~~ ensure student transcripts are kept current.

~~**I.**~~**J.** A school licensee shall schedule a minimum of four hours of theory ~~classes~~ courses each week for each full-time student and a minimum of two hours of theory ~~classes~~ courses each week for each part-time student.

~~**J.**~~**K.** A school licensee shall ~~teach~~ ensure safety and infection control measures relating to each subject are taught in conjunction with that subject.

~~**K.**~~**L.** A school licensee shall not solicit students for enrollment at other school sites.

~~**L.**~~**M.** ~~While~~ A school licensee shall ensure that while teaching, instructors ~~shall~~ wear a tag indicating the instructor's name and courses taught.

~~**M.**~~**N.** A school licensee shall ensure compliance with the following:

1. A student ~~shall~~ does not attend school more than 56 hours in any one week.
2. A student ~~shall only operate~~ operates only safe equipment in good repair.
3. A student of aesthetics, cosmetology, hairstyling, or nail technology performs services within the enrolled course, ~~upon~~ on the public or fellow students, only in the presence of a licensed instructor and, except for shampooing, only after completing the basic training specified in R4-10-303, R4-10-304, R4-10-304.1, or R4-10-305.
4. A ~~school shall~~ student is not ~~prevent~~ prevented or ~~discourage a student~~ discouraged from making a complaint to the Board.
5. A ~~school~~ student ~~shall~~ is not ~~dismiss a student~~ dismissed from a scheduled theory instruction or written or practical examination to perform clinical services for the public;
6. While in school, each student ~~shall wear~~ wears a tag indicating the student's name and the course in which the student is enrolled; and
7. If the school has a distant classroom, the ~~school shall ensure that~~ equipment ~~for each~~ in the distant classroom is the same as that required ~~for each course of instruction in the school~~ under this Section; and:

a. Private postsecondary and public educational facilities ~~shall~~ do not extend ~~the school facilities~~ beyond ~~.5 miles apart as verified by Global Positioning System map readings~~ Arizona boundaries;

~~b. Public educational facilities shall not extend the school beyond the school designated campus;~~

~~c.~~b. A ~~duplicate~~ photocopy of the Board-issued ~~school~~ license to operate a school or Board-issued, wallet-size license card to operate a school shall be posted in each distant facility;

~~d.~~c. Duplicate instructor ~~licensees~~ licenses are not required in a distant classroom; and

~~e.~~d. ~~Clinic~~ No clinic~~, retail, all public services, and appointments by the~~ or public services are ~~prohibited~~ allowed in a distant classroom.

R4-10-204. School Records

A. A school licensee shall maintain a student's records at the school where the student is enrolled. The Board may inspect the records at any time the school is open.

B. ~~When~~ A school licensee shall ensure that when a student transfers from one school to another or withdraws, the school from which the student is transferring ~~shall~~ or withdrawing:

1. ~~Keep~~ Keeps a copy of the student's transcript,
2. ~~Forward~~ Forwards one copy of the student's hours to the student and another copy to the Board within three days of the date of transfer or withdrawal, and
3. ~~Withdraw~~ Removes the student ~~on~~ from the school records and ~~the~~ monthly report submitted to the Board in the month following the transfer or withdrawal.

C. ~~Each~~ A school licensee shall ~~keep~~ ensure the following are maintained:

1. A complete and accurate record of the time devoted by each student to the enrolled course of study, including hours devoted to alternative learning and field trips;
2. A complete and accurate record that shows the ~~school's~~ basis for certification of the student hours. A school licensee shall certify only ~~those~~ hours of training the student receives ~~in that~~ at the licensee's school or hours the school licensee accepts as received in another state or country;
3. A complete and accurate individual student file for each student enrolled containing:
   a. ~~Contract and enrollment agreement~~ Executed student-school contract;
   b. Financial aid transcript;
   c. Proof of 10th grade equivalency for a student enrolled in an aesthetics, cosmetology, hairstyling, or nail technology course or proof of high school equivalency or 18 years of age for a student enrolled in an instructor course;

~~d. Identification number;~~

~~e.~~d. Proof of one year of licensed work experience for a student instructor;

~~f.~~e. A statement signed by a school administrator and the student that provides a list of the supplies contained in the training kit provided to the student~~. The contract shall set forth the contents of the kit including~~ and the following information:

~~i. The price of items contained in the kit;~~

~~ii.~~i. When the ~~items shall~~ training kit will be distributed to the student;

~~iii. The manufacturer of the products;~~

~~iv.~~ii. The retail value of the training kit; and

~~v.~~iii. A statement that ~~if~~ substitutions ~~occur~~ made after the ~~contract~~ statement is signed, ~~the substitutions shall~~ will be of comparable value; and

~~g.~~f. A record of completed hours, including proof of cosmetology, hairstyling, nail technology, aesthetics, or instructor hours earned in another state or country and accepted by the school licensee; and

4. Complete and accurate academic transcripts and attendance and hour records or time cards.

D. ~~The~~ A school licensee shall electronically deliver to the Board a complete and accurate monthly report, containing the following information, no later than the 10th day of each month~~. The monthly report shall include~~:

1. ~~For~~ Only for each student enrolled since the prior monthly report ~~only~~:
   a. Name;
   ~~b. Student identification number;~~
   ~~c.~~b. Enrollment date;
   ~~d.~~c. Address and e-mail address;
   ~~e.~~d. Telephone number;
   ~~f.~~e. Type of educational documentation that meets the requirements of R4-10-104;
   ~~g.~~f. Proof of hours received from another ~~Board-licensed~~ school for which the Board issued a license to operate~~,~~ or a school in another state~~,~~ or country~~,~~ and certified by the school licensee, if applicable;
   ~~h.~~g. ~~Proof~~ Acceptance of crossover hours ~~necessary to qualify for R4-10-306~~, if applicable; and
   ~~i.~~h. Birth date.
2. The enrollment category of each student;
3. The name, license number, and work schedule of the instructor in charge of the school~~,~~ and name of the custodian of records;

4. The name, license number, and work schedule of each instructor employed by the school licensee;
5. The signature of the instructor who prepares and certifies ~~that~~ the report is correct;
6. The name ~~of student instructors~~, ~~the~~ scheduled attendance, and ~~the~~ Board-issued license number for each student instructor;
7. For each demonstration given, the name of the demonstrator, ~~the~~ name of the observing instructor, ~~the~~ name of the process or product demonstrated, ~~the~~ number of students in attendance, and ~~the~~ name of the course in which the demonstration was given;
8. Hours received by each student for the prior month, the current month, and total cumulative hours. The school licensee shall not amend total hours without satisfactory proof of error;
9. Signature of each student verifying approval of the certified hours;
10. The ~~school's~~ school licensee's certification of the students who meet ~~the~~ graduation requirements ~~of the school~~, including the day, month, and year of graduation; and
11. The notation "transferred," "withdrawn," or "leave of absence" for students who discontinue training, and the day, month, and year training was discontinued. ~~The school shall provide certification to the student within one week of the hours earned by the student before the student withdraws or takes a leave of absence.~~

E. A school licensee shall credit a student with additional hours earned after graduation if the student completes the required hours for graduation, registers for the ~~Board~~ required examination, and stays in school until the date of the examination.

F. A school licensee is not required to maintain a student file for licensed individuals.

R4-10-205. Aesthetic School Requirements

A. ~~Schools~~ The licensee of a school that ~~provide~~ provides aesthetics 600-hour training for students, 350-hour training for instructors, or both, shall ~~provide~~ ensure the following minimum facilities, equipment, supplies, and materials are provided in addition to ~~that~~ those required ~~by~~ under R4-10-203 and R4-10-204:

1. A work station for each student in attendance to perform aesthetics services to the public for a fee, each having;
   a. A facial chair or table;
   b. A supported table top ~~that is 12" x 18" or larger~~;
   c. A dry, disinfected, covered container to store disinfected tools and instruments as specified under R4-10-112, and
   d. A labeled receptacle for contaminated tools ~~or~~ and instruments as specified under R4-10-112.

2. One steamer machine for each group of four students in attendance during ~~lab~~ classroom instruction and two students in attendance during clinic instruction;
3. One microdermabrasion machine to be used at a non-invasive level;
4. One magnifying lamp of at least 5 diopters for each group of two students in attendance during ~~lab~~ classroom instruction and each group of four students in attendance during clinic instruction;
5. Cleansers;
6. Massage medium;
7. Toner; and
8. ~~Exfolients~~ Exfoliants and masks~~; and~~.
9. ~~Depilatories.~~

B. ~~Each~~ A school licensee shall ~~provide~~ ensure a nonreturnable student training kit ~~for~~, containing at least the following, is provided to each enrolled aesthetics student~~. The kit shall contain at a minimum, the following~~:

1. ~~One~~ Access to an electronic or standard textbook for professional aestheticians;
2. ~~One~~ Access to an electronic or hard copy of the Arizona ~~cosmetology~~ Board of Cosmetology statutes and rules;
3. One disinfected, covered container to store disinfected tools and instruments as specified ~~by~~ under R4-10-112; and
4. ~~A~~ One container for contaminated tools ~~or~~ and instruments as specified under R4-10-112.

R4-10-206. Cosmetology School Requirements

A. ~~Schools~~ The licensee of a school that ~~provide~~ provides cosmetology 1600-hour training for students, 350-hour training for instructors, or both, shall ~~provide~~ ensure the following minimum facilities, equipment, supplies, and materials are provided in addition to ~~that~~ those specified ~~by~~ under R4-10-203 and R4-10-204:

1. A work station for each student in attendance ~~performing~~ to perform cosmetology services to the public for a fee, each having:
   a. A mirror ~~that is at least 18" by 30" when performing services on a~~ for client services;
   b. A table top or counter;
   c. A client chair;
   d. A dry, disinfected, covered receptacle to store disinfected tools and instruments as specified under R4-10-112; and
   e. A container for contaminated tools ~~or~~ and instruments as specified under R4-10-112;

2. One shampoo basin for each group of 10 students in attendance during ~~lab~~ classroom or clinic instruction;
3. One hand-held hair dryer for each student in attendance during ~~lab~~ classroom or clinic instruction;
~~4. One hooded dryer for each group of 20 students in attendance during lab or clinic instruction;~~
~~5. One high-frequency Tesla or violet-ray unit, including a facial and scalp electrode, for each group of 20 students in attendance during practical instruction;~~
~~6.~~4. Two electric clippers in the school;
~~7. Depilatories;~~
~~8.~~5. Chemical hair straighteners;
~~9.~~6. One nail technology table ~~with a 12" x 18" or larger top~~ for each group of 10 students in attendance during practical instruction;
~~10.~~7. A facial work station for each group of 10 students in attendance and receiving ~~lab~~ classroom or clinic aesthetics instruction;
~~11.~~8. A receptacle~~,~~ large enough to completely immerse two feet for each group of 10 students in attendance during ~~lab~~ classroom or clinic nail technology instruction;
~~12.~~9. ~~Two~~ One electronic nail ~~drills~~ file for filing and buffing ~~in the school~~; and
~~13.~~10. Nail products for acrylics, gels, tips, wraps, and polishing.

B. ~~Each~~ A school licensee shall ~~provide~~ ensure a nonreturnable student training kit ~~for~~, containing at least the following, is provided to each enrolled cosmetology student ~~a nonreturnable student training kit. The kit shall contain at a minimum, the following~~:
1. ~~One~~ Access to an electronic or standard textbook for professional cosmetologists;
2. ~~One~~ Access to an electronic or hard copy of the Arizona ~~cosmetology~~ Board of Cosmetology statutes and rules;
3. One disinfected, covered container to store disinfected tools and instruments as specified under R4-10-112; and
4. A container for contaminated tools ~~or~~ and instruments as specified under R4-10-112.

R4-10-206.1. Hairstyling School Requirements

A. ~~A~~ The licensee of a school that provides hairstyling 1000-hour training for students, 350-hour training for instructors, or both, shall ensure the minimum facilities, equipment, supplies, and materials listed under R4-10-206(A)(1) through (6) are provided in addition to those specified under R4-10-203 and R4-10-204.

B. A school licensee shall ensure a nonreturnable student training kit, containing at least the following, is provided to each enrolled hairstyling student:

1. ~~Reasonable access~~ Access to an ~~online~~ electronic or standard textbook for professional hairstylists;
2. ~~Reasonable access~~ Access to an electronic or ~~a~~ hard copy of the Arizona Board of Cosmetology statutes and rules;
3. One disinfected, covered container to store disinfected tools and instruments as specified under R4-10-112; and
4. A container for contaminated tools and instruments as specified under R4-10-112.

R4-10-207. Nail Technology School Requirements

A. ~~A~~ The licensee of a school that provides nail technology 600-hour training for students, 350-hour training for instructors, or both, shall ~~provide~~ ensure the following minimum facilities, tools, instruments, equipment, supplies, and materials are provided, in addition to those ~~required by~~ specified under R4-10-203 and R4-10-204:

1. A work station to perform nail technology services for the public for a fee for each student in attendance containing:
   a. A nail technology table ~~with a top 32" x 16" or larger~~;
   b. A client chair;
   c. A nail technology chair or stool;
   d. A disinfected, covered container to store disinfected tools and instruments as specified ~~in~~ under R4-10-112;
   e. A container with wet disinfectant as specified ~~in~~ under R4-10-112;
   f. A container for soiled tools ~~or~~ and instruments as specified ~~in~~ under R4-10-112;
   g. A waste receptacle as specified ~~in~~ under R4-10-112; and
   h. A disinfectant for blood or body-fluid exposure as specified ~~in~~ under R4-10-112.
2. One container large enough to ~~completely~~ immerse two feet completely, for every five students in attendance during ~~practical training~~ clinic instruction;
3. Nail products for acrylics, gels, tips, wraps, and polishing; and
4. One ultraviolet light.

B. ~~Each~~ A school licensee shall ensure a nonreturnable student training kit, containing at least the following, is provided to each enrolled nail technology student ~~shall have a training kit containing~~:

1. One simulated hand;
2. Disinfected tools and instruments including pusher, nipper, file or porous emery boards, tweezer, nail brush, and finger bowl;

3. One covered container to store disinfected tools and ~~implements~~ instruments as specified ~~by~~ under R4-10-112;
4. A container for soiled tools and instruments as specified ~~in~~ under R4-10-112;
5. ~~A current instruction manual or~~ Access to an electronic or standard textbook ~~of~~ for professional nail technology and access to an electronic or hard copy of the Arizona ~~cosmetology laws~~ Board of Cosmetology statutes and rules;
6. Artificial nail enhancement kit with remover, wrap kit, two dappen dishes, polish kit, nail forms, finishing tools and instruments, and one brush product applicator; and
7. One electric nail file.

R4-10-208. Combined School Requirements

A. A ~~licensed~~ school licensee shall ensure ~~that~~ the following hours are taught to a student enrolled in the specific curriculum before allowing the student to graduate:

1. Aesthetics course - 600 hours,
2. Aesthetics instructor course - 350 hours,
3. Cosmetology course - 1600 hours,
4. Cosmetology instructor course - 350 hours,
5. Hairstyling course – 1000 hours,
6. Hairstyling instructor course – 350 hours,
7. Nail technology course - 600 hours, and
8. Nail technology instructor course - 350 hours.

B. A school licensee that provides training in all of the above courses shall have the minimum records, facilities, equipment, supplies, and materials required ~~by~~ under:

1. R4-10-203,
2. R4-10-204,
3. R4-10-205 except subsection (A)(1) is one work station for each two aesthetics students in attendance,
4. R4-10-206,
5. R4-10-206.1, and
6. R4-10-207 except subsection (A)(1) is one work station for each two nail technology students in attendance.

C. A school licensee that provides the curriculum specified in subsections (A)(3) through (A)(8) only shall have the minimum records, facilities, equipment, supplies, and materials required under:

1. R4-10-203,
2. R4-10-204,
3. R4-10-206,
4. R4-10-206.1, and
5. R4-10-207 except subsection (A)(1) is one work station for each two nail technology students in attendance.

D. A school licensee that provides the curriculum specified in subsections (A)(1) through (A)(6) only shall have the minimum records, facilities, equipment, supplies, and materials required under:

1. R4-10-203,
2. R4-10-204,
3. R4-10-205 except subsection (A)(1) is one work station for each two aesthetics students in attendance,
4. R4-10-206, and
5. R4-10-206.1.

E. A school licensee that provides the curriculum specified in subsections (A)(1), (A)(2), (A)(7) and (A)(8) only shall have the minimum records, facilities, equipment, supplies, and material required under:

1. R4-10-203,
2. R4-10-204,
3. R4-10-205, and
4. R4-10-207.

R4-10-209. Demonstrators; Exclusions

A. A school licensee shall ensure only an individual ~~person~~ who ~~does not hold~~ holds an instructor license ~~shall not~~ or a student instructor is allowed to teach in a school.

B. ~~but~~ A school licensee shall ensure an unlicensed individual ~~may demonstrate to enrolled students any~~ who demonstrates a process, product, or appliance to enrolled students presents the demonstration only when ~~an~~ a licensed instructor is present and observing the demonstration.

~~B.~~C. ~~When demonstrating~~ A school licensee shall ensure an unlicensed individual who conducts a demonstration on a model, ~~the demonstrations shall be confined to an~~ confines the demonstration to an explanation of the products, procedures, and appliances being promoted.

R4-10-210. Changes Affecting a License to Operate a School

A. A licensee shall apply for a new license to operate a school when any of the following occurs:

1. The school address changes;
2. The name of the school changes;
3. If the school licensee is a corporation, the controlling ownership is transferred or the corporation is reorganized; or
4. If the school licensee is a corporation, limited liability company, or partnership, a corporate officer, partner, or statutory agent changes.

B. A school licensee and the instructor in charge shall ensure a Board-issued license to operate a school, indicating the correct ownership of the license, is posted in the school before the school is opened for business.

ARTICLE 3. STUDENTS

R4-10-301. Instruction; Licensed Individuals

~~Licensed schools~~ A school licensee that ~~provide~~ provides ~~instruction~~ a course for ~~licensed~~ individuals ~~pursuant to~~ licensed under this Article shall:

1. Keep a record of the~~:~~ ~~date,~~
   a. Date, time, title, and name of the provider of the course; and ~~along with the attendee's name~~
   b. Names and license ~~number~~ numbers of all attendees;
2. Ensure ~~that~~ the ~~instruction~~ course consists of professional development related to scope of practice as specified ~~by~~ under A.R.S. § 32-501; and
3. Ensure ~~that~~ hours are not granted toward licensing unless ~~it is~~ the hours are part of ~~the approved~~ a course required for licensing and provided by or in the presence of a licensed instructor.

R4-10-302. Instructor Curriculum Required Hours

A. A school licensee shall ensure each student in an aesthetics, cosmetology, hairstyling, or nail technology instructor course completes 350 curriculum hours that ~~includes~~ include the following:

1. Orientation and review of the Arizona Board of Cosmetology statutes and rules;
2. Theory, preparation, and practice curriculum development. This includes:
   a. Developing and using educational aids;
   b. Practical and written presentation principles;
   c. Classroom management evaluation, assessment, and remediation methods;
   d. Diversity in learning including cultural differences;
   e. Methods of teaching;
   f. Professional development including ethics; and

g. Alternative learning;

3. Classroom and clinic oversight.

B. A school licensee may allow a student in an instructor course to satisfy, in part, curriculum hours required under subsection (A)(2) by completing a course at an accredited college or university or an educational institution described under R4-10-101~~(14)~~(15)(c) and (d). Hours obtained under this subsection are subject to the following limits:

1. No more than nine credit hours for cosmetology, hairstyling, or aesthetics;
2. No more than six credit hours for nail technology; and
3. Each ~~college~~ credit hour equals no more than 30 of the clock hours required under subsection (A).

C. A school licensee may allow a student in an instructor course to satisfy the curriculum hours required under subsection (A)(2) by participating in virtual learning.

~~**C.**~~**D.** ~~All~~ A school licensee shall ensure all instruction given by a student instructor ~~shall be~~ is under the direct supervision and observation of a licensed instructor.

~~**D.** A student instructor as a student for the purpose of determining the maximum allowed ratio of 40 students during a theory class and 20 students during a lab or clinic for each licensed instructor in the school.~~

E. A school licensee shall not allow a student instructor ~~shall not~~ to instruct students or check student services performed on the public until the student instructor has received at least 80 hours of ~~basic~~ instructor training.

R4-10-303. Aesthetics Curriculum Required 600 Hours

A. Each student in an aesthetics course shall complete the following curriculum:

1. Theory of aesthetics, infection control, anatomy, physiology and histology of the body, diseases and disorders, and Arizona ~~cosmetology laws~~ Board of Cosmetology statutes and rules; and
2. Clinical and ~~laboratory~~ classroom aesthetics including theory ~~that involves~~ involving all skin types:
   a. Principles and practices of infection control and safety;
   b. Recognition of diseases and the treatment of disorders of the skin;
   c. Interpersonal skills and professional ethics;
   d. Clinical and ~~laboratory~~ classroom practice that includes face and body;
   e. Morphology and treatment of skin, including face and body, by hand and machine;
   f. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
   g. Aesthetics machines, tools, and instruments and their ~~related~~ uses;

h. Alternative skin technology;

i. ~~Pre-~~ Client pre- and post-~~client~~ service consultation, documentation, and analysis;

j. Spa body modalities;

k. Exfoliation modalities;

l. Body and face massage and manipulations;

m. Body and facial hair removal except by electrolysis;

n. Introduction to electricity and light therapy for cosmetic purposes including laser/Intense Pulsed Light (IPL) procedures and devices;

o. Cosmetic enhancement applications; and

p. Required industry standards and ecology, including monitor duties.

B. A school licensee may allow a student in an aesthetics course to satisfy the curriculum hours required under subsection (A)(1) by participating in virtual learning.

~~B.~~C. ~~An aesthetics~~ A school licensee shall not receive remuneration for ~~a~~ an aesthetics student performing clinical services ~~to~~ for the public until the student has received at least 120 hours of aesthetics training; and

~~C.~~D. ~~Each~~ A school licensee shall ensure each student ~~shall be~~ is evaluated for progress and ~~provided suggested remediation of~~ suggestions are provided to the student for remediating deficiencies.

R4-10-304. Cosmetology Curriculum Required 1600 Hours

A. Each student in a cosmetology course shall complete the following curriculum:

1. Theory of cosmetology, infection control, anatomy, physiology and histology of the body, ~~electricity,~~ diseases and disorders, and Arizona ~~cosmetology laws~~ Board of Cosmetology statutes and rules; and
2. Clinical and ~~laboratory~~ classroom cosmetology including theory that involves nails, hair, and skin:
   a. Principles and practices of infection control and safety;
   b. Recognition of diseases and the treatment of disorders of the hair, skin, and nails;
   c. Morphology and treatment of hair, skin, and nails;
   d. Interpersonal skills and professional ethics;
   e. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
   f. Cosmetology machines, tools, and instruments and their ~~related~~ uses;
   g. Chemical texturizing;
   h. Changing existing hair color;
   i. Hair and scalp care;

j. Fundamentals of hairstyling including braiding and extensions;

k. Body, scalp, and facial massage and manipulations;

l. Hair cutting fundamentals;

m. Fundamental aesthetics of the body and face;

n. Fundamentals of nail technology;

o. Clinical and ~~laboratory~~ classroom practice that includes hair, skin, and nails;

p. Alternative hair, skin, and nail technology;

q. ~~Pre-~~ Client pre- and post-~~client~~ service consultation, documentation, and analysis;

r. Body and facial hair removal except by electrolysis;

~~s. Introduction to electricity and light therapy for cosmetic purposes including laser/Intense Pulsed Light (IPL) procedures and devices;~~

~~t.~~s. Cosmetology technology; and

~~u.~~t. Required industry standards and ecology, including monitor duties.

B. A school licensee may allow a student in a cosmetology course to satisfy the curriculum hours required under subsection (A)(1) by participating in virtual learning.

~~B.~~C. A ~~cosmetology~~ school licensee shall not receive remuneration for a cosmetology student performing ~~any~~ clinical services, except shampooing, ~~to~~ for the public until the student has received at least 300 hours of cosmetology training; and

~~C.~~D. ~~Each~~ A school licensee shall ensure each student ~~shall be~~ is evaluated for progress and ~~provided suggested remediation of~~ suggestions are provided to the student for remediating deficiencies.

R4-10-304.1. Hairstyling Curriculum Required 1000 Hours

A. Each student in a hairstyling course shall complete the following curriculum:

1. Theory of hairstyling, infection control, anatomy, diseases and disorders, and Arizona Board of Cosmetology statutes and rules; and
2. Clinical and classroom instruction in hairstyling including theory that involves hair:
   a. Principles and practices of infection control and safety;
   b. Recognition of diseases and the treatment of disorders of the hair and scalp;
   c. Morphology and treatment of hair;
   d. Interpersonal skills and professional ethics;
   e. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
   f. Hairstyling machines, tools, and instruments and their uses;
   g. Chemical texturizing;
   h. Changing existing hair color;

i. Hair and scalp care;

j. Fundamentals of hairstyling including braiding and extensions;

k. Neck and scalp massage and manipulations;

l. Hair cutting fundamentals;

m. Clinical and classroom practice that includes hair;

n. Alternative hair technology;

o. Client pre- and post-service consultation, documentation, and analysis;

p. Hairstyling technology;

q. Facial hair removal except by electrolysis; and

~~q.~~r. Required industry standards and ecology, including monitor duties.

B. A school licensee may allow a student in a hairstyling course to satisfy the curriculum hours required under subsection (A)(1) by participating in virtual learning.

~~B.~~C. A school licensee shall not receive remuneration for a hairstyling student performing clinical services, except shampooing, for the public until the student has received at least 300 hours of hairstyling training; and

~~C.~~D. A school licensee shall ensure each student is evaluated for progress and suggestions are provided to the student for remediating deficiencies.

R4-10-305. Nail Technology Curriculum Required 600 Hours

A. Each student in a nail technology course shall complete the following curriculum:

1. Theory of nail technology; infection control; diseases and disorders of the nails and skin; anatomy; physiology and histology of the limbs, nails, and skin structures; and Arizona ~~state cosmetology laws~~ Board of Cosmetology statutes and rules; and
2. Clinical and ~~laboratory~~ classroom instruction in nail technology including theory that involves nails, skin, and limbs:
   a. Principles and practices of infection control and safety;
   b. Recognition of diseases and the treatment of disorders of the nail and skin;
   c. Massage and manipulation of the limbs;
   d. Interpersonal skills and professional ethics;
   e. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
   f. Nail technology machines, tools, and instruments and their ~~related~~ uses;
   g. Clinical and ~~laboratory~~ classroom practice that includes nails, skin, and limbs;
   h. ~~Pre-~~ Client pre- and post-~~client~~ treatment consultation, documentation, and analysis;
   i. Manicuring, including use of nippers;

j. Pedicuring, including use of nippers;

k. Artificial nail enhancements (application and removal);

l. Alternative nail technology;

m. Electric file use;

n. Pedicure spa modalities;

o. Exfoliation modalities on limbs or the body; and

p. Required industry standards and ecology, including monitor duties.

B. A school licensee may allow a student in a nail technology course to satisfy the curriculum hours required under subsection (A)(1) by participating in virtual learning.

~~B.~~C. A ~~nail technology~~ school licensee shall not receive remuneration for ~~students~~ a nail technology student performing clinical services ~~to~~ for the public until the student has received at least 80 hours of nail technology training; and

~~C.~~D. ~~Each~~ A school licensee shall ensure each student ~~shall be~~ is evaluated for progress and ~~provided suggested remediation of~~ suggestions are provided to the student for remediating deficiencies.

R4-10-306. Curricula Hours

A. A school licensee shall ensure hours of training received in an aesthetics, cosmetology, hairstyling, or nail technology course are not applied toward hours required to obtain an instructor's license.

B. A school licensee shall ensure hours of training received in an instructor course are not applied toward hours required to obtain an aesthetician, cosmetologist, hairstylist, or nail technician license. Hours received in an instructor course may apply toward hours required to reactivate an aesthetics, cosmetology, hairstyling, or nail technology license if the instructor hours are received after inactive status occurs.

C. When evaluating an application for licensure, the Board shall ~~allow the following hours to apply toward licensing:~~ accept crossover hours. The Board shall accept an hour of training as a crossover hour only once.

~~1. 100% of the hours of training received in a nail technology course toward a cosmetologist license;~~

~~2. 100% of the hours of training received in an aesthetics course toward a cosmetologist license;~~

~~3. 100% of the hours of training received in a combined aesthetics and nail technology course toward a cosmetologist license to a maximum of 600 hours;~~

~~4. 100% of the hours of training received in a hairstyling course toward a cosmetologist license;~~

~~5. 100% of the hours of training received in a cosmetology course toward a hairstylist license;~~

~~6. 15% of the hours of training received in a cosmetology course toward a nail technician license;~~

7. ~~15% of the hours of training received in a cosmetology course toward an aesthetician license;~~
8. ~~33% of the hours of training received in a nail technology course toward an aesthetician license;~~
9. ~~66% of the hours of training received in an aesthetics course toward a nail technologist license;~~
10. ~~50% of the hours of training received in a barber course toward a cosmetologist license;~~
11. ~~200 hours of training received for a registered nurse (RN) or clinical nurse specialist (CNS) license toward an aesthetician license;~~
12. ~~100% of the hours of training received by a licensed cosmetologist in a nail technology instructor course toward an aesthetics instructor license. The Board shall require the remaining hours needed for an aesthetics instructor license to be obtained in an aesthetics or cosmetology instructor course;~~
13. ~~100% of the hours of training received by a licensed cosmetologist in a nail technology instructor course toward a cosmetology instructor license. The Board shall require the remaining hours needed for a cosmetology instructor license to be obtained in a cosmetology instructor course;~~
14. ~~100% of the hours of training received by a licensed cosmetologist in an aesthetics instructor course toward a cosmetology instructor license. The Board shall require the remaining hours needed for a cosmetology instructor license to be obtained in a cosmetology instructor course;~~
15. ~~100% of the hours of training received in a barber instructor course toward a cosmetology instructor license. The Board shall require the remaining hours needed for a cosmetology instructor license to be obtained in a cosmetology instructor course. For the purpose of qualifying for the cosmetology instructor examination specified under A.R.S. § 32-531, the Board shall accept one year of licensed barber experience as one year of licensed cosmetology experience; and~~
16. ~~Hours transferred to another course shall be used only once.~~

D. A school licensee shall ensure that when a student completes a course of instruction, the cumulative hours for the student equal, at a minimum, those specified in this Article, as applicable.

E. ~~Infection~~ A school licensee shall ensure that infection control, disinfection procedures, and safety issues ~~shall be~~ are taught with every subject and every procedure.

F. Alternative learning hours are hours ~~that~~ a school licensee may authorize to enable a student to pursue knowledge of cosmetology in an alternative format or at a location other than a salon. A school licensee shall ensure a student is not ~~credit a student~~ credited with more than 20~~%~~ percent of the total hours required for graduation~~, earned during enrollment at the school,~~ as alternative learning hours. The school licensee shall ensure the record of alternative learning hours required under R4-10-204(C) is maintained.

G. A school licensee that ~~provides~~ authorizes alternative ~~format or location in~~ learning hours under subsection (F) shall include details of the alternative learning format ~~and~~ or location in the school ~~policy~~ policies and procedures in the school catalog.

H. ~~Up to~~ A school licensee may grant a maximum of 16 hours ~~of~~ obtained during field trips ~~may be granted~~ toward ~~licensing~~ the hours required for graduation if the field trips ~~for which those hours were granted are part of the approved course of instruction and~~ are provided by or in the presence of a licensed instructor. The school licensee shall ensure the record of field trip hours required under R4-10-204(C) is maintained.

I. If a school is physically ~~closes~~ closed while ~~providing curricula in an~~ alternative ~~format or location~~ learning hours or ~~while conducting~~ a field trip is provided, the school licensee shall ensure:

1. ~~Post a~~ A notice ~~that is~~ visible to the public and students is posted; and
2. ~~Send a~~ A notice is sent to the Board indicating the ~~times~~ time and location ~~where the curricula is being conducted~~ of the alternative learning hours or field trip.

J. A student instructor may obtain ~~lab~~ classroom ~~(clinic)~~ hours in a licensed school other than the licensed school in which the student instructor is enrolled if the student:

1. Has available proof of enrollment in a licensed school to show to a Board inspector, and
2. Earns no more than the ~~lab~~ classroom ~~(clinic)~~ hours required ~~by~~ under R4-10-302.

ARTICLE 4. SALONS

R4-10-401. Application for a ~~Salon~~ License to Operate a Salon

An applicant for a ~~salon~~ license to operate a salon shall submit:

1. An application on a form provided by the Board ~~that contains~~ , which is signed by the applicant and provides the following information:
   a. The applicant's name, address, e-mail address, telephone number, federal tax identification number, and signature;
   b. If the applicant is a partnership, each partner's name, address, and an identification of whether each is a limited or general partner;
   c. If the applicant is a corporation, the state of incorporation and ~~the~~ name, title, and address of each officer of the corporation and the statutory agent;
   d. If the applicant is a limited liability company, name and address of each member, manager, and statutory agent;
   ~~d.~~e. The name ~~of~~ under which the salon will be operated as registered with the Arizona Secretary of State;

~~e.~~f. If ~~a~~ the location ~~change~~ of the salon is changing, the previous address;

~~f.~~g. A history of the salon including:

i. If the location was previously licensed by the Board, the name of the previous establishment;

ii. The name of each business operating at the salon address; and

iii. A statement of whether a cosmetology license of the applicant~~,~~ or any partner ~~of the applicant~~, ~~or any~~ corporate officer, or member or manager of the applicant has ever been suspended or revoked by any state or foreign country;

h. A statement of the kind of salon to be operated: cosmetology, aesthetics, hairstyling, or nail technology; and

i. A statement by the applicant verifying the truthfulness of the information provided by the applicant.

2. ~~If a corporation, the articles of incorporation and a Certificate of Good Standing from the~~ 2. ~~Corporation Commission;~~ The following evidence of business organization, as applicable:

a. Copy of the partnership agreement for a partnership,

b. Copy of the articles of incorporation and a Certificate of Good Standing from the Arizona Corporation Commission for a corporation, or

c. Copy of the articles of organization for a limited liability company.

~~3. If a partnership, a copy of the partnership agreement;~~

~~4.~~3. A signed statement that the establishment is in compliance with all Board statutes and rules and has all of the following in the salon:

a. Wet disinfectant;

b. A dry, closed, disinfected container to store disinfected tools and instruments;

c. A sink or shampoo bowl with hot and cold running water that is not also used as a dispensary or restroom sink as required ~~by~~ under R4-10-403;

d. A work station;

e. A restroom that meets the standards specified under R4-10-112(S); and

f. ~~Notice posted for activities performed in the salon but not regulated by the Board~~ The notice required under R4-10-111(F); and

~~5.~~4. The fee required in R4-10-102.

R4-10-402. Changes Affecting a ~~Salon~~ License to Operate a Salon

A. ~~An owner~~ A licensee shall apply for a new ~~salon~~ license to operate a salon and pay the fee for an initial salon license specified in R4-10-102 when any of the following occur:

1. The salon address changes;
2. The name of ~~a~~ the salon changes;
3. ~~The~~ If the salon licensee is a corporation, the controlling ownership ~~in the corporation~~ is transferred or the corporation is reorganized; or
4. ~~The~~ If the salon licensee is a corporation, limited liability company, or partnership, ~~has a change of any~~ a corporate officer, partner, or statutory agent changes.

B. A licensee shall apply for an updated license and pay the fee specified at R4-10-102(C)(8) when the suite number of the salon changes.

~~B.~~C. ~~The~~ A salon ~~owner~~ licensee and the manager shall ensure ~~that~~ a Board-issued license to operate a salon, indicating ~~proper~~ the correct ownership of the license, is posted in the salon before ~~opening~~ the salon is opened for business.

R4-10-403. Salon Requirements and Minimum Equipment

A. A salon licensee shall ~~perform~~ ensure all services performed at the salon for the public ~~according to~~ are consistent with the type of license issued to the licensee. A salon licensee shall ensure that, except as provided in R4-10-405, all services are performed for the public by an individual who holds a Board-issued license.

B. ~~Salons~~ A salon licensee shall ~~have~~ ensure the salon has enough equipment, materials, supplies, tools, and instruments to ~~ensure~~ control infection ~~control~~ and protect the safety ~~for~~ of the public and employees.

C. A salon licensee shall ensure the salon has:

1. A work station for each ~~employee or person~~ licensee using space within the salon;
2. If licensees using space in the salon ~~is a~~ are performing cosmetology or hairstyling ~~salon~~ services, at least one shampoo bowl and one hair dryer, which may be a blow dryer; and
3. If licensees using space in the salon ~~is a~~ are performing aesthetics or nail technology ~~salon~~ services, at least one sink in addition to the restroom ~~and dispensary sinks~~.

D. A salon licensee shall ensure licensed aestheticians, cosmetologists, hairstylists, and nail technicians have enough equipment, materials, supplies, tools, and instruments to provide services, control infection, and disinfect between clients.

R4-10-404. Mobile Services

A. If a salon licensee provides mobile services ~~are provided~~ as an extension of ~~a licensed~~ the salon, the salon licensee shall advertise the mobile service ~~shall advertise~~ using the ~~licensed~~ name of the salon on the Board-issued license. The ~~licensed~~ salon ~~owner~~ licensee and manager shall ensure ~~that the~~ mobile services comply with the Arizona ~~Board's~~ Board of Cosmetology statutes and rules.

1. A salon licensee providing mobile cosmetology, hairstyling, nail technology, or aesthetics services shall ensure licenses are posted as required under R4-10-111.
2. A salon licensee providing mobile services shall ~~make~~ ensure client appointments are made through the ~~licensed~~ salon using an appointment book that lists the appointments and locations where services are performed.
3. Mobile services are subject to inspection by the Board at any time.
4. If a retrofitted ~~mobile~~ motor vehicle is used to provide mobile services, the salon ~~owner~~ licensee and manager shall ensure ~~that~~ the vehicle has the same equipment as specified ~~by~~ under R4-10-403 and complies with safety and infection control requirements specified ~~by~~ under R4-10-112.
5. If mobile services are provided in a location other than a retrofitted ~~mobile~~ motor vehicle, the salon ~~owner~~ licensee and manager shall ensure ~~that~~ equipment is disinfected before use and stored as specified ~~in~~ under R4-10-112.

B. If a retrofitted motor vehicle is used exclusively as a mobile facility ~~that is~~ dispatched from ~~a business~~ an establishment address, the ~~owner~~ salon licensee and manager of the mobile facility shall:

1. Comply with all salon requirements, including infection control and equipment requirements, specified in this Chapter;
2. ~~Comply with all infection control and equipment requirements;~~
3.2. Maintain a complete and current list of appointment locations at the ~~business~~ establishment address and ~~display~~ ensure the list is displayed ~~in a location listed on~~ as specified in the ~~salon~~ application for a license to operate a salon and ~~that is~~ available to an inspector at all times when the retrofitted motor vehicle is open for business; and
4.3. Comply with ~~other~~ the Arizona Board of Cosmetology statutes and rules ~~of the Board~~.

R4-10-405. Shampoo Assistants

A. ~~People who are~~ A salon licensee may hire an individual who is not licensed by the Board ~~may be hired~~ as a shampoo ~~assistants~~ assistant to shampoo and apply ~~cream rinse~~ conditioner to an individual's hair, comb the hair to remove tangles, and remove rollers ~~and clippies~~.

B. ~~Shampoo assistants~~ A salon licensee shall ~~not~~ ensure a shampoo assistant does not:

1. ~~apply conditioners, reconstructors,~~ Apply hair color~~,~~ or permanent wave solution or neutralizer~~,~~; or ~~remove~~
2. Remove rods, tint, relaxers, or ~~other~~ chemical solutions from the hair.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT1

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 10. BOARD OF COSMETOLOGY

1. Identification of the rulemaking:

   Under Laws 2017, Chapter 12, the legislature added hairstylist as an occupation regulated by the Board, reduced the number of hours of training to become a cosmetology or aesthetics instructor, added hairstyling as a kind of school that could be operated in Arizona, and required the Board to make rules necessary and proper to achieve this. In this rulemaking, the Board makes the required rules. An exemption from EO2017-02 was provided for this rulemaking by Mara Mellstrom, Policy Advisor in the Governor's office, in an email dated May 2, 2017.

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

      Until the rulemaking is completed, the Board will not have standards for issuing a hairstylist license and will not have rules consistent with statutory changes made by the legislature.

   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:

      By having rules inconsistent with statute, the Board is violating principles of good government.

   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 be consistent with statute and the Board will have fulfilled the statutory directive to make rules necessary and proper to implement statute.

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

   The Board expects the rulemaking, which simply implements a statutory change made by the legislature, to have minimal economic impact. It is the legislature that produced economic impact by requiring the Board to regulate an additional occupation, reducing the number of

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

hours required to become licensed as a cosmetology or aesthetics instructor, and adding hairstyling as a kind of school that can be operated in Arizona.

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: Donna Aune
Address: 1721 E. Broadway
Tempe, AZ 85282-1611
Telephone: (480) 784-4539
Fax: (480) 784-4962
E-mail: daune@azboc.gov
Web site: www.azboc.gov

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

Applicants for a hairstylist license, cosmetology or aesthetics instructor license, or license to operate a hairstyling school will be directly affected by and benefit from this rulemaking. However, the economic benefits and costs result from the statutory change rather than the rulemaking. Operators of cosmetology schools may be indirectly affected by the change.

The Board currently licenses 76,775 cosmetologists, aestheticians, nail technicians, and instructors. A cosmetologist can do the same work as an aesthetician and nail technician in addition to hairstyling. At least 1600 hours of training are required to become licensed as a cosmetologist. An individual can become licensed as an aesthetician or nail technologist with only 600 hours of training. With the recent statutory change, the occupation of hairstylist is added to the Board's regulatory authority and an individual can become licensed as a hairstylist with only 1000 hours of training. The Board estimates that of the 1744 new applicants for licensure as a cosmetologist last year, 45 percent would have chosen to be licensed as a hairstylist if that option had been available. The fewer hours of required training mean an individual seeking licensure as a hairstylist is able to enter the workforce more quickly and may have less educational expense.

With the recent statutory change, the legislature also added hairstyling as a kind of school a person can be licensed by the Board to operate. The Board estimates that if this option had been available last year, most of the 11 applicants for a license to operate a cosmetology school would have applied for a license to operate a hairstyling school.

Operators of cosmetology schools may be negatively impacted by the statutory changes implemented in this rulemaking if students who would have enrolled in a cosmetology school and paid for the required 1600 hours of instruction choose to enroll instead in a hairstyling school and pay for only 1000 hours of required instruction. However, just as an operator of a cosmetology school is able to offer a training program in aesthetics or nail technology only, the operator of a cosmetology school will be able to offer a training program in hairstyling only so the possible reduction in cosmetology students may be offset by an increase in hairstyling students.

An applicant for an instructor license is required to be licensed in the occupation to be instructed. The instructor training focuses on methods of instructing. This is why it is possible to reduce the number of hours of required training to be a cosmetology or aesthetics instructor to equal those required to be a nail technician or hairstylist instructor. The reduced number of hours of training does not pose a health or safety risk for the public.

The Board is also directly affected by, bears the costs of, or directly benefits from the rulemaking. The Board incurred the cost of making these rules and will incur the cost of implementing them. The Board has the benefit of having rules consistent with statute and fulfilling its statutory responsibility.

5. Cost-benefit analysis:
    a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:
    The Board is the only state agency directly affected by the rulemaking. The costs and benefits for the Board are discussed in item 4. The Board has determined no additional FTEs are required to implement and 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:
    Hairstylists are businesses directly affected by the rulemaking. As a result of the statutory change, individual hairstylists will be able to enter the workforce more quickly and may have less educational expense. School operators are also businesses directly affected by the rulemaking. The number of hours of training they are

required to provide to students is reduced for cosmetology and aesthetics instructor students. School operators wanting to provide instruction only to hairstyling instructors will now be able to do so. Cosmetology school operators may have fewer students as individuals choose to attend a hairstyling school rather than a cosmetology school. However, just as an operator of a cosmetology school is able to offer a training program in aesthetics or nail technology only, the operator of a cosmetology school will be able to offer a training program in hairstyling only so the possible reduction in cosmetology students may be offset by an increase in hairstyling students.

6. Impact on private and public employment:

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

7. Impact on small businesses[2]:

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

      All the effected business identified in item (5)(c) are small businesses.

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

      All applicants for licensure are required to make application, take a licensing examination, and pay a licensing fee. Operators of schools are required to comply with minimum equipment and educational standards and maintain student records.

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

      Because all businesses affected by the rulemaking are small businesses, no methods are available for reducing the impact on small businesses. Additionally, small businesses that obtain one of the licenses newly created by the legislature do so voluntarily because they determine the benefits of the license outweighs the costs.

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.

9. Probable effects on state revenues:

   Because the cost for an initial personal license is the same regardless of the occupation licensed, the addition of hairstyling as a licensed occupation will not change the amount of fees collected by the Board. The same is true regarding the fee for a license to operate a school and for applicable renewal fees. As a result, the rulemaking will have no effect on state revenues.

10. Less intrusive or less costly alternative methods considered:

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

The Board believes the rules are the least intrusive and least costly possible. No alternative methods were considered.

ARIZONA DEPARTMENT OF TRANSPORTATION
Title 17, Chapter 5, Article 9, Transportation Network Companies

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 6, 2020

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

FROM: Council Staff

DATE: September 16, 2020

SUBJECT: **ARIZONA DEPARTMENT OF TRANSPORTATION (F20-1002)**
Title 17, Chapter 5, Article 9, Transportation Network Companies

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Summary

This Five-Year Review Report (5YRR) from the Department of Transportation relates to rules in Title 17, Chapter 5, Article 9 regarding transportation network companies. This Article provides information and guidelines on the initial and renewal permit application, as well as information regarding the transfer of permits, the process of reviewing network companies' records, and the assignment of a designated point of contact.

This is the first 5YRR for these rules which were made by final rulemaking and became effective on March 6, 2017.

To provide context to the Council, under A.R.S Title 30, Chapter 28 Article 3 "transportation network company" is defined as "an entity that has been issued a permit pursuant to this article, that operates in this state, that uses a digital network or software application to connect passengers to transportation network services provided by transportation network company drivers and that may but is not deemed to own, operate or control a personal motor vehicle of a transportation network company driver." Applications like Lyft or Uber would fit this definition.

Proposed Action

The Department does not propose to take any action on these rules.

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:

In the Department's 2017 economic, small business, and consumer impact statement (EIS), it determined that the costs associated with the rule would be a $1,000 application fee for transportation network companies who apply for a three year operational permit, and the $147,160 spent to establish an online application and renewal system. Since the Department does not intend to make any changes to the fees associated with the rule, the Department determined that the economic impact does not differ significantly from what was originally determined in 2017.

The stakeholders include: Arizona residents and visitors who use transportation network company services, transportation network companies, and employees of transportation network companies.

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 determined that the cost to fulfill the regulatory objective is minimal. To apply for a three year operational permit, transportation network companies must pay a $1,000 fee to the Department to have their application reviewed. The Department concluded that relative to other states, Arizona's $1,000 application fee is low, with 20 states charging $20,000 or more for an annual transportation network permit.

While transportation network companies bear the financial burden of these costs, these costs are outweighed by the benefits of protecting the general public safety, and providing Arizona residents and visitors with alternative and affordable transportation options.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department indicates it has not received any written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Yes. The Department states that the rules under review are clear, concise, and understandable and do not require any changes.

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

Yes. The Department states that the rules are consistent with applicable statutes and other rules.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

Yes. The Department states that all rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

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

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

Not applicable. There is no corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Yes. The Department states that these rules, last revised in 2017, provide for the issuance of a transportation network company permit to a person who meets the statutory requirements of a transportation network company pursuant to A.R.S. Title 28, Chapter 30, Article 3. The Department has determined that the permit is in compliance with the general permit requirements of A.R.S § 41-1037 and is considered a "general permit" in that the activities and practices authorized by the permit are the same for all transportation network companies.

Upon review, Council staff agrees with this determination.

11. Conclusion

As stated above, the Department does not propose to take any action on these rules. Council staff finds that the Department prepared an adequate report that meets the requirements of A.R.S. § 41-1056(A). Council staff agrees that the rules are clear, concise, understandable, effective, and consistent with applicable statutes and rules. Council staff recommends approval of this report.

July 31, 2020

VIA EMAIL: grrc@azdoa.gov
Ms. Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Department of Transportation, 17 A.A.C. Chapter 5, Article 9, Five-year Review Report

Dear Ms. Sornsin:

Please find enclosed the Arizona Department of Transportation's Five-year Review Report covering all rules located under 17 A.A.C. Chapter 5, Article 9, which is due on July 31, 2020.

This document complies with all requirements under A.R.S. § 41-1056 and A.A.C. R1-6-301. The Department certifies that it is in full compliance with the requirements of A.R.S. § 41-1091.

For information regarding the report, please communicate directly with John Lindley, Senior Rules Analyst, at (602) 712-8804 or email JLindley@azdot.gov.

Sincerely,

John S. Halikowski
ADOT Director

Enclosure

Government Relations & Rules
Office of the Director

Five-Year Review Report

A.A.C. Title 17 – Transportation

Chapter 5. Department of Transportation

Commercial Programs

Article 9. Transportation Network Companies

Douglas A. Ducey ***Governor***

John S. Halikowski ***ADOT Director***

Submitted to the Governor's Regulatory Review Council July 2020

Arizona Department of Transportation

5-YEAR REVIEW REPORT

Title 17. Transportation

Chapter 5. Department of Transportation - Commercial Programs

Article 9. Transportation Network Companies

July 31, 2020

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

General Statutory Authority: A.R.S. §§ 28-366 and 28-9551 through 28-9558

Specific Statutory Authority: A.R.S. §§ 28-9552, 28-9554, 28-9555, and 28-9556

2. **The objective of each rule:**

Rule	Objective
R17-5-901. Definitions	To clarify the Department's intended meaning for certain terms and phrases used throughout the Article.
R17-5-902. Transportation Network Company Permit - Initial Application; Issuance; Fee	To provide transportation network company permit applicants with information regarding the permit application process and other requirements, including the permit application fee and the circumstances under which an application fee may be refunded.
R17-5-903. Transportation Network Company Permit - Renewal Application; Fee	To provide transportation network company permit renewal applicants with information regarding the permit renewal application process and other requirements, including the permit renewal application fee.
R17-5-904. Transportation Network Company Permit or Renewal - General Provisions	To provide transportation network company permit holders with information relating to the assigned permit number and the circumstances under which a transportation network company permit may be transferred or assigned to another person.
R17-5-905. Transportation Network Company - Record Review	To provide transportation network company permit holders with information relative to the circumstances and process by which the Department may review all records a transportation network company permit holder is required to maintain under Arizona law.
R17-5-906. Transportation Network Company - Designated Point of Contact	To provide transportation network company permit holders with information regarding their statutory obligation to provide the Department with a designated point of contact and to inform the Department if any changes are made to that designated point of contact.

3. **Are the rules effective in achieving their objectives?** **Yes** X **No** ___

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

The rules are effective in achieving their objectives, and the Department does not recommend any rule changes.

4. **Are the rules consistent with other rules and statutes?** **Yes** X **No** ___

If not, please identify the rule(s) not consistent. Also, provide an explanation and identify the provisions not consistent with the rule(s).

These rules are consistent with other rules and statutes.

Rule	Explanation
N/A	N/A

5. **Are the rules enforced as written?** Yes X No ___

If not, please identify the rule(s) not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

The Department enforces these rules as written.

Rule	Explanation
N/A	N/A

6. **Are the rules clear, concise, and understandable?** Yes X No ___

If not, please identify the rule(s) 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.

The rules are clear, concise, and understandable and the Department does not believe any rule changes are necessary.

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:

The Department has not received any written criticisms on the rules within the last five years.

Commenter	Comment	Agency's Response
N/A	N/A	N/A

8. **Economic, small business, and consumer impact comparison:**

Laws 2015, Chapter 235, established the initial authority for transportation network companies to operate in Arizona. The Arizona Department of Transportation (ADOT) and the Department of Weights and Measures (DWM) were granted an exemption from the Administrative Procedure Act to establish transportation network company rules. The statutes were subsequently renumbered and amended under Laws 2016, Chapter 232, when all administrative authority over taxis, limousines, livery vehicles, and transportation network companies was transferred from the DWM to ADOT. The rules were permanently codified by Final rulemaking at 23 A.A.R. 223, effective March 6, 2017.

Transportation network companies operate using a digital network or software application to connect passengers to transportation network company services. These rules establish only minimal regulatory requirements for the operation of a transportation network company in Arizona by establishing an application fee of $1,000 for a three-year transportation network company permit as required by statute for operating in Arizona. Additionally, the rules prescribe the application process and renewal requirements necessary for transportation network company permit issuance, allow for appropriate Department review of transportation network company records, require a company to provide information regarding its designated point of contact, and clarify that a transportation network company permit or renewal may be transferred or assigned to another person under certain circumstances. The rules do not impose regulatory requirements on transportation network company drivers.

To increase efficiency, the Department incurred costs of $147,160 to establish an on-line application and renewal system for use in registering all Arizona taxis, limousines, livery vehicles, and transportation network companies. A company that submits the necessary information and pays the application fee may operate throughout the state and contract with an unlimited number of drivers for three years.

The economic impact of the transportation network company rules in 17 A.A.C. 5, Article 9, has remained essentially the same as estimated in the economic impact statement submitted for the rules in 2017. However, the Department has now issued permits for 18 transportation network companies operating in Arizona, which include both small and large companies. During flourishing economic times, large transportation network companies expanded to have thousands of drivers in the state. During economic downturns and economic sector closings, consumer demand for rideshare services drops, substantially reducing services and the income generated by both drivers and transportation network companies.

With the popularity of smart phone usage and ridesharing, future growth in ridesharing employment and usage is expected during periods of economic growth. The increase from 7 transportation network companies to 18 in three years reflects substantial interest by these businesses in operating in Arizona. As indicated in Table 1 below, Arizona's application fee for transportation network companies is low in comparison to the fees or taxes imposed by other states on transportation network companies. The application fee for the three-year transportation network company permit was established at the same amount as the three-year permit fee required of other vehicle-for-hire companies regulated by the Department, such as large taxi companies with a fleet of 42 or more vehicles, to establish parity between similar businesses.

States have taken different approaches to setting fees for, or taxing transportation network company services. A total of 33 states and Washington D.C. impose a state fee or tax on transportation network companies to operate. Some cities have imposed their own requirements, which may include a tax or fee, such as a per trip assessment. Alabama and New York, for instance, impose an assessment fee of 1% and 4% of gross trip fares on each trip, respectively. In addition, New York has an initial application fee of $100,000, with an annual renewal fee of $60,000. Nevada imposes an annual transportation network company permit fee based on the transportation network company's in-state gross operating revenue and a graduated fee based on the number of drivers. New Jersey imposes a $25,000 annual permit fee with a small ride surcharge fee. State fees range from none in a few states to $100,000 in Virginia and New York (initial application only) to $111,250 in Colorado.

In summary, the Department maintains that the previous economic, small business, and consumer impact statement on transportation network companies has remained essentially the same. In 2019 the Department collected $11,000 in application fees from transportation network companies; these fees are deposited in the state general fund and support other state programs and services. The Department does not receive these fees or have a specific appropriation to cover the program's administrative and other costs. With the exception of the application fee, most of the regulatory requirements on transportation network companies are derived from the statutes.

9. Has the agency received any business competitiveness analyses of the rules? **Yes ___ No X**

The Department did not receive any business competitive analyses of the rules. However, the Department has researched the regulatory fees and taxes associated with the administration of transportation network companies in other states. The results of which are as follows:

TABLE 1. REGULATORY FEES OR TAXES ASSOCIATED WITH TRANSPORTATION NETWORK COMPANIES

STATE	TAX OR FEE
Alabama	Local assessment fee of 1% of gross trip fare each trip. Portion of fees collected distributed to city of ride origination.
Alaska	None
Arizona	$1,000 application fee (3 yr. permit)

Arkansas	$15,000 annual TNC permit
California	$1,000 TNC permit (3 yrs.), $100 annual renewal; $0.10 fee on each TNC trip.
Colorado	$111,250 annual TNC permit fee
Connecticut	$5,000 TNC annual registration fee
Delaware	$5,000 annual TNC permit fee
Florida	None
Georgia*	Annual license - $100
Hawaii	Not applicable, insurance law only
Idaho	None
Illinois	None
Indiana	None
Iowa	$5,000 annual permit fee
Kansas	None
Kentucky	$250 annual TNC certificate, $30 annual license fee per transportation network company (TNC) vehicle. Cities, counties prohibited from charging other fees and taxes, except for annual license fee not over $30.
Louisiana	Not applicable, insurance law only
Maine	$10,000 annual TNC permit fee
Maryland	Except in counties and municipal corporations that imposed a fee before January 2015, other counties and cities can impose a $0.25 per trip fee assessment.
Massachusetts	$0.20 per trip assessment
Michigan	TNC registration application fee - $25 if 10 or fewer vehicles; $50 if 11-25 vehicles registered; $100 if more than 25 vehicles registered. TNC registration fee $100 for first vehicle and $50 for vehicles 2-9; $550 for 10 vehicles; $1,000 for 11-25 vehicles, $2,500 for 26-100 vehicles; $5,000 for 101-500 vehicles; $10,000 for 501-1,000 vehicles, $30,000 for more than 1,000 vehicles.
Minnesota	Not set by state
Mississippi	$5,000 TNC annual license fee
Missouri	$5,000 annual license fee. Per-driver and per-vehicle fees prohibited.
Montana	$500 TNC fee for certificate of compliance
Nebraska	$25,000 transportation network company fee or $80 per driver-operated vehicle
Nevada*	Graduated fee for TNC based on authority to use set number of drivers within first 24 mos. after permit granted, ranging from $6,000 for under 100 or less drivers, $60,000 for 1,000 or less drivers, $300,000 for 5,000 or less drivers, to more than $500,000 for more than 7,000 drivers. Annual transportation network company permit assessment based on transportation network companies in-state gross operating revenue.
New Hampshire	$500 annual TNC permit fee
New Jersey	$25,000 annual TNC permit fee, $0.50 per ride surcharge, $.025 per shared ride surcharge.
New Mexico	$10,000 annual TNC permit fee
New York	4% state assessment fee on gross trip fares originating anywhere in the state outside of cities with more than 1,000,000 people located in the metropolitan commuter transportation district, and

	terminating anywhere in the state. $100,000 TNC initial application fee and $60,000 annual renewal fee.
North Carolina	$5,000 TNC application fee, renewed annually.
North Dakota	None
Ohio	$5,000 annual TNC permit fee
Oklahoma	$5,000 annual TNC permit fee
Oregon	None
Pennsylvania	None
Rhode Island	$5,000 annual TNC permit if under 50 active TNC drivers; $10,000 if at least 50 but less than 200 active drivers; $30,000 if TNC has at least 30 active drivers.
South Carolina	TNC permit requiring a local assessment fee of 1% of gross trip fares. Fees remaining after Office of Regulatory Staff expenses are covered are distributed to cities where ride originated.
South Dakota	None
Tennessee*	No state licensing or fees. Cities or counties may further regulate transportation network companies. Sioux Falls requires $1,500 annual TNC license fee.
Texas	As determined by rules to cover TNC administrative costs. $10,500 original application fee TNC permit, $7,000 annual renewal fee, $25 permit amendment fee, $25 address change fee, $25 name change fee.
Utah	$5,000 annual TNC permit fee
Vermont	None
Virginia	$100,000 TNC permit fee or $20 surcharge for each TNC partner's driver transcript from DMV.
Washington*	For-hire operator one-time permit - $110. Fee waived if regulated by cities or counties, which often require fees or taxes by ordinance ranging from $200 to $2,000, but must pay $55 annual vehicle permit fee. TNC drivers pay a tax on the driver's gross income and the gross income of business.
Washington D.C.	$25,000 initial TNC permit (2 yrs.), $1,000 renewal (2 yrs.), 1% of gross revenue
West Virginia	$1,000 annual TNC permit fee
Wisconsin	$5,000 annual TNC license fee
Wyoming	None

Source: Regulation of Transportation Network Companies Policy Guide, January 2019, as commissioned by the Washington State Legislature's Joint Transportation Committee. Published by Berk Consulting, 2200 Sixth Avenue, Suite 1000, Seattle, Washington 98121, www.berkconsulting.com. This information is available for download, free of charge, at http://leg.wa.gov/JTC/Documents/Final%20Studies/TNC_PolicyGuideFinal.pdf. *Updated, if new information was available.

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

This is the first five-year-review report submitted by the Department since the Governor's Regulatory Review Council initially approved the transportation network company rules in 2017, under 17 A.A.C. 5, Article 9. No previous course of action was proposed.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

As required by statute, the Department established an application fee for a transportation network company to operate in the state. The Department established minimal regulatory and compliance requirements on transportation network companies in order to foster their development and growth in the state as new businesses. The rules require a company applying online for a transportation network company permit to provide limited information, including an agent for service of process, an illustration of the company's trade dress, and to certify compliance with A.R.S. Title 28, Chapter 30, Article 3. Each company is required to maintain certain business records. Other costs to comply with mandatory insurance requirements for drivers providing transportation network services and conduct employee background checks are due to statutory requirements. The statutes place regulatory responsibility on transportation network companies to ensure completion of driver background checks, vehicle safety inspections, and to maintain a zero-tolerance policy on driver drug and alcohol use.

A.R.S. § 28-9552(A) prohibits a person from acting as a transportation network company driver unless the transportation network company has been issued a permit by the Department. The Department is required to charge and collect an application fee as determined by the Department. An application fee of $1,000 for a three-year transportation company permit was established by exempt rulemaking in 2015 and permanently codified by final rulemaking approved by the Governor's Regulatory Review Council on January 4, 2017. On an annual basis, the permit costs a transportation network company about $333. By paying the application fee and meeting other statutory and rule requirements, a transportation network company can contract with an unlimited number of drivers to provide transportation network services throughout the state. Transportation network company drivers must have their own vehicles and must hold an Arizona driver's license in good standing without certain driving and other criminal violations, but do not pay any special license fees or taxes to the state. State statutes prescribe higher levels of mandatory insurance, vehicle safety checks, and mandate employee background checks for drivers. The rules do not have any paperwork requirements or impose any compliance costs on individual drivers. In addition, a permitted transportation network company and a transportation network company driver may not be required to pay transaction privilege tax or a similar tax by any state taxing authority. The longer period of permit validity and the efficient online application process were both designed to reduce the regulatory burden on transportation network companies.

Arizona's fee of $1,000 for a three-year permit is one of the lowest state fees. The Department consulted with transportation network company representatives to discuss setting a reasonable and fair fee to operate their business in the state. Transportation network company representatives agreed that the $1,000 fee was reasonable and fair.

California charges $1,000 for a three-year permit and West Virginia's annual fee is $1,000. A total of 20 states and Washington D.C. charge $5,000 or more annually for a transportation network company permit or license. Those states that do not have a specific fee or tax may rely on increased personal and corporate income taxes paid by individuals and rideshare companies. In some cases, cities and airports impose additional fees on rideshare companies or passengers. A list of the state regulatory fees and taxes imposed on, or associated with, transportation network company services is provided in Table 1 above.

The Department believes that the public and the state both benefit from transportation network company services as an alternative transportation option. The rules benefit Arizona residents and visitors who routinely rely on the alternative and affordable service options provided by these transportation network companies for short distance travel in growing metropolitan areas. Arizona residents and visitors may choose a transportation network company or another transportation option that fits individual needs. In addition, the existence of transportation network companies provides employment opportunities for part-time or full-time transportation network company drivers. Drivers incur fuel, maintenance, finance, and other costs to purchase and maintain their vehicles properly and safely. Vehicle-related costs are associated with the requirement for a driver to operate a personal vehicle. The statutes give the responsibility to transportation network

companies to ensure that all vehicles used to provide transportation network company services meet state vehicle safety and emissions standards and have annual brake and tire inspections. Mandatory insurance must also be maintained to meet the statutory insurance limits for transportation network company vehicles while providing transportation network services.

Transportation network companies are required to pay the application fee as established in the rules. The Department does not receive the permit fees or other monies from the companies to support administration of this program. Fees generated from the transportation network company permits are deposited in the state general fund pursuant to statute, and support other state programs. The public and state benefit from the revenue generated by these application fees that support other state programs. Other political subdivisions benefit because the state has established a permitting process that ensures transportation network companies are held to a minimal, but appropriate, level of oversight to protect general public safety.

The Department routinely adopts the least costly and least burdensome option for any process or procedure required of the regulated public or business. The Department believes that the transportation network company rules impose the least burden and cost to businesses regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying objective, and provide significant benefit to the public and the state. The Department believes that many residents and visitors view the availability of rideshare services favorably.

12. Are the rules more stringent than corresponding federal laws? **Yes ___ No _X__**

The rules are not more stringent than federal law and there is no corresponding federal law directly related to these 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:

These rules, last revised in 2017, provide for the issuance of a transportation network company permit to a person that meets the statutory requirements of a transportation network company as prescribed under A.R.S. Title 28, Chapter 30, Article 3. The transportation network company permit is in compliance with the general permit requirements of A.R.S. § 41-1037 and is considered a "general permit" in that the activities and practices authorized by the permit are the same for all companies issued the permit and allows all transportation network companies to provide the same services.

14. Proposed course of action

The Department does not believe any rule changes are necessary at this time.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION

COMMERCIAL PROGRAMS

R17-5-901 through R17-5-906, R17-5-1001 through R17-5-1009

A. Economic, small business and consumer impact summary:

1. Identification of the rulemaking:

Laws 2015, Chapter 244 transferred the regulation of taxis, livery vehicles, and limousines (vehicles for hire) from the Department of Weights and Measures (DWM) to ADOT effective July 1, 2016. Laws 2015, Chapter 235, gave new authority to DWM to regulate transportation network companies. Regulatory authority over transportation network companies was transferred to ADOT in this legislation effective July 3, 2015. ADOT filed exempt rules on transportation network companies that became effective on August 31, 2015. The Legislature made additional changes in Laws 2016, Chapters 171 and 232, to the regulatory and oversight provisions of transportation network companies and taxis, livery vehicles, and limousines. ADOT is adopting administrative rules to implement these 2015 and 2016 legislative changes.

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

Vehicle for hire and transportation network company permits extend for 3 years rather than one year. Under previous legislation, a taximeter license from the DWM was $24 per taximeter for one year. The current legislation requires a vehicle for hire company operating a taxi to pay a $24 application fee per vehicle used as a taxi at the time of application for a 3-year permit. The Legislature established a new cap of $1,000 over three years for a taxi company that obtains a vehicle for hire company permit. The exempt transportation network company rules established a new transportation network company permit application fee of $1,000 that allows a transportation network company to operate in the state for 3 years. The rules reduce regulation over taxis, livery vehicles, and limousines and establish a streamlined permitting and renewal process for both transportation network companies and vehicles for hire.

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:

If these rules are not adopted, ADOT will not have any Department rules on taxis, limousines, and livery vehicles that are consistent with the 2015 and 2016 legislative changes. Additionally, ADOT will not be in compliance with statutory rulemaking requirements. ADOT filed exempt rules in 2015 on transportation network companies that contained the application fee and permitting process. If the application fee for transportation network companies to operate in the state is not approved by this rulemaking by August 31, 2017, ADOT will lose authority to continue charging the application fee. Failure to collect this fee will negatively impact the state general fund, but the revenue impact is minimal. If these rule changes are not made, the public may not know the regulatory provisions relating to transportation network companies and vehicles for hire, and could be harmed. Failing to

adopt the rule changes may lower compliance because vehicle for hire companies and transportation network companies may not understand the regulatory requirements.

c. **The estimated change in frequency of the targeted conduct expected from the rule change:**
Approval of the vehicle for hire and transportation network company rules will benefit vehicle for hire and transportation network companies and the public, increase understanding and business compliance, and reduce possible harm. Additionally, ADOT will continue to have authority to collect the application fee for transportation network companies, which will benefit the state general fund.

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

As of August 2016, a total of 263 businesses have valid vehicle for hire company permits. The vast majority of the taxi, livery, and limousine companies have small vehicle fleets, with many company fleets of less than 10 vehicles. Several companies have very large fleets and do not fall in the definition of a small business. A total of 7 companies have permits to operate a transportation network company in the state. Most of the vehicle for hire companies and some newly formed transportation network companies are small businesses. Several prominent transportation network companies do not fall within the definition of a small business.

Impact on Employment

Employment data on drivers employed by transportation network companies is not available; however, employment of transportation network company drivers is expected to increase due to the popularity of ride sharing. The rules have no impact on public employment. Laws 2016, Chapter 244, § 37 provided for the transfer of employees from DWM to ADOT to administer the program. Four DWM employees were transferred to ADOT. The Department has not employed any new full-time employees to enforce and implement the proposed rules.

Impact on Businesses

Insurance is a business cost imposed in statute for transportation network companies and vehicle for hire companies. This rulemaking has no impact on insurance costs paid by vehicle for hire companies and transportation network companies. The transportation network companies and vehicle for hire companies are required to have increased insurance coverage when the driver is available to provide transportation and when the driver has accepted a ride request, and is providing passenger transportation. Transportation network companies pay an application fee of $1,000 for a 3-year transportation network company permit to conduct business in the state. The Department believes that the $1,000 application fee for a three-year transportation network company permit is a minimal permit cost. This allows a transportation network company to have an unlimited number of rideshare drivers operating in the state during the 3-year period. Taxi companies continue to pay a fee of $24 per vehicle used as a taxi at the time of application for a 3-year permit. This $24 fee per taximeter was previously imposed by the DWM as an annual license fee. The Legislature extended the length of the permit period to 3 years in similar fashion to the three-year permit for transportation network companies, thus reducing the annual business permit cost. The Legislature also

established a cap of $1,000 over 3 years, for a vehicle for hire company operating taxis, to ensure fairness with transportation network companies. The Department believes that the fee of $24 for each vehicle used as a taxi over a three-year period, or the capped fee of $1,000 if the company has 42 or more taxis, is a minimal permit cost. The statutes require transportation network companies and vehicle for hire companies to conduct employee background checks and drug testing.

The application process and requirements for transportation network companies and vehicle for hire companies have been automated and streamlined, which lowers the regulatory burden on these businesses. Taxis are no longer required to have a taxi license plate and taxi decals are no longer issued, which lessens the regulatory burden. In addition, the transportation network and vehicle for hire legislation also exempted permitted vehicle for hire and transportation network companies and drivers from paying transaction privilege tax on income derived from transporting persons for hire.

Impact on State and Political Subdivisions

The rules do not impose any costs on political subdivisions, however, political subdivisions benefit from the permitting of vehicles for hire and transportation network companies. Application fees that ADOT collects from transportation network companies and taxis are deposited in the state general fund which increases state revenue. The costs for the Department to administer the vehicle for hire and transportation network company program are much greater than the program revenue generated, which is used for other state government purposes. The increase in state revenue to the general fund from permit fees is minimal, with periodic deposits, due to the fact that a company pays fees for a three-year permit period. It should be noted, however, that vehicle for hire and transportation network companies and drivers are exempt under the statutes from paying transaction privilege tax to the state or cities from income derived from passenger transportation.

Impact on Consumers

Consumers who need local transportation benefit from the availability of a new ride sharing option, transportation network companies, and the availability of vehicle for hire company transportation for varying consumer transportation needs. Consumers benefit because the vehicle for hire and transportation network company legislation removed previous permitting requirements and regulations to encourage new business development that expands consumer transportation options.

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

Name: Jane McVay

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

Telephone: (602) 712-4279

E-mail: jmcvay@azdot.gov

B. Economic, small business and consumer impact statement:

1. Identification of the rulemaking:

See paragraph (A)(1) above.

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

Persons to bear costs	Persons directly benefiting
Arizona Department of Transportation	Vehicle for hire and transportation network company consumers
Vehicle for hire and transportation network companies	Vehicle for hire and transportation network company consumers
Vehicle for hire company owners, lessees, and transportation network company drivers	Vehicle for hire and transportation network company consumers
Vehicle for hire company owners, lessees, and transportation network company drivers	Insurance companies

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

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

Minimal Less than $50,000

Moderate $50,000 to $150,000

Substantial $150,000 or more

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

ADOT incurred moderate costs, including necessary programming costs of $147,160 to change the permitting process from a manual one to an automated process. The agency incurred minimal costs for the rulemaking. The Department benefits from the rulemaking because the permitting process time for vehicles for hire has been substantially reduced. Under Laws, 2016, Chapter 244, § 37, four employees were transferred from DWM to ADOT to administer the vehicle for hire program. The Department has not employed any new full-time employees to enforce and implement the proposed rule. The rules do not impose additional costs on any other state agency. Law enforcement agencies may benefit from ADOT's regulation and oversight of vehicle for hire and transportation network companies. However, since ADOT no longer collects certain information, such as the vehicle identification numbers of vehicles for hire, and taxi plates are no longer required, these changes may be a detriment to law enforcement.

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

Political subdivisions may benefit indirectly from application fees deposited in the state general fund from which state shared revenue is distributed by the state to political subdivisions. Political subdivisions may regard state permitting of vehicle for hire companies and transportation network companies as beneficial because no additional permitting is necessary. ADOT, and not political subdivisions, will enforce the state vehicle for hire and transportation network company rules.

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

Transportation network companies and vehicle for hire companies are required to have comparable amounts of insurance under the transportation network company and vehicle for hire company legislation for passenger transportation. Either the vehicle driver or the vehicle for hire or transportation network company pays for the insurance coverage needed to transport passengers. The rules do not contain any insurance provisions. This rulemaking has no impact on insurance costs paid by vehicle for hire companies and transportation network companies. The transportation network company rules require an application fee of $1,000 for a three-year permit. The Department believes that the $1,000 application fee for a three-year transportation network company permit is a minimal permit cost. Vehicle for hire legislation requires a vehicle for hire company operated as a taxi to pay an application fee of $24 per vehicle used as a taxi at the time of application for a three-year permit. A larger taxi company with 42 or more taxis pays no more than $1,000 for a three-year permit. ADOT established this fee level in consultation with transportation network companies who agreed that this fee is reasonable and fair for both small and large companies. Large taxi companies with 42 or more taxis pay a lower fee due to the three-year permit and the cap of $1,000 for all vehicles. The application fee is a cost incurred by each company to operate in the state. The Department believes that the fee of $24 for each vehicle used as a taxi over a three-year period, or the capped fee of $1,000 if the company has 42 or more taxis, is a minimal permit cost. It is expected that these companies will pass on this fee to customers. After a transportation network company pays the application fee and meets other permitting requirements, the company may have an unlimited number of rideshare drivers in the state. Transportation network companies and vehicle for hire companies are required to maintain evidence of criminal background checks for their drivers, with costs payable by the company or the driver. Both transportation network companies and vehicle for hire companies are required to maintain other vehicle safety records. Vehicle for hire drivers and transportation network company drivers are independent contractors who either lease or own their vehicle and pay for associated vehicle operating costs, a smartphone and the required software. Vehicle for hire owners or lessees pay for associated vehicle operating costs, including emissions testing, brake and tire inspections, and other costs.

4. **General description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the rulemaking:**

Employment data is not available on the number of drivers and other persons employed by transportation network companies or vehicle for hire companies in the state. With the popularity of using transportation network companies for transportation, employment in these companies is expected to increase. Many of the ride share drivers work part-time. Taxi companies face increased competition with transportation network companies. Some taxi companies may choose to apply for a transportation network company permit, meet transportation network company requirements, and use their vehicles at different times as a taxi or a transportation network company without hiring new employees. With the popularity of ridesharing, transportation network company employment is expected to increase. The rules will not impact public employment.

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

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

   A small business subject to these rules, as defined under A.R.S. § 41-1001(21), is a business that is not dominant in its field, that employs fewer than 100 full-time employees, or that had gross annual receipts of less than $4,000,000. ADOT believes that many of the vehicle for hire companies and a few of the transportation network companies are small businesses.

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

   The vehicle for hire and transportation network company legislation establishes increased amounts of insurance for vehicle for hire companies and transportation network companies, however, the rules do not impose any insurance costs or requirements. The application process for taxis and transportation network companies has been automated and streamlined. The vehicle for hire and transportation network company legislation imposes other costs on these businesses, to include employee or driver background checks and vehicle tire and brake checks. Taxis and transportation network driver vehicles are required by the legislation to have company trade dress on their vehicles. Application fees for transportation network companies and vehicles for hire are discussed in Section (B)(3)(c).

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

   The streamlining of the application process for vehicles for hire and transportation network companies from 6 hours to 6 minutes benefits small businesses. Maintaining the application fee for each taxi at $24, but extending the permit period to 3 years, ensures that the annual permitting cost to a small business is less than that previously charged by DWM. The fee cap of $1,000 for a vehicle for hire company that has more than 42 taxis also reduces the permitting cost for small taxi companies.

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

   Consumers in the state who need transportation services, including services for medical needs, have the choice of several ridesharing options, transportation network companies and taxis, which may have varying costs. If a consumer uses a transportation network company with a substantial volume of rideshare business in a large urban area, it is expected that the increased cost due to permitting that is passed on to a consumer will be small. Due to the modest application fee of $24 per taxi for a taxi

company and the cap of $1,000 per company for a 3-year permit, it is expected that a consumer will only incur a small increase in fare due to this fee. Vehicle for hire companies and transportation network companies set their own fares, which are not regulated by the state.

6. **Statement of the probable effect on state revenues:**

   Application fees collected for transportation network companies and vehicle for hire companies have a positive impact on state revenues because the fees are deposited in the state general fund. The increase in state revenue to the general fund from permit fees is minimal, with periodic deposits, due to the fact that a company pays fees for a three-year period.

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

   ADOT routinely chooses the rulemaking options that are the least costly and burdensome to the business sector. ADOT also considered other fee options, including requiring a transportation network company to pay a set fee for each transportation network company driver. The Department determined that this option was not feasible due to the rapid change in the number of rideshare drivers, with many part-time or seasonal drivers. This option also posed implementation, collection, and auditing challenges. ADOT is required to adopt rules to comply with the applicable provisions of the vehicle for hire and transportation network company legislation, which established less burdensome regulation over transportation network companies and vehicle for hire companies.

C. **Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement:**

   None

B. A self-insurance applicant shall provide, on a self-insurance application form provided by the Department, the following information:
1. Applicant's name;
2. Business name, if applicable;
3. Mailing address, city, state, and ZIP code;
4. A selection of coverage type:
   a. Public liability only; or
   b. Public liability and property damage;
5. Number of vehicles in the applicant's fleet;
6. A selection list that describes the nature of the applicant's business;
7. A description of any hazardous materials transported by type, class, and weight;
8. A report of all accidents in the prior 39-month period before the application date;
9. The applicant's signature and official business title to certify that all information is true and correct; and
10. Acknowledgment by a notary public or by the signature of an authorized Department agent.

C. Supplementary documentation. In addition to a completed self-insurance application form, the applicant shall submit a profit and loss statement certified by a Certified Public Accountant for the 12-month period before the application date. The profit and loss statement shall include one of the following:
1. A balance sheet; or
2. An annual financial report.

D. On approval of an application, the Department shall issue a certificate of self-insurance that is continuously valid, but shall require the self-insurer to submit a 12-month update of supplementary documentation prescribed under subsection (C) on or before July 1 of each successive year.

E. An initial self-insurance applicant or a self-insurer making an annual update shall submit documentation required under subsections (B) through (D) to the following address:
Motor Vehicle Division
Financial Responsibility Unit
P.O. Box 2100, Mail Drop 535M
Phoenix, AZ 85001-2100

F. A self-insurer shall keep a copy of the self-insurance certificate in each covered vehicle at all times.

G. A self-insurer shall submit periodic, written notification updates to the Department of vehicles added or removed from self-insurance coverage. The written notification shall include the vehicle identification number of each vehicle.

H. A self-insurer that terminates self-insurance shall provide new evidence of financial responsibility as required under A.R.S. § 28-4135 for each vehicle previously covered under a self-insurance certificate.

I. In addition to the reasonable grounds prescribed under A.R.S. § 28-4007(C), the Department may cancel a self-insurance certificate under the following circumstances:
1. A self-insurer fails to comply with provisions of the Department's annual update requirement under subsection (D), or
2. A self-insurer no longer owns the covered business or fleet.

J. For the purpose of A.R.S. § 28-4007(C) and this Section, the Department shall conduct a self-insurance cancellation hearing according to the provisions prescribed under 17 A.A.C. 1, Article 5.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1). Section amended by final expedited rulemaking at 24 A.A.R. 279, effective January 12, 2018 (Supp. 18-1).

R17-5-811. Certificate of Deposit as Alternate Proof of Financial Responsibility; Applicability
For the purpose of A.R.S. §§ 28-4076(2) and 28-4084, a person depositing a $40,000 certificate of deposit with the state treasurer as alternate proof of financial responsibility may apply the certificate to a maximum of 25 non-commercial vehicles registered in the person's name.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

ARTICLE 9. TRANSPORTATION NETWORK COMPANIES

R17-5-901. Definitions
In addition to the definitions provided under A.R.S. § 28-9551, when applicable to a transportation network company, the following definitions apply to this Article unless otherwise specified:

"Applicant" means a person that meets the statutory requirements of a transportation network company as prescribed under A.R.S. Title 28, Chapter 30, Article 3.

"Designated point of contact" means a person employed by a transportation network company who has the authority to gather and provide records to the Department on request.

"Transportation network company permit" means a document issued by the Department to an applicant that meets the requirements prescribed under A.R.S. Title 28, Chapter 30, Article 3, as authorization to conduct transportation network services in this state.

"Violation" means a failure to maintain or make available to the Department any records the transportation network company is required to maintain and provide to the Department on request as provided under A.R.S. §§ 28-9554 through 28-9556.

Historical Note
New Section made by exempt rulemaking under Laws 2015, Ch. 235, § 14, at 21 A.A.R. 1825, effective August 21, 2015 (Supp. 15-3). Section repealed; new Section made by final rulemaking at 23 A.A.R. 223, effective March 6, 2017 (Supp. 17-1).

R17-5-902. Transportation Network Company Permit - Initial Application; Issuance; Fee

A. An applicant for a transportation network company permit issued by the Department under A.R.S. § 28-9552, shall apply to the Department by:
1. Completing and submitting online the application form provided by the Department at www.azdot.gov;
2. Providing the full name and contact information of the applicant's agent for service of process in this state;
3. Certifying that the transportation network company meets the requirements of A.R.S. Title 28, Chapter 30, Article 3;
4. Filing a legible illustration of the applicant's trade dress; and
5. Paying a $1,000 application fee as provided under A.R.S. § 28-9552(A).

B. Upon receipt and acceptance of all required documents, fees, and certifications, the Department shall issue to an applicant a transportation network company permit.

C. The application fee paid to the Department under subsection (A) is refundable in full if the transportation network company permit application is:
1. Denied by the Department, or

2. Withdrawn by the applicant before the Department issues a transportation network company permit.

D. A transportation network company permit issued by the Department under this Section expires three years after issuance and may be renewed as provided under R17-5-903.

Historical Note
New Section made by exempt rulemaking under Laws 2015, Ch. 235, § 14, at 21 A.A.R. 1825, effective August 21, 2015 (Supp. 15-3). Section repealed; new Section made by final rulemaking at 23 A.A.R. 223, effective March 6, 2017 (Supp. 17-1).

R17-5-903. Transportation Network Company Permit - Renewal Application; Issuance; Fee

A. A transportation network company shall apply to the Department for renewal of a transportation network company permit issued by the Department under A.R.S. § 28-9552 and R17-5-902, no earlier than 90 days, and no later than 30 days, before the permit expires by:
1. Completing and submitting online the renewal application form provided by the Department at https://secure.servicearizona.com;
2. Filing with the Department a legible illustration of the applicant's trade dress if different than the illustration already on file with the Department;
3. Certifying that the transportation network company meets the requirements of A.R.S. Title 28, Chapter 30, Article 3; and
4. Paying a $1,000 renewal application fee as provided under A.R.S. § 28-9552(A).

B. Upon receipt and acceptance of all required documents, fees, and certifications, the Department shall issue to an applicant a transportation network company permit renewal.

C. A transportation network company permit renewal issued by the Department expires three years after the date the existing transportation network company permit expires.

D. The holder of an expired transportation network company permit may apply to the Department for a new transportation network company permit using the renewal application procedure provided under R17-5-903(A).

Historical Note
New Section made by exempt rulemaking under Laws 2015, Ch. 235, § 14, at 21 A.A.R. 1825, effective August 21, 2015 (Supp. 15-3). Section repealed; new Section made by final rulemaking at 23 A.A.R. 223, effective March 6, 2017 (Supp. 17-1).

R17-5-904. Transportation Network Company Permit or Renewal - General Provisions

A. A transportation network company permit or renewal issued by the Department under this Article shall include an assigned number that remains effective until either withdrawn by the Department or until it expires.

B. A transportation network company permit or renewal issued by the Department under this Article shall not be transferred or assigned, in whole or in part, to any person other than the person to whom the permit is issued, except upon a merger, change in control, or sale of substantially all of the transportation network company's assets to an entity that assumes the duties and obligations of the permit. The transportation network company shall notify the Department within 30 days of such a transfer or assignment, and the Department shall have 30 days beginning on such notification to nullify the transfer or assignment based on the criteria set forth in this Article. An initial public offering shall not be deemed to trigger a transfer or assignment under this Section.

Historical Note
New Section made by exempt rulemaking under Laws 2015, Ch. 235, § 14, at 21 A.A.R. 1825, effective August 21, 2015 (Supp. 15-3). Section repealed; new Section made by final rulemaking at 23 A.A.R. 223, effective March 6, 2017 (Supp. 17-1).

R17-5-905. Transportation Network Company - Record Review

A. The Department, after providing reasonable notice to a transportation network company, may review with or without cause all records a transportation network company is required to make available to the Department on request as provided under A.R.S. §§ 28-9554 through 28-9556.

B. A transportation network company shall make all records described under subsection (A) available to the Department for review at an Arizona location.

C. The Department shall conduct a record review during the transportation network company's normal business hours.

D. The Department shall provide a copy of its review report to the transportation network company's designated point of contact. The report shall include the review results and indicate any violations found.

Historical Note
New Section made by exempt rulemaking under Laws 2015, Ch. 235, § 14, at 21 A.A.R. 1825, effective August 21, 2015 (Supp. 15-3). Section repealed; new Section made by final rulemaking at 23 A.A.R. 223, effective March 6, 2017 (Supp. 17-1).

R17-5-906. Transportation Network Company - Designated Point of Contact

A. A transportation network company shall provide to the Department the name and contact information of the transportation network company's designated point of contact in this state.

B. A transportation network company shall notify the Department within 10 business days of making a change to the name or contact information of the transportation network company's designated point of contact in this state.

Historical Note
New Section made by exempt rulemaking under Laws 2015, Ch. 235, § 14, at 21 A.A.R. 1825, effective August 21, 2015 (Supp. 15-3). Section repealed; new Section made by final rulemaking at 23 A.A.R. 223, effective March 6, 2017 (Supp. 17-1).

ARTICLE 10. VEHICLE FOR HIRE

R17-5-1001. Definitions

In addition to the definitions in A.R.S. §§ 28-101 and 28-9501, the following terms apply to this Article unless otherwise specified:

"Appealable agency action" has the meaning prescribed in A.R.S. § 41-1092.

"Applicant" means a company that applies to the Department for a vehicle for hire company permit as prescribed under A.R.S. Title 28, Chapter 30, Article 1, and these rules.

"Application" means forms designated as an application and all documents and additional information the Department requires a vehicle for hire company applicant to submit to obtain a vehicle for hire company permit.

"Contested case" has the meaning prescribed in A.R.S. § 41-1001.

"Designated point of contact" means a person employed by a vehicle for hire company who has the authority to gather and provide records to the Department on request.

Arizona Department of Transportation

5-YEAR REVIEW REPORT

Title 17. Transportation

Chapter 5. Department of Transportation - Commercial Programs

Article 9. Transportation Network Companies

July 31, 2020

Definitions and Statutory Authority

A.R.S. § 28-366. Director; rules

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

1. Collection of taxes and license fees.

2. Public safety and convenience.

3. Enforcement of the provisions of the laws the director administers or enforces.

4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

A.R.S. § 28-9551. Definitions

In this article, unless the context otherwise requires:

1. "Digital network or software application" means any online-enabled application, software, website or system that is offered or used by a transportation network company and that enables a potential passenger to arrange a ride with a transportation network company driver.

2. "Trade dress" means a removable and distinct logo, insignia or emblem attached to or visible from the exterior of either of the following:

(a) A transportation network company vehicle during the performance of transportation network services.

(b) A taxi while providing vehicle for hire services.

3. "Transportation network company" means an entity that has been issued a permit pursuant to this article, that operates in this state, that uses a digital network or software application to connect passengers to transportation network services provided by transportation network company drivers and that may but is not deemed to own, operate or control a personal motor vehicle of a transportation network company driver. Transportation network company does not include the following:

(a) This state or a county, city, town or political subdivision of this state and any related entity, a nonprofit agency or any other public body that coordinates, operates, promotes or sponsors public transportation or carpool or vanpool services.

(b) A program that is in place to meet federal air quality standards pursuant to section 49-404.

(c) Any individual, company or activity that meets the requirements of a rental car agent or rental company as defined in section 20-331 if all of the following apply:

(i) Transportation is provided to another person or is arranged by the rental company but provided by another person.

(ii) The route is predetermined.

(iii) Any money exchanged between the provider of the transportation and the recipient does not exceed the cost of providing the transportation.

4. "Transportation network company driver" means an individual who receives connections to potential passengers and related services from a transportation network company in exchange for payment of a fee to the transportation network company and who operates a motor vehicle that is both of the following:

(a) Owned, leased or otherwise authorized for use by the individual.

(b) Used to provide transportation network services.

5. "Transportation network company vehicle" means a motor vehicle that meets all of the following:

(a) Has a seating capacity not exceeding eight passengers, including the driver.

(b) Is authorized by a transportation network company.

(c) Is used by a transportation network company driver to provide transportation network services.

6. "Transportation network services" means the transportation of a passenger between points chosen by the passenger and arranged with a transportation network company driver through the use of a transportation network company's digital network or software application beginning when a transportation network company driver accepts a request for transportation network services received through the transportation network company's digital network or software application, continuing while the transportation network company driver provides transportation network services in a transportation network company vehicle and ending when the passenger exits the transportation network company vehicle or when the trip is canceled.

A.R.S. § 28-9552. Transportation network companies; permit; fee; agent; trade dress

A. A person may not act as a transportation network company driver in this state unless the transportation network company has been issued a permit by the department. The transportation network company may apply to the department on forms prescribed by the department. The department shall charge and collect an application fee as determined by the director.

B. The department shall issue a permit to an applicant that meets the requirements of this article.

C. A transportation network company shall maintain an agent for service of process in this state.

D. A transportation network company vehicle shall display trade dress while being used to provide transportation network services. The trade dress shall identify the transportation network company vehicle with a particular

transportation network company. The transportation network company shall file an illustration of the trade dress with the department.

E. A transportation network company shall be regulated pursuant to this article and not as a vehicle for hire.

A.R.S. § 28-9553. Transportation network services; fares; driver identification; electronic receipt

A. On behalf of a transportation network company driver, a transportation network company may charge a fare for transportation network services provided to passengers. If a fare is charged through a digital network or software application, the transportation network company shall disclose to passengers the fare calculation method on its website or within the digital network or software application.

B. The transportation network company shall provide passengers with the applicable rates being charged through a digital network or software application and the option to receive an estimated fare before the passenger enters the transportation network company vehicle.

C. Before the passenger enters the transportation network company vehicle through the transportation network company's digital network or software application, the digital network or software application shall display a picture of the transportation network company driver and the license plate number of the motor vehicle used for providing the transportation network service.

D. Within a reasonable period of time following the completion of a trip arranged through a digital network or software application, the transportation network company shall transmit to the passenger an electronic receipt that lists all of the following:

1. The origin and destination of the trip.

2. The total time and distance of the trip.

3. An itemization of the total fare paid, if any.

A.R.S. § 28-9554. Zero-tolerance policy; drug and alcohol use by driver; passenger complaints

A. A transportation network company shall implement a zero-tolerance policy on the use of drugs and alcohol while a transportation network company driver is providing transportation network services or is logged in to the digital network or software application but is not providing transportation network services. The transportation network company shall provide notice of this policy on its website, including procedures to file a complaint about a transportation network company driver with whom a passenger was matched and who the passenger reasonably suspects was under the influence of drugs or alcohol during the course of the trip.

B. On receipt of a passenger complaint alleging a violation of the zero-tolerance policy, the transportation network company shall do both of the following:

1. Immediately suspend the transportation network company driver's access to the transportation network company's digital network or software application.

2. Conduct an investigation into the filed complaint. The suspension shall last the duration of the investigation.

C. If the transportation network company's investigation confirms that the transportation network company driver has violated this section, the transportation network company shall permanently deactivate the driver's access to the transportation network company's digital network or software application. The transportation network company shall maintain enforcement records for at least two years after the date a passenger complaint is received by the transportation network company and make the records available to the department on request.

A.R.S. § 28-9555. Transportation network company duties; driver requirements

A. Before a person may accept trip requests through a digital network or software application, the transportation network company shall do all of the following:

1. Require the person to submit an application to the transportation network company that includes the person's name, address, age, driver license number, driving history, motor vehicle registration, motor vehicle insurance information and any other information requested by the transportation network company.

2. Conduct, or have a third party conduct, a local and national criminal background check for each applicant that includes a search of a multijurisdiction criminal records locator or similar, validated commercial nationwide database and a national sex offender registry database.

3. Obtain and review a driving history report for the applicant.

4. Require that all transportation network company vehicles used by transportation network company drivers meet state vehicle safety and emissions standards for private vehicles and have at a minimum an annual brake and tire inspection that is performed by a qualified third party.

B. A transportation network company may not allow a person to act as a transportation network company driver who:

1. Has had more than three moving violations or one major violation pursuant to this title in the preceding three years. For the purposes of this paragraph, "major violation" includes attempting to evade the police, reckless driving or driving on a suspended or revoked license.

2. Has been convicted within the preceding seven years of violation of section 13-706, 28-1381, 28-1382 or 28-1383 or title 13, chapter 14, 19, 22, 23, 34 or 35.1.

3. Is listed in a national sex offender registry database.

4. Does not possess a valid driver license.

5. Does not possess proof of registration for the motor vehicle that will be used as a transportation network company vehicle.

6. Does not possess proof of financial responsibility for the motor vehicle that will be used as a transportation network company vehicle.

7. Is not at least nineteen years of age.

C. A transportation network company or its agent shall maintain records of the criminal background check conducted on behalf of each transportation network company driver and make the records available to the department on request.

A.R.S. § 28-9556. Transportation network services; civil penalty; street hails prohibited; records

A. A transportation network company driver shall accept rides booked and paid for exclusively through a transportation network company's digital network or software application. The department may impose a civil penalty of not more than one thousand five hundred dollars per violation against any transportation network company driver who is found to be soliciting or accepting street hails.

B. A transportation network company shall maintain individual trip records for at least one year after the date each trip was provided and transportation network company driver records until the one-year anniversary of the date of the driver's activation on the transportation network company's digital network or software application has ended and shall make the records available to the department on request.

A.R.S. § 28-9557. Transportation network companies; drivers; transaction privilege tax prohibited

A transportation network company that has a permit issued pursuant to this article and a transportation network company driver may not be required to pay transaction privilege tax or any similar tax imposed by any taxing authority in this state on transactions in which a transportation network company driver is providing transportation network services.

A.R.S. § 28-9558. Transportation network company disclosures; insurance proceeds

A. A transportation network company shall disclose to its transportation network company drivers, in writing or in an electronic format, the following information before the drivers may accept a request for transportation network services on the transportation network company's digital network or software application:

1. The insurance coverage and limits of liability that the transportation network company provides while the transportation network company driver uses a transportation network company vehicle in connection with the transportation network company's digital network or software application.

2. That the transportation network company driver's own insurance policy might not provide coverage while the transportation network company driver uses a transportation network company vehicle in connection with the transportation network company's digital network or software application, depending on its terms.

3. That the transportation network company driver's use of a vehicle that has a lien against it to provide transportation network services for the transportation network company might violate the terms of the transportation network company driver's contract with the driver's lienholder.

B. The disclosures required by subsection A of this section shall be placed in the prospective transportation network company vehicle owner's written terms of service.

C. If a transportation network company's insurer makes a payment for a claim covered under comprehensive coverage or collision coverage, the transportation network company shall cause its insurer to issue the payment directly to the business repairing the vehicle or jointly to the owner of the vehicle and the primary lienholder on the covered vehicle.

Department of Health Services
Title 9, Chapter 7, Article 14, Registration of Nonionizing Radiation Sources and Standards for Protection against Nonionizing Radiation

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 6, 2020

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

FROM: Council Staff

DATE: **September 11, 2020**

SUBJECT: **Department of Health Services**
Title 9, Chapter 7, Article 14

This Five-Year- Review Report (5YRR) from the Department of Health Services relates to rules in Title 9, Chapter 7, Article 14 regarding registration of nonionizing radiation sources and standards for protection against nonionizing radiation.

In the previous 5YRR of these rules, the Department stated that the Arizona Radiation Regulatory Agency planned to complete a rulemaking. However, the Governor's policy advisor asked the agency to hold off on the rulemaking until a legislative plan was determined. Since the legislative changes in 2017 and 2018, in which the Department took over the responsibility for the regulation of sources of radiation, no rulemaking has been completed.

Proposed Action

The Department, for the reasons mentioned in the report, indicates it plans to amend several of its rules to improve overall clarity, conciseness, understandability, effectiveness, enforcement, and consistency with other rules and statutes. As mentioned in other Five-Year-Review Reports for Chapter 7, the Department plans to complete the changes after reviewing all articles in the Chapter. The last 5YRR for the Chapter is due in December 2021.

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

Yes, the Department cites to both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

Pursuant to Laws 2017, Ch. 313, and Laws 2018, Ch. 234, the Department of Health Services 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 Department indicates that no economic impact statements were available for any of the rulemakings in the five-year period. Economic impact of sections made/revised was assessed from information in the Notice of Final Rulemaking (NFR) for the rulemaking that occurred.

Currently, the Department issues regulations for approximately 4,500 devices to about 435 registrants under the article. As of July 17, 2020, these include 181 registrants of 193 radio frequency devices, 189 registrants of 921 tanning devices, and 1,465 registrants of 3,376 lasers/IPL devices.

The Department states that based on their analysis the economic impact of the rulemakings was as estimated.

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 impose the minimum requirements to ensure the regulation and safe use of nonionizing radiation. The rules contain requirements for qualifications of applicants and operators, for equipment, for facilities, and for operating and emergency procedures, including recordkeeping. The Department believes that the substantive content of the rules is the minimum necessary to protect health and safety and that the protection of public health and safety outweigh the probable costs of the rules.

4. Has the agency received any written criticisms of the rules over the last five years?

No, the Department indicates they did not receive any comments on these rules.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Yes, for the reasons mentioned in the report the Department indicates that several rules of its rules are not clear, concise, and understandable.

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

Yes, the Department indicates that the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

Yes, and for the reasons mentioned in the report, the Department indicates that several of its rules could be amended to improve their overall effectiveness

8. Has the agency analyzed the current enforcement status of the rules?

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

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

No, the Department indicates the rules are not more stringent than the corresponding laws; 21 CFR 801.109, 21 CFR 1030.10, 21 CFR 1040.10, 21 CFR 1040.20, and 21 CFR 1040.30

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Yes, A.R.S. § 30-672, was amended by Laws 2017, Ch. 313, authorizes the Department to issue licenses and registrations for sources of radiation and those persons using these sources. The Department issues a general permit under the rules in 9 A.A.C. 7 applies to certain levels of radioactive material or certain categories of facilities or devices and specific permits are issued by rule for quantities. The registrations issued under R9-7-1302(F), include both general and specific permits and complies with A.R.S. § 41-1037.

11. Conclusion

As mentioned above, and for the reasons mentioned in the report the Department is proposing to amend several of the rules to improve their overall clarity, conciseness, and understandability. The Department is proposing to complete a rulemaking that addresses the changes, after reviewing all of the Articles in the Chapter.

Council staff recommends approval of this report.

ARIZONA DEPARTMENT
OF HEALTH SERVICES
POLICY & INTERGOVERNMENTAL AFFAIRS

July 30, 2020

VIA EMAIL: 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 14, 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 14, Registration of Nonionizing Radiation Sources and Standards for Protection against Nonionizing Radiation, which is due on August 31, 2020.

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 or 602-364-1230.

Sincerely,

Robert Lane
Director's Designee

RL:rms

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 7. Department of Health Services

Radiation Control

Article 14. Registration of Nonionizing Radiation Sources and Standards for Protection against Nonionizing Radiation

July 2020

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, 30-672, 30-671.01, 30-673, 32-516, and 32-3233

2. The objective of each rule:

Rule	Objective
R9-7-1401	To specify requirements for the registration of non-ionizing radiation units and service providers.
R9-7-1402	To define terms specific to the Article to enable general understanding of the terms.
R9-7-1403	To establish general requirements for the safe use of a source of non-ionizing radiation, as well as criteria for the Department's waiving of requirements.
R9-7-1404	To specify requirements for the safe operation of radiofrequency equipment.
R9-7-1405	To establish parameters for the maximum permissible exposure to radiofrequency radiation.
R9-7-1406	To require the posting of warning signs and operating procedure restrictions/limitations to reduce the chance of unnecessary or excessive exposure to radiofrequency radiation.
R9-7-1407	To specify which microwave ovens are required to be registered with the Department.
R9-7-1408	To specify requirements for reporting incidents involving radiofrequency radiation.
R9-7-1409	To provide for a medical examination of an individual who may have been exposed to radiofrequency radiation in excess of the maximum permissible exposure.
R9-7-1410	To specify how the Department will monitor compliance with requirements. To specify requirements for registrant measurements.
R9-7-1412	To require policies and procedures to ensure compliance with requirements for tanning equipment.
R9-7-1413	To establish requirements for sunlamp products used in a tanning facility.
R9-7-1414	To establish requirements for individuals operating tanning equipment.
R9-7-1415	To require the posting of warning signs to reduce the chance of overexposure or eye damage.
R9-7-1416	To specify requirements for reporting incidents involving tanning injuries.
R9-7-1418	To specify which high intensity mercury vapor discharge lamps are required to be registered

	with the Department.
R9-7-1421	To establish requirements for the safe use of lasers.
R9-7-1422	To specify requirements for protective devices related to the use of lasers.
R9-7-1423	To specify actions, related to the use of a laser, that are not permitted.
R9-7-1425	To specify how laser products are classified.
R9-7-1426	To establish where the exposure limits for laser and collateral radiation are specified.
R9-7-1427	To require the use and placement of warning signs, symbols, and labels related to the use of lasers and specify their content.
R9-7-1429	To specify where requirements for the posting of warning signs related to the use of lasers may be found.
R9-7-1433	To specify requirements related to establishing a controlled area for a laser to protect health and safety.
R9-7-1434	To specify the designation and duties of a Laser Safety Officer.
R9-7-1435	To specify requirements related to the provision, maintenance, and use of eyewear to protect against the harmful effects of lasers.
R9-7-1436	To specify requirements for reporting incidents involving lasers.
R9-7-1437	To specify requirements for operating a laser system with an unenclosed beam path.
R9-7-1438	To specify requirements related to the use of lasers or devices producing intense pulsed light for hair reduction or other cosmetic procedures.
R9-7-1438.01	To specify certification requirements for laser technicians.
R9-7-1439	To establish the certification process for laser training programs.
R9-7-1440	To specify requirements for the use of laser products in the practice of medicine.
R9-7-1441	To specify requirements related to laser light shows and demonstrations.
R9-7-1442	To specify how measurements to determine maximum permissible exposures are taken.
R9-7-1443	To specify requirements related to compliance monitoring.
R9-7-1444	To specify how a registrant is required to measure accessible emission for classification purposes.
Appendix A	To list types of radiofrequency devices.
Appendix B	To specify the information to be proved as part of the application in R9-7-1401(B)(3).
Appendix C	To specify the content of a training program for operators of lasers or devices producing intense pulsed light that are used for hair reduction or other cosmetic procedures.
Appendix D	To specify the content of a training program for laser operators and Laser Safety Officers.

3. **Are the rules effective in achieving their objectives?** **Yes _X_** **No __**

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
Multiple	Although the rules are generally effective, changes to address the items described below would improve the effectiveness of the rules.
Multiple	The rules would be more effective if therapies using UV light, lasers, or other nonionizing radiation modalities were better addressed in the rules. For example, a dermatologist or

	pediatrician who uses UV light to treat jaundice must follow the same requirements as for tanning beds.

4. Are the rules consistent with other rules and statutes? **Yes _X_** **No __**

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
Multiple	Although the rules are consistent with statutes, the statutes are not consistent with advances in technology. Some devices used for hair removal and other cosmetic procedures have interchangeable heads or attachments that allow the same base device to be used as a radiofrequency device, laser, or intense pulsed light device. A technician with the required training can use the piece of equipment for the latter two functions but not to administer radiofrequency radiation.

5. Are the rules enforced as written? **Yes _X_** **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 _X_**

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
Multiple	The rules would be clearer if minor grammatical or formatting changes were made. The rules would also be more understandable if all incorporations by reference were listed in one Section, to which they were then cited from other Sections.
R9-7-1401	Subsection (A) duplicates and is included in the requirements in subsection (B)(1) and R9-7-1403(C), respectively. The rule would be more concise if subsection (A) were removed from the rule. This subsection, as well as subsections (A), (B)(1), (B)(2), and (C), would be more understandable if the defined term, "nonexempt nonionizing source," were used. Subsection (B) would be more understandable if it required an application for registration to be submitted "at least 30 days before its first use" rather than "within 30 days of its first use." Subsection (B)(3) would be clearer and more understandable if the elements in Appendix (B) were included in this rule, rather than being listed in a different location, and the rule stated that the application must be made on a Department-provided form. Subsection (C) would be clearer if the different types of notifications required were better delineated and broken out, as well as possibly adding citations to the other types of notifications required in the Article or in A.R.S. § 32-516 or 32-3233. The rule would also be improved by clarifying in subsection (E) application requirements for different situations, such as when a mobile device is required to be registered. Subsection (F) could be improved by making the wording

	more similar to the corresponding requirement in Article 2 for those installing or servicing devices producing ionizing radiation and changing the wording to "for registration at least 30 days before."
R9-7-1402	The rule would be improved if definitions, such as those for "controlled area," "certified laser product," "laser facility," "laser product," "laser protective device," "sampling interval," "near field region," and "radio frequency source," were reworded so parts of defined terms were not included in the definition. Other terms, such as "direct supervision," "accessible radiation," "angular subtense," "CDRH," "demonstration laser," "integrated radiance," "pulse interval," "sampling interval," and "secured enclosure," could be removed from the rule because the term is not used in the Article. Still other terms, such as "aperture stop," "certified laser product," "continuous wave," "enclosed laser," "pulse duration," radiant power,", and "rule of nines," are used only once in the Article and could be defined/described in place. Definitions should be added for other used, but undefined, terms such as "prescribing healthcare professional." In addition, the definitions could also be reorganized because some terms, defined with one group of terms, may also apply to rules for which there is a different group of defined terms. The incorporations by reference in the definitions of "certified laser product," "classes of laser," "collateral radiation," "federal performance standards for light-emitting products," "maximum permissible exposure (MPE)," "uncertified laser product," and "self-extinguishing lamp" should be updated. The rule would be more understandable if incorporations by reference were in the body of the rules, rather than as part of the definitions, for terms for which the incorporated documents specify information to which a regulated person must comply. The term, "incident," is defined in the rule, but it is then used with a different meaning in the definitions of "irradiance" and "radiant exposure." The term "maximum permissible exposure" is defined twice, once for lasers and once for radiofrequency devices, with two different definitions, and this could be confusing. The order of the terms "radio frequency source" and "radio frequency radiation" should be switched to put the terms in alphabetical order.
R9-7-1403	The rule would be clearer if it specified that class 1 through 3a lasers are not regulated under the Article. Subsection (A) would be improved if the rule more clearly described what "specific requirements" may be waived. Subsections (B)(1) and (2) would be more understandable if the defined term "nonexempt nonionizing source" were used. Subsection (B)(1) would be clearer by stating that a trained individual still must be working under their scope of practice or as certified by the Department. The rule would also be clearer if subsection (B)(2) specified what "safety rules" must be provided. Requirements for recordkeeping in subsection (B)(4) would be improved by changing to "for at least three years." The Article might also be more concise if the content of R9-7-1407 and R9-7-1418 were included in this rule.
R9-7-1404	Subsection (A) would be more understandable if the incorporation by reference were updated and a URL to access the document were provided. The last sentence in subsection (A) restates the requirement in R9-7-1406 and is unneeded. Subsection (B) would be clearer if the rule stated or cited to what would require a registrant to operate a radiofrequency source in a controlled area and if "emission indicators" were described or defined. Subsection (F) would be clearer if "mechanically scanned" were described or defined.
R9-7-1405	Subsection (A) would be more understandable if the incorporation by reference were updated and a URL to access the document were provided. The rule would also be more understandable if subsection (A) began with excepting situations specified in subsections (B) and (C).
R9-7-1406	The rule would be more understandable if the sign were more clearly designated as "Figure 1." In subsection (C), it is unclear what is meant by warning "label"; subsection (A) should be cited to with respect to "warning sign."
R9-7-1407	The rule would be more understandable if the incorporation by reference were updated and a URL to access the document were provided. The content of the rule, specifying that those

	persons with microwave ovens complying with 21 CFR 1030.10 would be exempt from requirements in the Article, could be included in R9-7-1403.
R9-7-1408	The rule could be clearer if the subsections were reformatted and reworded to be mutually exclusive. The rule would be more concise if it were included in the content of R9-7-1409.
R9-7-1409	The rule would be clearer if wording in the Section title ("Workers") and in subsections (A) and (B) ("individual") matched. The content would also be clearer if the situations described in the rule were called "radiofrequency incidents" and the requirements included under R9-7-1408.
R9-7-1410	The rule would be improved if the rule specified the requirements with which a registrant needs to comply for each parameter, rather than describing how the Department would measure compliance.
R9-7-1412	The content of the rule would be more understandable if combined into R9-7-1413. The rule would also be clearer if the rule did not refer to itself as "R9-7-1412."
R9-7-1413	Subsections (A) and (D) would be more understandable if the incorporation by reference were updated and a URL to access the document were provided. The rule would be clearer if subsection (A) started with an exception for sunlamp products in use before a specific effective date, rather than the effective date of the Article, since the content has been in effect since 2005, while other Sections unrelated to the subject matter of the rule have been revised in 2009 and 2010 and the entire Chapter recodified in 2018. The rule would also be clearer if it also specified the labeling required in 21 CFR 1040.2(d). The second sentence in subsection (D)(5) is now obsolete and could be removed, with the wording in the first sentence revised accordingly.
R9-7-1413, R9-7-1414, R9-7-1415, R9-7-1416	The rules would be more understandable if the term "sunlamp product" were used consistently, rather than the rules including "tanning booth," "tanning device," "tanning room," and "tanning equipment."
R9-7-1414	The rule would be clearer if subsection (A)(2) used "individual" rather than "person," and if subsections (A)(3) and (C)(1)(b)(iv) and (v) specified what "equipment" is meant. The rule would be more understandable if the second sentence in subsection (A)(5) were a separate subsection under subsection (A). The rule would also be clearer if the same term ("protective eyewear," "protective sunlamp eyewear" (the defined term), or "eyewear") were used in the Article, including in subsections (B)(1) and (C)(1)(b)(iv) and (v). The first sentence in subsection (C) does not belong with the rest of the subsection and should be its own subsection or combined into subsection (A). Requirements for recordkeeping in subsection (C)(2) would be improved by changing to "for at least three years."
R9-7-1415	Subsection (B) would be improved by rewording the content of the notice to clarify that a parent or guardian must sign in the presence of a tanning facility operator, not that the minor must tan in the presence of a tanning facility operator. The rule would also be clearer if the term "reception area" were better described.
R9-7-1416	Subsection (B) would be clearer if it were rewritten to state that a written report of an incident must be provided to the Department "within 10 working days after its occurrence or within 10 working days after the date the registrant became aware of the incident." The rule could be improved by requiring in subsection (C)(3) the date/time of the incident.
R9-7-1418	The rule would be more understandable if the incorporation by reference were updated and a URL to access the document were provided. The content of the rule, specifying that those persons using HID lamps complying with 21 CFR 1040.30 would be exempt from requirements in the Article, could be included in R9-7-1403.
R9-7-1421	Subsection (A) would be improved if the rule clarified that the individual specifying alternate requirements is the Laser Safety Officer for the applicant or registrant. Subsection (C) would be clearer if the rule stated "If a registrant is required under R9-7-1433 to establish a

	controlled area for a laser…". The rule would also be improved if subsection (C)(1) cited to R9-7-1427(H) for labeling requirements and to where the "required standards" may be found. Subsection (C)(2) would be clearer if the term "warning device" were described as a method for an individual to know the device was on or a requirement elsewhere in the Article cited to. Subsection (C)(4) would be clearer if the rule were reworded so "reevaluate potential hazards" was described as mean that potential hazards were evaluated as part of the survey at least every six months. In subsection (C)(5) the term "incident" is not used as defined in R9-7-1402. Subsection (D)(5) would be clearer if "registrant" were used instead of "licensee."
R9-7-1422	Subsection (A) would be clearer if what "it" refers to were better specified. The meaning of the second sentence in subsection (A) could also be clarified. The term "accessible emission levels" is defined for radiofrequency devices, but not for lasers. Subsection (B)(3) would be more understandable if it specified under what circumstances an interlock should turn off the power supply or interrupt the beam. In subsection (B)(4), the term "automatic accessibility" should be described or defined. Subsection (C)(1) would be more understandable if the incorporation by reference were updated and a URL to access the document were provided.
R9-7-1423	In subsection (A), the term "specular reflections" should be described or defined.
R9-7-1425	Subsections (A) and (B) would be more understandable if the incorporation by reference were updated and a URL to access the document were provided.
R9-7-1426	Subsections (A) and (B) would be more understandable if the incorporations by reference were updated and a URL to access the documents were provided.
R9-7-1427	The rule would be more understandable if the incorporations by reference in subsections (A) and (D) were updated and a URL to access the documents were provided. Subsection (I)(4) would be clearer if the rule read "warnings in subsections (I)(1) through (3)."
R9-7-1429	The rule would be more understandable if the incorporation by reference were updated and a URL to access the document were provided. The rule would be more concise if the content of the rule were included in R9-7-1427.
R9-7-1433	Subsection (C) would be clearer if the second sentence in subsection (C)(4)(d) became a separate subsection under subsection (C).
R9-7-1434	Subsection (B) should cite to the requirement for a laser radiation "safety" program in R9-7-1421(B). Subsection (B)(1) would be clearer if it specified that the maintenance or service for Class 3b and Class 4 lasers must be performed by a person registered according to R9-7-1401(F). Subsection (B)(2) would be clearer if it cited to requirements in R9-7-1421(D)(2).
R9-7-1435	The rule would be more concise if requirements were included under R9-7-1422. Requirements for recordkeeping in subsection (C) would be improved by changing to "for at least five years."
R9-7-1436	The rule would be improved if it more clearly specified that the date of the date of the incident be included in a report. In addition, the requirement in subsection (E) should be included in R9-7-1421.
R9-7-1437	The title of the rule could be changed to clarify that only laser systems with an unenclosed beam path are addressed in the rule. The rule would be clearer if the two sentences in subsection (1) were combined into one sentence.
R9-7-1438	The title of the rule would be improved by rewording to use the statutorily defined term "cosmetic purpose" (see A.R.S. §§ 32-501 and 32-3231). Adding the list in R9-7-1438.01 would also make the term "other cosmetic purpose" more understandable. Subsection (A) would be more understandable if the incorporation by reference were updated and a URL to access the document were provided. Subsection (A) would also be improved by specifying in two separate requirements that only lasers and intense pulsed light devices that meet the requirements in the CFR may be used, and that the device must be registered. The subsection would also be clearer if it stated that the requirements in subsections (A)(1) through (6) were

	documents, rather than "information," and were in addition to the requirements for registration specified in R9-7-1401 and listed in Appendix B. Although the term "medical director" is not currently used in the rule, subsection (A) would also be more understandable if this term were used where applicable to make clearer when "health professional" or "prescribing health professional" refers to a medical director named on the registration form or when these terms mean another individual associated with the facility. More information should also be provided about "an Department-approved exam" A citation should also be given to the subjects that have to be covered in the didactic training in subsection (A)(1). Subsections (A)(1) and (2) should be reworded to clarify that those health professionals in practice before October 1, 2010 were exempt from the requirement to pass a Department-approved examination but were still required to have documentation of 24 hours of didactic training. In subsection (A)(3), which "prescribing health professional" should be clarified and the term defined as described in ARS § 32-3232. Subsection(A)(4) could be improved by clarifying that "a prescribing health professional" is associated with the facility. Subsection (A)(5) could be clarified to specify that "authorization" is obtained from the Department and to provide more detail about "emergency medical care and assumed legal liability." Subsection (A)(6) may be more understandable by citing to the statutes "as applicable." Subsection (B) may be clearer if the CFR cited to in subsection (A) were included, rather than the cross-reference being to all of subsection (A). In both subsection (B)(1) and subsection (C)(1), the order of subsections (a) and (b) should be switched, because a device is first purchased then used. Subsections (B)(2)(a) and (C)(2) could be changed to clarify that "individual" means a certified laser technician. The content of the text would be clearer if the second sentence of subsection (B)(2)(a)(i) through subsection (B)(2)(a)(iv) and of subsection (C)(2)(a) through (C)(2)(d) were moved into R9-7-1439. In subsections (B)(2)(b) and (c), (B)(4)(b), and (B)(5), the rule would be more understandable if "certified laser technician" were specified rather than "laser technician." In subsections (B)(3) and (C)(3), the rule would be clearer if "prescribing health professional" were replaced with "medical director." Subsections (B)(4) and (C)(3) would be more understandable if subsections (B)(4)(a) and (C)(3)(a) were separated into two parts ("maintain…" and "ensure…") and the content of subsection (B)(4)(b) and (C)(3)(b) were clarified. Requirements for recordkeeping in subsection (B)(5) would be improved by changing to "for at least three years." The content of subsections (B)(6) and (C)(4) appears to duplicate requirements in subsection (A)(1). Subsections (B)(7) and (C)(5) could be more understandable if they clarified that the "radiation safety training" specified refers to training on specific policies and procedures of the facility, rather than to training programs under R9-7-1439. The second sentence in subsections (B)(7) and (C)(5) should be a separate requirement, and the requirements for recordkeeping would be improved by changing to "for at least three years." Since many requirements in subsections (B) and (C) are identical, the rule would be more concise if they were combined into one subsection, with the few differences, such as hair reduction requiring indirect supervision and other procedures requiring direct supervision, being specified. The title of subsection (C) should describe what "other cosmetic procedures" means, as listed in R9-7-1438.01(F). Subsection (C)(1) may be clearer if the CFR cited to in subsection (A) were included, rather than the cross-reference being to all of subsection (A). Subsection (D) could be clarified to specify what is meant by "other applicable licensing and safety laws." Since a laser device may not always have a "key," subsection (E) could be changed to clarify that other methods installed by a manufacturer to prevent unauthorized use would satisfy the requirement.
R9-7-1438.01	Certification of a laser technician constitutes occupational licensing, so the content of this rule should be moved under a new Article in 9 A.A.C. 16. Processes to review, withdraw, and deny applications should also be added, as well as timeframes for review, currently in subsection (G). In subsection (A), it is unclear what "completed application" means or what information must be provided. Subsection (D) would be clearer if a "health professional board" were defined or better described and if other reasons for disciplining, such as not

	following requirements, were added. Subsection (E) should be reworded to clarify grandfathering, so someone using laser and IPL devices before November 24, 2009 could renew a certificate but no new certificates would be issued without approved training. Since the list in subsection (F), if updated to include new methodologies and remove duplications, essentially specifies "cosmetic procedures, the list should be moved into R9-7-1438. The rule should also clarify that, in order to comply with statutes, a certified laser technician must meet the requirements to perform hair removal before being able to get additional training to perform the "other cosmetic procedures." Subsection (H) should also be revised to allow for electronic certificates that can be printed out in as many copies as needed.
R9-7-1439	Subsection (A) should be reworded to remove the requirement to submit a copy of a test, especially since such a document could then be requested as a public record. Having test questions available outside the testing arena could compromise the effectiveness of the test in truly gauging the knowledge of a student. The rule should better specify the content requirements of the various training programs, and perhaps be combined with the requirements in subsection (F). The citation in subsection (B) should be to subsection (F), not (E). In subsection (C), the URL for where the list is maintained by the Department should be specified. The location of the list should also be specified at the beginning or the end of the rule, not in the middle. The content of subsection (D) should be included with information about an application. Subsection (E) would be clearer if it were not in the passive voice.
R9-7-1440	The rule could be more understandable if subsection (E) were reworded to more clearly specify that the "laser safety training program" specified refers to training on specific policies and procedures of the facility, rather than to training programs under R9-7-1439. The rule would also be clearer definitions for "specular reflections" and "diffuse reflections" were added.
R9-7-1441	Subsection (A) would be more understandable if the incorporation by reference were updated and a URL to access the document were provided and if a typographical error were corrected. Subsection (B) also contain a typographical error that should be corrected. In subsection (B)(2), a definition is needed of "diffuse surface." In subsection (B)(4), the rule should cite to R9-7-1421(D), where surveys and calculations are required. In subsection (D), the rule should specify how long before an outdoor laser light show the FAA should be notified, or a federal requirement for notification cited. Subsections (G) ("shall prevent the radiation from exceeding") and (H) ("areas where levels of laser radiation exceed") appear to be in conflict and should be reworded to clarify the intent of the two subsections and why they are not in conflict. Subsection (J) would be clearer if the rule ended after the text "requirements of subsections (F) and (G)." Subsections (K) and (L) should also be reworded to clarify their meaning, and subsection (R) should be removed from the rules as unnecessary.
R9-7-1442, R9-7-1443, and R9-7-1444	These three rules would be more understandable if they were combined into one Section, possibly with the title "Laser Measurement and Calibration." R9-7-1442 would be more understandable if the incorporation by reference were updated and a URL to access the document were provided, as would subsection (B) of R9-7-1444.
Appendix A	The information currently in this Appendix should be specified in R9-7-1401 to provide notice of the types of devices for which an application would be required, especially since the Appendix is not cited to anywhere in the body of the rules.
Appendix B	The Article would be improved if the information in the rule were included in R9-7-1401(B)(3) and updated to include the information currently being submitted and the minimum necessary for the type of application.
Appendix C	The Article would be improved if the information in the rule were included in R9-7-1439, which should then be cited to in R9-7-1438(A).
Appendix D	The Article would be improved if the information in the rule were included in R9-7-1439,

	which should then be cited to in R9-7-1421.

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 and those persons using them. The rules in Article 6 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 all but one of the rulemakings were in 12 A.A.C. 1. No economic impact statements (EISs) are available to the Department for any of these rulemakings, so the economic impact of the Sections made/revised in the rulemakings was assessed from information in the Notice of Final Rulemaking (NFR) 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 issues registrations for approximately 4,500 devices to about 435 registrants under this Article. As of July 17, 2020, these include 181 registrants of 193 radiofrequency devices; 189 registrants of 921 tanning devices; and 1,465 registrants of 3,376 lasers/IPL devices. Under R9-7-1438.01, the Department issues 1,800 certificates. Under R9-7-1439, the Department has certified 26 laser training programs.

In a rulemaking effective February 5, 2005, the rules in Article 14, with the exception of R9-7-1421, were essentially newly made in a "kill and fill" manner, but with few substantive changes. In the rulemaking, the requirements in R9-7-1403 through R9-7-1418, R9-7-1422 through R9-7-1437, and R9-7-1440 through Appendix B were last updated. In R9-7-1403, the only substantive change appears to have been for the retention time for records, with retention of all specified records being required for three years, rather than the variety of time periods ranging from two years to permanent retention in the previous rules. Other requirements in the Section were reworded but not changed. In R9-7-1404 through R9-7-1410, R9-7-1412, R9-7-1413, R9-7-1416, and R9-7-1422 through R9-7-1437, the incorporations by reference were updated to correspond with federal or national standards, requirements were put into active voice, and the terminology was changed from "licensee" to "registrant." In R9-7-1414 and R9-7-1415, similar changes were made, as well as the substantive change of adopting requirements related to obtaining permission from a parent or guardian before an individual under 18 years of age is allowed to use tanning equipment. Both R9-7-1411 and R9-7-1417 were repealed, the former as duplicative of requirements in the new R9-7-1401, and requirements in the latter replaced with those in the new R9-7-1418. Requirements for lasers used for medical purposes were adopted in R9-7-1440, with the requirements that had been in the Section moved to R9-7-1441, and the requirements in R9-7-1441 moved to R9-7-1442.

Requirements in R9-7-1443 were put into active voice. Some requirements in R9-7-1444 were reworded, while others were replaced with an incorporation by reference. In Appendix A, two categories of radiofrequency devices were removed and the Appendix reformatted. A new Appendix B was added to include the information required on an application associated with new requirements in R9-7-1401, which had been moved from Article 2 of the Chapter. The Preamble for the NFR for the rulemaking stated that the changes to requirements for laser and tanning facility, to comply with the then-current federal standards, could "present some increase in operating cost, if a user has not made an effort to stay abreast of industry safety." The cost, although unknown, was thought to be "minimal when compared to the cost of the machines that produce the nonionizing radiation." Tanning businesses that would be required to install timers on their equipment to avoid burns from excessive tanning, about which four cases had had to be investigated in the previous two years, were estimated to incur about $300 in expenses. The Department believes the economic impact is as estimated.

Two rules in the Article were last revised and two new Appendices added in a rulemaking effective April 3, 2005. In this rulemaking, requirements were added related to lasers and devices producing intense pulsed light (IPL). In R9-7-1402, a new definition of "indirect supervision" was added, and a definition of "other cosmetic procedure" replaced the definition of "cosmetic procedure." In R9-7-1421, a requirement was added for a registrant to provide training specified in Appendix D to a Laser Safety Officer. Appendix C specified requirements for hair removal and other cosmetic laser or IPL operator training programs, and Appendix D specified requirements for training of laser operators and Laser Training Officers. These requirements were added because of "the potential hazard associate with laser and IPL misuse." The NFR stated that the changes could "present some increase in operating cost, if a user has not made an effort to stay abreast of training and industry safety." The cost, although unknown, was thought to be "minimal when compared to the cost of the machines that produce the nonionizing radiation and potential costs associated with a court case if one of these devices is misused." The NFR stated that 220 medical laser registrants and 25 users of IPL systems would be affected by the new rules. The cost of the training was estimated to cost between $750 and $2,000, which was anticipated to be passed on "the patient or client who receives the laser or IPL treatment." The Department believes the economic impact is as estimated.

Only one rule in Article 14, R9-7-1401, was revised in a rulemaking effective on August 1, 2009. The requirement for submitting an application was changed from "at least before its first use" to "within 30 days of its first use." A minimal increase in costs was anticipated for other elements of the rulemaking, in different Articles, but no mention of any costs associated with this change was made. The Department believes there was no cost imposed by this change.

In a rulemaking effective August 10, 2010, two rules were amended and one new rule adopted. This rulemaking was undertaken to make the rules consistent with A.R.S. Tile 32, Chapters 5 and 32, as amended by Laws 2008, Ch. 232. Changes made to R9-7-1438 include an updating of an incorporation by record, making changes to be in compliance with the statutory changes, and adding a requirement for securing a laser when not in use. In the new R9-7-1438.01, requirements were added for certification of a laser technician and revocation of

the certification. In R9-7-1439, changes were made to update the rule in compliance with statutory changes, add a fee for initial approval and for renewal of approval of a certified laser or IPL training program, and specify the requirements for an application for certification. The NFR specified that the cost of certification of a laser technician would be $30 per year, while the cost for a training facility would be $100 per year, to cover the administrative costs of regulation. The rulemaking did not change the registration fee for a facility. 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 2015 five-year-review report indicated that the Arizona Radiation Regulatory Agency (ARRA) had planned to request an exception from the rulemaking moratorium once two pending requests had been approved by the Governor's Office and the agency's sunset review completed. However, ARRA had been asked by the Governor's policy advisor to hold off until the legislative plan was determined. ARRA had thought the Governor's Office would support a rulemaking during 2016. With legislative changes in 2017 and 2018 under which the Department assumed responsibility for the regulation of sources of radiation, no rulemaking was begun.

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 rules provide the minimum requirements to ensure the regulation and safe use of nonionizing radiation. The rules contain requirements for qualifications of applicants and operators, for equipment, for facilities, and for operating and emergency procedures, including recordkeeping. The Department believes that the substantive content of the rules is the minimum necessary to protect health and safety and that the protection of public health and safety outweigh the probable costs of the rules. The Department also believes that, despite the minor issues identified in this report, which may impose a slight regulatory burden, the rules impose 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. 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)?

21 CFR 801.109, 21 CFR 1030.10, 21 CFR 1040.10, 21 CFR 1040.20, and 21 CFR 1040.30

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:

In March 2018, these rules were recodified into 9 A.A.C. 7, Article 14, without any substantive changes, from 12 A.C.C. 1, Article 14, to clarify that the Department had assumed responsibility for regulating the use, storage, and disposal of sources of radiation, in compliance with Laws 2017, Ch. 313, and Laws 2018, Ch. 234. Except for the three rules made or revised in 2010, the rules in 12 A.A.C. 1, Article 14, were all adopted before July 29, 2010. However, A.R.S. § 30-672, as amended by Laws 2017, Ch. 313, authorizes the Department to issue licenses and registrations for sources of radiation and those persons using these sources. A general permit issued under the rules in 9 A.A.C. 7 applies to certain levels of radioactive material or certain categories of facilities or devices, and specific permits are issued by rule for quantities and uses that are specific to the user and their training or scope of practice. The registrations, issued under R9-7-1302(F), include both general permits and specific permits, depending on the category of the source of nonionizing radiation.

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.

ARTICLE 14. REGISTRATION OF NONIONIZING RADIATION SOURCES AND STANDARDS FOR PROTECTION AGAINST NONIONIZING RADIATION

Section

R9-7-1401. Registration of Nonionizing Radiation Sources and Service Providers
R9-7-1402. Definitions
R9-7-1403. General Safety Provisions and Exemptions
R9-7-1404. Radio Frequency Equipment
R9-7-1405. Radio Frequency Radiation: Maximum Permissible Exposure
R9-7-1406. Radio Frequency Hazard Caution Signs, Symbols, Labeling, and Posting
R9-7-1407. Microwave Ovens
R9-7-1408. Reporting of Radio Frequency Radiation Incidents
R9-7-1409. Medical Surveillance for Workers Who May Be Exposed to Radio Frequency Radiation
R9-7-1410. Radio Frequency Compliance Measurements
R9-7-1412. Tanning Operations
R9-7-1413. Tanning Equipment Standards
R9-7-1414. Tanning Equipment Operators
R9-7-1415. Tanning Facility Warning Signs
R9-7-1416. Reporting of Tanning Injuries
R9-7-1418. High Intensity Mercury Vapor Discharge (HID) Lamps
R9-7-1421. Laser Safety
R9-7-1422. Laser Protective Devices
R9-7-1423. Laser Prohibitions
R9-7-1425. Laser Product Classification
R9-7-1426. Laser and Collateral Radiation Exposure Limits
R9-7-1427. Laser Caution Signs, Symbols, and Labels
R9-7-1429. Posting of Laser Facilities
R9-7-1433. Laser Use Areas that are Controlled
R9-7-1434. Laser Safety Officer (LSO)
R9-7-1435. Laser Protective Eyewear
R9-7-1436. Reporting Laser Incidents
R9-7-1437. Special Lasers

R9-7-1438. Hair Reduction and Other Cosmetic Procedures Using Laser and Intense Pulsed Light
R9-7-1438.01. Certification and Revocation of Laser Technician Certificate
R9-7-1439. Laser and IPL Laser Technician and Laser Safety Training Programs
R9-7-1440. Medical Lasers
R9-7-1441. Laser Light Shows and Demonstrations
R9-7-1442. Measurements and Calculations to Determine MPE Limits for Lasers
R9-7-1443. Laser Compliance Measurement Instruments
R9-7-1444. Laser Classification Measurements
Appendix A. Radio Frequency Devices (Include, but are not limited to, the following)
Appendix B. Application Information
Appendix C. Hair Removal and Other Cosmetic Laser or IPL Operator Training Program
Appendix D. Laser Operator and Laser Safety Officer Training

ARTICLE 14. REGISTRATION OF NONIONIZING RADIATION SOURCES AND STANDARDS FOR PROTECTION AGAINST NONIONIZING RADIATION

R9-7-1401. Registration of Nonionizing Radiation Sources and Service Providers

A. A person shall not use a nonexempt nonionizing radiation source, unless the source is registered by the Department.

B. A person who possesses a nonexempt nonionizing source shall submit to the Department an application for registration within 30 days of its first use.

1. A person who possesses a nonexempt source listed in R9-7-1302(F) shall register the source with the Department.
2. A person applying for the registration of a nonexempt source shall use an application form provided by the Department.
3. An applicant shall provide the information identified in Appendix B of this Article.

C. A registrant shall notify the Department within 30 days of any change to the information contained in the registration, or sale of a source that results in termination of the activities conducted under the registration.

D. In addition to the application form, an applicant shall remit the applicable registration fee, specified in R9-7-1306.

E. A person who is operating more than one facility, where one or more nonexempt nonionizing sources are used, shall apply for a separate registration for each facility.

F. A person in the business of installing or servicing nonexempt nonionizing sources shall apply to the Department for registration 30 days before furnishing the service. The person shall apply for registration on a form furnished by the Department and shall provide the information required by A.R.S. § 30-672.01.

R9-7-1402. Definitions

General definitions:

"Controlled area" means any area to which human access is restricted for the purpose of protection from nonionizing radiation.

"Direct supervision" means that a licensed practitioner supervises the use of a source for medical purposes while the practitioner is present inside the facility where the source is being used.

"Indirect supervision" means: for lasers or IPL devices used for hair removal procedures, there is at a minimum, responsible supervision and control by a licensed practitioner who is easily accessible by telecommunication.

"Licensed practitioner" (See R9-7-102)

"Medical director" means a licensed practitioner, as defined in R9-7-102, who delegates a laser, IPL, or other light-emitting medical device procedure to a non-physician and is qualified to perform the procedure within the scope of practice of the license.

"Nonexempt nonionizing source" means any system or device that contains a nonionizing source listed in R9-7-1302(F).

"Operator" means a person who is trained in accordance with this Article and knowledgeable about the control and function of a nonionizing device regulated under this Article.

"Other cosmetic procedure" means a method of using medical lasers or intense pulse light (IPL) devices approved by the Federal Food and Drug Administration (FDA), for the cosmetic purpose of spider vein removal, skin rejuvenation, non-ablative skin resurfacing, skin resurfacing, port wine stain removal, epidermal pigmented skin lesion removal, or tattoo removal; and does not include hair removal.

Laser definitions:

"Accessible emission limit (AEL)" means the maximum accessible emission level of laser or collateral radiation permitted within a particular class.

"Accessible radiation" means laser or collateral radiation to which human access is possible.

"Angular subtense" means the apparent visual angle, a, as calculated from the source size and distance from the eye.

"Aperture" means an opening in the protective housing or other enclosure of a laser product, through which laser or collateral radiation is emitted, allowing human access to the radiation.

"Aperture stop" means an opening serving to limit the size and to define the shape of the area over which radiation is measured.

"Certified laser product" means that the product is certified by a manufacturer in accordance with the requirements of 21 CFR 1040.10, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department.

This incorporation by reference contains no future editions or amendments.

"CDRH" means the Center for Devices and Radiological Health.

"Classes of lasers" means the following categories of lasers, defined in 21 CFR 1040.10, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department: Class 1, Class 2, Class 2a, Class 3, Class 3a, Class 3b, and Class 4. This incorporation by reference contains no future editions or amendments.

"Collateral radiation" means any electronic product radiation, except laser radiation, emitted by a laser product as a result of operation of the laser or any component of the laser product that is physically necessary for operation of the laser. The accessible emission limits for collateral radiation are specified in 21 CFR 1040.10, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments.

"Continuous wave" (cw) means the output of a laser that is operated in a continuous rather than a pulsed mode. For purposes of this Article, a laser operating with a continuous output for a period 0.25 seconds, is regarded as a cw laser.

"Cosmetic procedure protocol" means a delegated written authorization to select specific laser or IPL settings, initiate a laser or IPL procedure, and conduct necessary follow-up procedures.

"Demonstration laser" means any laser manufactured, designed, intended, or used for purposes of demonstration, entertainment, advertising display, or artistic composition.

"Embedded laser" means an enclosed laser with an assigned class number higher than the inherent capability of the laser system in which it is incorporated, where the system's lower classification is due to engineering features that limit accessible emission.

"Enclosed laser" means a laser that is contained within its own protective housing or the protective housing of a laser or laser system in which it is incorporated. Opening or removing the protective housing provides more access to laser radiation above the applicable MPE than is possible with the protective housing in place. (An embedded laser is a type of enclosed laser.)

"Federal performance standards for light-emitting products" means the regulations in 21CFR 1040.10, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives, and Records Administration, Washington,

D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments.

"Human access" means the capacity to intercept laser or collateral radiation by any part of the human body.

"Incident" means an event or occurrence that results in actual or suspected accidental exposure to laser radiation that has caused or is likely to cause biological damage.

"Integrated radiance" means radiant energy per unit area of a radiating surface per unit solid angle of emission, expressed in joules per square centimeter per steradian.

"Irradiance" means the time-averaged radiant power incident on an element of a surface divided by the area of that element, expressed in watts per square centimeter.

"Laser" See the definition in Article 1.

"Laser energy source" means any device intended for use in conjunction with a laser to supply energy for the operation of the laser. General energy sources, such as electrical supply mains or batteries, are not considered laser energy sources by the Department.

"Laser facility" means a facility where one or more lasers are used. For purposes of this definition a Class 1 facility is a facility that has one or more Class 1 lasers; a Class 2 facility is a facility that has one or more Class 2 or 2a lasers; a Class 3 facility is a facility that has one or more Class 3, 3a, or 3b lasers, and a Class 4 facility is a facility that has one or more Class 4 lasers. Facilities that contain more than one laser class are classified according to the highest laser class in use at the facility.

"Laser product" means any manufactured product or assemblage of components that constitutes, incorporates, or is intended to incorporate a laser or laser system. A laser or laser system that is intended for use as a component of an electronic product is itself considered a laser product.

"Laser protective device" means any device used to reduce or prevent exposure of personnel to laser radiation. This includes: protective eyewear, garments, engineering controls, and operational controls.

"Laser radiation" means all electromagnetic radiation emitted by a laser product, within the spectral range specified in the definition of "laser," which is produced as a result of controlled stimulated emission or that is detectable with radiation so produced through the appropriate aperture stop and within the appropriate solid angle of acceptance.

"Laser Safety Officer (LSO)" means any individual, qualified by training and experience in the evaluation and control of laser hazards, who is designated by the registrant and has

the authority and responsibility to establish and administer the laser radiation protection program for a particular class of facility.

"Laser system" means a laser in combination with an appropriate laser energy source with or without additional incorporated components.

"Limited exposure duration (T_{max})" means an exposure duration that is specifically limited by design or intended use.

"Maintenance" means performance of those adjustments or procedures specified in operator information provided by the manufacturer with the laser product, which are to be performed by the operator to ensure the intended performance of the product. The term does not include operation or service as defined in this Section.

"Maximum permissible exposure (MPE)" means the level of laser radiation to which a person may be exposed without hazardous effect or adverse biological changes in the eye or skin. MPE values for eye and skin exposure are listed in ANSI Z136.1-2000, American National Standard for Safe Use of Lasers, 2000 edition, which is incorporated by reference, published by the Laser Institute of America, 13501 Ingenuity Drive, Suite 128, Orlando, FL 32826, and on file with the Department. This incorporation by reference contains no future editions or amendments.

"Medical laser product" means any laser product that is a medical device defined in 21 U.S.C. 321(h) and is manufactured, designed, intended, or promoted for in vivo laser irradiation of any part of the human body for the purpose of: diagnosis, surgery, therapy, or relative positioning of the human body.

"Operation" means the performance of the laser product over the full range of its function. It does not include maintenance or service as defined in this Section.

"Protective housing" means those portions of a laser product that are designed to prevent human access to laser or collateral radiation in excess of the prescribed accessible emission limits under conditions specified in this Article.

"Pulse duration" means the time increment measured between the half-peak-power points at the leading and trailing edges of a pulse.

"Pulse interval" means the period of time between identical points on two successive pulses.

"Radiance" means the timeaveraged radiant power per unit area of a radiating surface per unit solid angle of emission, expressed in watts per square centimeter per steradian.

"Radiant energy" means energy emitted, transferred, or received in the form of radiation,

expressed in joules.

"Radiant exposure" means the radiant energy incident on an element of a surface divided by the area of that element, expressed in joules per square centimeter.

"Radiant power" means the timeaveraged power emitted, transferred, or received in the form of radiation, expressed in watts.

"Rule of nines" means a method for estimating the extent of burns, expressed as a percentage of total body surface. In this method the body is divided into sections of 9 percent or multiples of 9 percent, each: head and neck, 9 percent; anterior trunk, 18 percent; posterior trunk, 18 percent; upper limbs, 18 percent; lower limbs, 36 percent; and genitalia and perineum, 1 percent.

"Safety interlock" means a device associated with the protective housing of a laser product to prevent human access to excessive radiation.

"Sampling interval" means the time interval during which the level of accessible laser or collateral radiation is sampled by a measurement process. The magnitude of the sampling interval in units of seconds is represented by the symbol "t".

"Secured enclosure" means an area to which casual access is impeded by various means, such as a door secured by a lock, latch, or screws.

"Service" means the performance of those procedures or adjustments described in the manufacturer's service instructions that may affect any aspect of the product's performance. The term does not include maintenance or operation as defined in this Section.

"T_{max}" See limited exposure duration.

"Uncertified laser product" means any laser that has not been certified in accordance with the requirements of 21CFR 1040.10, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments.

Radio frequency and microwave radiation definitions:

"Accessible emission level" means the level of radio frequency radiation emitted from any source, expressed in terms of power density in milliwatts per square centimeter or electric and magnetic field strength, as applicable, and to which human access is normally possible.

"Far field region" means the area in which locally uniform distribution of electric and

magnetic field strengths exists in planes transverse to the direction of propagation. The far field region is presumed to exist at distances greater than $2D^2/\square\square$ from the antenna, where $\square$ is the wavelength and D is the largest antenna aperture dimension.

"Maximum permissible exposure MPE" means the rms and peak electric and magnetic field strengths, their squares, or the plane-wave equivalent power densities associated with these fields and the induced and contact currents to which a person may be exposed without harmful effect and with an acceptable safety factor.

"Near field region" means the area near an antenna in which the electric and magnetic field components vary considerably in strength from point to point. For most antennas the outer boundary of the region is presumed to exist at a distance $\square/2\square$ from the antenna surface, where $\square$ is the wavelength.

"Radio frequency controlled area" means any location to which access is controlled for the purpose of protection from radio frequency radiation.

"Radio frequency source" means a source or system that produces electromagnetic radiation in the radio frequency spectrum.

"Radio frequency radiation" means electromagnetic radiation (including microwave radiation) with frequencies in the range of 0.3 megahertz to 100 gigahertz.

"Root-mean-square (rms)" means the effective value, or the value associated with joule heating, of a periodic electromagnetic wave. The rms is obtained by taking the square root of the mean of the squared value of a function.

"Safety device" means any mechanism incorporated into a radio frequency source that is designed to prevent human access to excessive levels of radio frequency radiation.

Ultraviolet, high intensity light, and intense pulsed light source definitions:

"EPA" means the United States Environmental Protection Agency.

"FDA" means the United States Food and Drug Administration.

"High intensity mercury vapor discharge (HID) lamp" means any lamp, including a mercury vapor or metal halide lamp that incorporates a highpressure arc discharge tube with a fill that consists primarily of mercury and is contained within an outer envelope, except the tungsten filament selfballasted mercury vapor lamp.

"Intense pulsed light device (IPL)" means, for purposes of R9-7-1438, any lamp-based device that produces an incoherent, filtered, and intense light.

"Maximum exposure time" means the greatest continuous exposure time interval recommended by the manufacturer of a product.

"Protective sunlamp eyewear" means any device designed to be worn by a user of a product to reduce exposure of the eyes to radiation emitted by the product.

"Sanitize" means treat the surfaces of equipment and devices using an EPA or FDA registered product that provides a specified concentration of chemicals, for a specified period of time, to reduce the bacterial count, including pathogens, to a safe level.

"Self-extinguishing lamp" means any HID lamp that ceases operation in conformance with the requirements of the performance standard in 21 CFR 1040.30(d), April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments.

"Sunlamp product" means any electronic product designed to incorporate one or more ultraviolet lamps and intended for irradiation of any part of the living human body, by ultraviolet radiation with wavelengths in air between 200 and 400 nanometers, to induce skin tanning.

"Timer" means any device incorporated into a product that terminates radiation emission after a preset time interval.

"Ultraviolet lamp" means any light source that produces ultraviolet radiation and that is intended for use in any sunlamp product.

"Ultraviolet radiation" means electromagnetic radiation in the wavelength interval from 200 to 400 nanometers in air.

"User" means any member of the public who is provided access to a tanning device in exchange for a fee or other compensation, or any individual who, in exchange for a fee or other compensation, is afforded use of a tanning device as a condition or benefit of membership or access.

R9-7-1403. General Safety Provisions and Exemptions

A. Based on consideration of the following factors, the Department may waive compliance with specific requirements of this Article:

1. Whether compliance requires product replacement or substantial modification of a product's current installation, and
2. Whether the registrant provided information requested by the Department to determine if there are alternative methods of achieving the same or a greater level of radiation protection.

B. The registrant shall:

1. Ensure that any nonionizing source is operated by an individual who is trained and has demonstrated competence in the safe use of the source.
2. Provide safety rules to each individual who operates a nonionizing radiation source and determine whether the individual is aware of operating restrictions and procedures associated with the safe use of the source.
3. Make, or cause to be made, any physical radiation surveys required by this Article.
4. Maintain the following records for three years for Department review:
    a. Results of any physical survey or calibration required by this Article;
    b. Radiation source inventories;
    c. Maintenance, service, and modification records; and
    d. Incident reports of known or suspected exposure to nonionizing radiation that exceeds any MPE specified in this Article.

C. A registrant shall not operate a nonionizing radiation source unless the source complies with all of the applicable requirements of this Article.

R9-7-1404. Radio Frequency Equipment

A. A registrant shall operate a radiation source that emits radio frequency radiation in a radio frequency controlled area, in a manner that will prevent human exposure that exceeds the MPE specified in IEEE Std C95.1-1999, Institute of Electrical and Electronics Engineers Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3kHz to 300 GHz, 1999 edition, which is incorporated by reference, published by the Institute of Electrical and Electronic Engineers, Inc., 345 East 47th Street, New York, NY 10017, and on file with the Department. This incorporation by reference contains no future editions or amendments. The registrant shall post each point of access into a radio frequency controlled area according to R9-7-1406.

B. If a registrant is required to operate a radio frequency source in a controlled area, the registrant shall employ visual or audible emission indicators that function only during production of radiation.

C. If a source of radio frequency emissions is physically separate from the source's means of activation by a distance greater than 2 meters, the registrant shall place a visual or an audible emission indicator at the source and the point of activation.

D. A registrant shall place each visual emission indicator so that the location of the indicator

does not require human exposure to radio frequency radiation that exceeds the applicable MPE.

E. A registrant shall inspect each safety device designed to prevent human exposure to excessive radio frequency radiation for proper operation at intervals that do not exceed one month.

F. If a machine emits mechanically scanned radio frequency radiation, a registrant shall ensure that the machine cannot, as the result of scan failure or any other malfunction, cause a change in angular velocity or amplitude, allowing human exposure that exceeds the applicable MPE.

G. A registrant shall physically secure each radio frequency sources to prevent unauthorized use and tampering.

R9-7-1405. Radio Frequency Radiation: Maximum Permissible Exposure

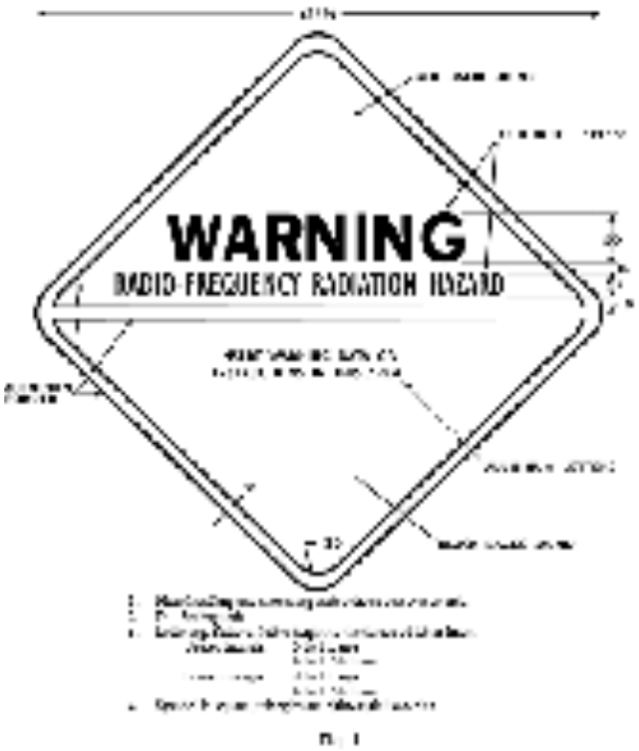
A. A registrant shall not expose a person to radio frequency radiation that exceeds the applicable MPE specified in IEEE Std C95.1-1999, Institute of Electrical and Electronics Engineers Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3kHz to 300 GHz, 1999 edition, which is incorporated by reference, published by the Institute of Electrical and Electronic Engineers, Inc., 345 East 47th Street, New York, NY 10017, and on file with the Department. This incorporation by reference contains no future editions or amendments.

B. At frequencies between 300 kHz and 100 GHz a registrant may exceed the applicable MPE if exposure conditions can be shown by laboratory procedures to produce specific absorption rates (SARs) above 0.4 watts per kilogram, averaged over the whole body, and spatial peak SAR values above 8 watts per kilogram, averaged over 1 gram of tissue.

C. At frequencies between 300 kHz and 1 GHz, a registrant may exceed the applicable MPE, if the radio frequency input power to the radiating device is seven watts or less.

R9-7-1406. Radio Frequency Hazard Caution Signs, Symbols, Labeling, and Posting

A. A registrant shall post each point of access to a controlled area with caution signs of the type



designated in Figure 1.

B. A registrant shall post operating procedure restrictions or limitations, used to prevent unnecessary or excessive exposure to radio frequency radiation, in a location visible to the operator.

C. A registrant shall place each warning sign or label so that an observer is not exposed to radio frequency radiation that exceeds the applicable MPE.

R9-7-1407. Microwave Ovens

A person shall register with the Department any microwave oven that does not meet the requirements in 21 CFR 1030.10, April 1, 2004, which is incorporated by reference, published by

the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments.

R9-7-1408. Reporting of Radio Frequency Radiation Incidents

A. A registrant shall report in writing to the Department within 15 days of a known or suspected personnel exposure to radiation that exceeds the applicable MPE incorporated by reference in R9-7-1405.

B. A registrant shall report to the Department within 24 hours of a known or suspected personnel exposure to radiation that exceeds 150% of an applicable MPE incorporated by reference in R9-7-1405.

C. A registrant shall immediately report to the Department a known or suspected personnel exposure to radiation that exceeds 500% of an applicable MPE incorporated by reference in R9-7-1405.

R9-7-1409. Medical Surveillance for Workers Who May Be Exposed to Radio Frequency Radiation

A. Upon request by the Department, a registrant shall provide a medical examination to an individual exposed to radiation reported to the Department according to R9-7-1408.

B. A registrant shall provide a copy of the results to the Department if an individual undergoes a medical examination, requested under subsection (A).

R9-7-1410. Radio Frequency Compliance Measurements

A. For obtaining measurements to determine compliance with R9-7-1405, the Department shall use an instrument capable of measuring the field strength and frequency of radiation.

B. The Department shall ensure that each instrument used for compliance measurements is calibrated every 12 months. The calibration shall be performed in a manner that meets the standards in IEEE Std C95.1-1999, incorporated by reference in R9-7-1404(A).

C. For compliance measurements of exposure conditions in the near field, the Department shall obtain measurements of both the electric and magnetic field components. The applicable protection standards for near field measurements are the mean squared electric and magnetic field strengths (using the applicable MPE) referenced in R9-7-1405.

D. If the Department is obtaining measurements to determine compliance in far field exposure

conditions, the Department may use measurements of power density in milliwatts per square centimeter or the calculated equivalent plane wave power density, based on measurement of either the electric or magnetic field strength. The applicable protection standards are the power density values (using the applicable MPE) referenced in R9-7-1405.

E. In obtaining measurements in accordance with this Section, the Department shall measure the electric and magnetic field strength:

1. Obtained at an emission frequency of 300 megahertz or less; and
2. Expressed in terms of power density.

F. For mixed or broadband fields at frequencies for which there are different protection standards, the Department shall determine the fraction of the applicable MPE incurred within each frequency interval. To achieve compliance the sum of all the fractions shall not exceed unity (1).

G. The Department shall obtain compliance measurements at a distance of five centimeters or greater from any object.

H. A registrant shall obtain measurements that are averaged over a sixminute period for pulsed and non-pulsed modes of radio frequency emission and make a correction for duty cycle in determining the average field strength.

R9-7-1412. Tanning Operations

A registrant shall establish and maintain written policies and procedures that are part of a radiation safety program to assure compliance with the requirements in R9-7-1412 through R9-7-1416.

R9-7-1413. Tanning Equipment Standards

A. A registrant operating a tanning facility shall use sunlamp products that are certified by the manufacturer to comply with 21 CFR 1040.20, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments. For sunlamp products in use before the effective date of this Article, the Department shall determine compliance based on the standard in effect at the time of manufacture, as shown on the equipment identification label.

B. A registrant shall replace burned-out or defective lamps or filters, before any use of a tanning device.

C. A registrant shall replace a burnedout or defective lamp or filter with a lamp or filter intended for use in that equipment, as specified on the sunlamp product label, or that is equivalent to a lamp or filter specified on the sunlamp product label under the FDA regulations and polices applicable to the sunlamp product at the time of manufacture. If an equivalent lamp or filter is used instead of the Original Equipment Manufacturer (OEM) lamp or filter specified on the product label, the registrant shall maintain a copy of the equivalency certification, provided by the lamp supplier, on file for review by Department inspectors.

D. A registrant shall ensure that each sunlamp product has a timer and control system that complies with 21 CFR 1040.20(c), April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments. In addition the registrant shall ensure that:

1. The timer interval does not exceed the manufacturer's maximum, recommended exposure time;
2. The timer is functional and accurate to within +/- 10% of the maximum timer interval of the product;
3. The timer does not automatically reset and cause radiation emission to resume for a period greater than the unused portion of the timer cycle;
4. The timer is tested annually for accuracy;
5. For a new facility (including existing facilities with change of ownership) a remote timer control system is installed before operation of sunlamp products. For an existing facility that has sunlamp products not equipped with a remote timer control system, a remote timer control system (outside of the sunlamp product room) is installed no later than 6 months after the effective date of this Section; and
6. Each sunlamp product is equipped with an emergency shutoff mechanism that allows manual termination of the UV exposure by the user.

E. A registrant shall provide physical barriers between each sunlamp product to protect users from injury caused by touching or breaking a lamp.

F. A registrant that employs a standup sunlamp product shall:

1. Use physical barriers, handrails, floor markings, or other methods to indicate the proper exposure distance between the ultraviolet lamps and the user's skin;
2. Construct each tanning booth so that it can withstand the stress of use and the impact of a falling person;
3. Provide access to a tanning booth with doors of rigid construction that open outward, handrails, and nonslip floors; and
4. Control the interior temperature of a sunlamp product so that it never exceeds 100 degrees Fahrenheit (38 degrees Centigrade).

R9-7-1414. Tanning Equipment Operators

A. A registrant shall ensure that at least one operator is present during operating hours. The operator shall:

1. Limit the occupancy of the tanning room to one person when the tanning equipment is in use;
2. Prevent use of the tanning equipment by anyone under 18 years of age unless the person has written permission from a parent or guardian;
3. Limit exposure time to the manufacturer's recommendation on the equipment label or in the operator's manual;
4. Limit exposure time during a 24-hour period to the maximum recommended for a 24-hour period by the manufacturer; and
5. Maintain a record of each user's total number of tanning visits and exposure times for Department inspection. The registrant shall maintain the records for three years from the date on the record.

B. Before use of tanning equipment, an operator shall:

1. Provide the user sanitized protective sunlamp eyewear and directions for its use;
2. Demonstrate the use of any physical aids, necessary to maintain correct exposure distance for the user, as recommended by the manufacturer of the tanning equipment;
3. Set the exposure timer so that the user is not exposed to excess radiation;
4. Instruct the user on the maximum exposure time and correct distance from the radiation source as recommended by the manufacturer of the tanning equipment; and

5. Instruct the user about the location and correct operation of the emergency shutoff switch.

C. An operator shall control a sunlamp's timer. A registrant shall:

1. Provide training to operators that covers:
    a. The requirements of this Section;
    b. Facility operating procedures, including:
        i. Determination of skin type and associated duration of exposure;
        ii. Procedures for use of minor and adult user consent forms;
        iii. Potential harm associated with photosensitizing foods, cosmetics, and medications;
        iv. Requirements for use of protective eyewear by users of the equipment; and
        v. Proper sanitizing procedures for the facility, equipment, and eyewear;
    c. The manufacturer's procedures for operation and maintenance of tanning equipment;
    d. Recognition of injury or overexposure; and
    e. Emergency procedures used in the case of an injury.
2. Maintain records of training for Department review, which include dates and material covered, for three years from the date the training is provided.
3. Post a list of operators at the facility.

D. Before the first use of a tanning facility in each calendar year by a user:

1. An operator shall request that the user read a copy of the warnings in R9-7-1415(A);
2. The operator shall obtain the user's signature on a statement as an acknowledgment that the user has heard or read and understands the warnings in R9-7-1415(A); and
3. For illiterate or visually handicapped persons, the operator shall read the warnings in R9-7-1415(A) in the presence of a witness. Both the witness and the operator shall sign the statement described in subsection (D)(2).

R9-7-1415. Tanning Facility Warning Signs

A. A registrant shall post the warning sign shown in this subsection within 1 meter (39.37 inches) of each tanning device, ensuring that the sign is clearly visible and easily viewed

by the user before the tanning device is operated.

B. A registrant shall post a warning sign, which contains the statement shown, at or near the reception area.

PERSONS UNDER AGE 18 ARE REQUIRED TO HAVE
PARENT OR LEGAL GUARDIAN SIGN AN AUTHORIZATION
TO TAN IN THE PRESENCE OF A TANNING
FACILITY OPERATOR

C. The lettering on each warning sign shall be at least 10 millimeters high for all words shown in capital letters and at least 5 millimeters high for all lower case letters.

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DANGER - ULTRAVIOLET RA

1. Follow instructions.
2. Avoid overexposure. As with natural sunlight, exposure can cause
   exposure may cause premature aging of the skin, dryness, wrinklin
3. Wear protective eyewear.

FAILURE TO USE PROTECTIVE EYEWEAR MA Y RESULT IN SEVE
EYES.

4. Medications or cosmetics may increase your sensitivity to the ultra
   sunlamp if you are using medications or have a history of skin prob
5. If you do not tan in the sun, you are unlikely to tan from use of this

R9-7-1416. Reporting of Tanning Injuries

A. A registrant shall report any incident involving an eye injury; skin burn; fall injury, if the fall occurs within the tanning device or while entering or exiting the device; laceration; infection believed to have been transmitted by use of the tanning device; or any other injury reasonably related to the use of the tanning device.

B. A registrant shall provide a written report of an incident to the Department within 10 working days of its occurrence or within 10 working days of the date the registrant became aware of the incident.

C. The report shall include:

1. The name of the user;
2. The name and location of the tanning facility;
3. A description of and the circumstances associated with the injury;
4. The name and address of the health care provider treating the user, if any; and
5. Any other information the registrant considers relevant to the incident.

R9-7-1418. High Intensity Mercury Vapor Discharge (HID) Lamps

A person shall register with the Department any HID lamp that does not meet the requirements in 21 CFR 1040.30, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments.

R9-7-1421. Laser Safety

A. The requirements contained in this Section apply to laser products that are used in accordance with the manufacturer's classification and instructions. If certain engineering controls are impractical during manufacture or research and development activities, the LSO shall specify alternate requirements to obtain equivalent laser safety protection.

B. A registrant shall establish and maintain a laser radiation safety program.

C. If R9-7-1433 is applicable, a registrant shall conduct a laser radiation protection survey to ensure compliance with R9-7-1433 before initial use, following system modifications, and at intervals that do not exceed six months. During a survey the registrant shall:

1. Determine whether each laser protective device is labeled correctly, functioning within the design specifications, and meets required standards for the type and class of laser in use;

2. Determine whether each warning device is functioning within design specifications;
3. Determine whether each controlled area is identified, controlled, and posted with accurate warning signs in accordance with this Article;
4. Reevaluate potential hazards from surfaces that are associated with Class 3 and Class 4 beam paths; and
5. Evaluate the laser and collateral radiation hazard incident to the use of lasers.

D. The registrant shall maintain records of:

1. Results of all physical surveys made to determine compliance with this Article;
2. Any restriction in operating procedures necessary to prevent unnecessary or excessive exposure to laser or collateral radiation;
3. Any incident for which reporting to the Department is required pursuant to R9-7-1436;
4. Results of medical surveillance to determine extent of injury resulting from exposure to laser or collateral radiation;
5. Inventory to account for all sources of radiation possessed by the licensee.

E. A registrant shall provide the Laser Safety Officer with training that covers the subjects listed in Appendix D.

R9-7-1422. Laser Protective Devices

A. A registrant shall ensure that each laser product has a protective housing that prevents access to laser and collateral radiation if it exceeds the exposure limits for Class 1 lasers in R9-7-1426. If a laser's accessible emission levels must exceed the limits for Class 1 lasers, the registrant shall use a laser from the lowest class that will enable the registrant to perform the intended function.

B. To prevent access to radiation above the applicable MPE, a registrant shall ensure that each laser has a safety interlock, which prevents operation of the laser if a person has removed any portion of the protective housing that can be removed or displaced without the use of tools during normal operation or maintenance. The registrant shall ensure that:

1. Service, testing, or maintenance of a laser does not render the interlocks inoperative or increase radiation outside the protective housing to levels that exceed the applicable MPE, unless a controlled area is established as specified in R9-7-1433;
2. For pulsed lasers, interlocks are designed to prevent the laser from firing;

3. For Class 3b and 4 continuous wave (cw) lasers, interlocks turn off the power supply or interrupt the beam.
4. An interlock does not allow automatic accessibility to radiation emission above the applicable MPE when the interlock is closed; and
5. Multiple safety interlocks or a means to preclude removal or displacement of the interlocked portion of the protective housing is provided if failure of a single interlock could result in:
    a. Human access to levels of laser radiation that exceed the radiant power accessible emission limit for Class 3a laser radiation, or
    b. Laser radiation that exceeds the accessible emission limit for Class 2, emitted directly through the opening created by removal or displacement of a portion of the protective housing.

C. A registrant shall ensure that a laser with viewing ports, viewing optics, or display screens, included as an integral part of the enclosed laser or laser system has:

1. A suitable means to attenuate laser and collateral radiation transmitted through the optical system to less than the accessible emission limit for collateral radiation required by 21 CFR 1040.10, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments; and
2. Specific written administrative procedures developed by the LSO, and use controls, such as interlocks or filters, if there is increased hazard to the eye or skin associated with the use of optical systems such as lenses, telescopes, or microscopes.

D. A registrant shall ensure that each Class 3 or 4 laser product provides a visual or audible indication before the emission of accessible laser radiation that exceeds the limits for Class 1, as follows:

1. For Class 3, except for laser products that allow access to less than 5 milliwatts peak visible laser radiation, and Class 4 lasers, the indication occurs before the emission of the radiation and allows enough time for action to avoid exposure;
2. Any visual indicator is clearly visible through protective eyewear designed specifically for the wavelength of the emitted laser radiation;
3. If the laser and laser energy source are housed separately and can be operated at a

separation distance of greater than 2 meters, both the laser and laser energy source incorporate visual or audible indicators; and

4. Any visual indicators are positioned so that viewing does not require human access to laser radiation that exceeds the applicable MPE.

E. In addition to the information signs, symbols, and labels prescribed in R9-7-1427, R9-7-1428, and R9-7-1429, each registrant shall provide, near the signs, symbols, and labels within the laser facility, operating procedure restrictions and any other safety information required to ensure compliance with this Article and minimize exposure to laser and collateral radiation.

R9-7-1423. Laser Prohibitions

A. A registrant shall not require or permit an individual to look directly into a laser beam or directly at specular reflections of a laser beam, or align a laser by eye while looking along the axis of the laser beam if the intensity of the beam or the beam's reflections exceeds the applicable MPE.

B. A registrant shall not permit an individual to enter a controlled area if the skin exposure exceeds the applicable MPE, unless the registrant provides and requires the use of protective clothing, gloves, and shields.

C. A registrant shall ensure that any laser product, emitting spatially scanned laser radiation, does not, as a result of scan failure or any other failure that causes a change in angular velocity or amplitude, permit human access to laser radiation that exceeds the accessible emission limits applicable to that class of product.

R9-7-1425. Laser Product Classification

A. Each laser product is classified on the basis of emission level, emission duration, and wavelength of accessible laser radiation emitted over the full range of resulting operational capability, any time during the useful life of the product, according to the federal performance standards for light-emitting products contained in 21 CFR 1040.10, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments.

B. Any person that modifies a certified laser product in a manner that affects any aspect of

performance or intended functions of the product, shall recertify and reidentify the product in accordance with 21 CFR 1040.10, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments.

C. Any laser system that is incorporated into a laser product that is subject to the requirements of this Article, and capable, without modification, of producing laser radiation when removed from the laser product, is considered a laser product, subject to the applicable requirements of this Article. Upon removal of the laser system described in this subsection, the laser product is classified on the basis of accessible laser radiation emission.

R9-7-1426. Laser and Collateral Radiation Exposure Limits

A. A registrant shall not use, or permit the use of a laser product that will result in a human exposure that exceeds the applicable MPE or accessible emission limit (AEL) listed in ANSI Z136.1-2000, American National Standard for Safe Use of Lasers, 2000 edition, which is incorporated by reference, published by the Laser Institute of America, 13501 Ingenuity Drive, Suite 128, Orlando, FL 32826, and on file with the Department. Accessible emission limits are listed in 21 CFR 1040.10, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. These incorporations by reference contain no future editions or amendments.

B. A registrant shall not allow exposure to collateral radiation that exceeds any accessible emission limit in 21 CFR 1040.10, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments.

R9-7-1427. Laser Caution Signs, Symbols, and Labels

A. Except as otherwise authorized by the Department, a registrant shall use signs, symbols, and labels prescribed by this Section and the design and colors specified in ANSI Z136.1-2000, American National Standard for Safe Use of Lasers, 2000 edition, which is incorporated by reference, published by the Laser Institute of America, 13501 Ingenuity

Drive, Suite 128, Orlando, FL 32826, and on file with the Department. This incorporation by reference contains no future editions or amendments.

B. A registrant shall ensure that the word "invisible" immediately precedes the word "radiation" on labels and signs required by this Section for lasers that only produce wavelengths of laser and collateral radiation that are outside of the range of 400 to 710 nanometers.

C. A registrant shall ensure that the words "visible and invisible" immediately precede the word "radiation" on labels and signs required by this Section for lasers that produce wavelengths of laser and collateral radiation that are both within and outside the range of 400 to 710 nanometers.

D. A registrant shall position any label placed on lasers or signs posted in laser facilities so that the reader of the label or sign is not exposed to laser or collateral radiation that exceeds the applicable MPE or accessible emission limit while reading the label or sign.

E. A registrant shall use labels and signs that are clearly visible, legible, and permanently attached to the laser or facility.

F. A registrant shall ensure that a permanent and legible label is affixed to each laser, identifying the classification of the laser in accordance with 21 CFR 1040.10, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments.

G. For a Class 3 or Class 4 laser a registrant shall ensure that a permanent and legible label is affixed to each laser, specifying the maximum output of laser radiation, the pulse duration if applicable, and the laser medium or emitted wavelength.

H. For a Class 3 or Class 4 laser, used in the practice of medicine, a registrant shall ensure that a permanent and legible label is affixed to each laser providing one or more of the following warnings near each aperture that emits laser radiation or collateral radiation that exceeds the applicable MPE, as follows:

1. "AVOID EXPOSURE - Laser radiation is emitted from this aperture" if the radiation emitted through the aperture is laser radiation;
2. "AVOID EXPOSURE - Hazardous electromagnetic radiation is emitted from this aperture" if the radiation emitted through the aperture is collateral radiation; or
3. "AVOID EXPOSURE - Hazardous x-rays are emitted from this aperture" if the radiation emitted through the aperture is collateral x-ray radiation.

I. A registrant shall ensure that there is a label on each non-interlocked or defeatable interlocked portion of the protective housing or enclosure that permits human access to laser or collateral radiation. The label shall include one or more of the following warnings, as applicable:

1. For laser radiation that exceeds the applicable accessible emission limit for a Class 1 or Class 2 laser, but does not exceed the applicable accessible emission limit for a Class 3 laser, the warning: "DANGER - Laser radiation when open, AVOID DIRECT EXPOSURE TO THE BEAM."
2. For laser radiation that exceeds the applicable accessible emission limit for a Class 3 laser, the warning: "DANGER - Laser radiation when open, AVOID EYE OR SKIN EXPOSURE TO DIRECT OR SCATTERED RADIATION."
3. For collateral radiation that exceeds an applicable accessible emission limit:
    a. If the applicable limit for collateral laser radiation is exceeded, the warning: "CAUTION - Hazardous electromagnetic radiation when open"; and
    b. If the applicable limit for collateral x-ray radiation is exceeded, the warning: "CAUTION - Hazardous x-ray radiation".
4. For a protective housing or an enclosure that has a defeatable interlock, the warning "and interlock defeated" in addition to the warnings in subsections (1) through (3).

R9-7-1429. Posting of Laser Facilities

Unless other methods are approved by the Department, a registrant shall post each laser facility in accordance with ANSI Z136.1-2000, American National Standard for Safe Use of Lasers, 2000 edition, which is incorporated by reference, published by the Laser Institute of America, 13501 Ingenuity Drive, Suite 128, Orlando, FL 32826, and on file with the Department. This incorporation by reference contains no future editions or amendments.

R9-7-1433. Laser Use Areas that are Controlled

A. A registrant shall establish a controlled area for a laser if it is possible for a person to be exposed to laser radiation from a Class 3b laser, except a Class 3b laser of less than 5 milliwatts visible peak power, or a Class 4 laser that exceeds the applicable MPE or AEL in R9-7-1426.

B. A registrant shall ensure that a controlled area associated with a Class 3b laser is:

1. The responsibility of a LSO;
2. Posted in accordance with this Article; and
3. Access controlled by the LSO or a trained, designated representative.

C. A registrant shall ensure that a controlled area associated with a Class 4 laser is:

1. The responsibility of a LSO;
2. Posted in accordance with this Article;
3. Access controlled by the LSO or a trained, designated representative; and
4. If an indoor controlled area:
    a. Equipped with latches, interlocks, or another means of preventing unexpected entry into the controlled area;
    b. Equipped with a controldisconnect switch, panic button, or an equivalent device for deactivating the laser during an emergency;
    c. Operated so that the person in charge of the controlled area can momentarily override the safety interlocks during tests that require continuous operation to provide access to other personnel if there is no optical radiation hazard at the point of entry and the entering personnel are wearing required protective devices; and
    d. Controlled in a way that reduces the transmitted values of laser radiation through optical paths such as windows, to levels at or below the applicable ocular MPE and AEL in R9-7-1426. If a laser beam with an irradiance or radiant-exposure above the applicable MPE or AEL will exit the indoor controlled area (as in the case of exterior atmospheric beam paths), the registrant and the operator are responsible for ensuring that the beam path is limited to controlled air space or controlled ground space.

D. If a panel or protective cover is removed or an interlock bypassed for service, testing, or maintenance, a registrant shall establish an accessible controlled area. The registrant, through a LSO or a designated representative, shall comply with laser safety requirements for all potentially-exposed individuals.

R9-7-1434. Laser Safety Officer (LSO)

A. Each registrant shall designate a Laser Safety Officer (LSO).

B. The LSO shall administer the laser radiation protection program and shall:

1. Ensure that maintenance or service for Class 3b and Class 4 lasers is performed only by technicians trained to provide the maintenance or service by either the manufacturer's service organization or the registrant;
2. Approve or reject written service, maintenance, and operating procedures;
3. Investigate, document, and report all incidents as required by R9-7-1436;
4. Select protective eyewear as required by R9-7-1435, along with any other protective equipment;
5. For health care facilities, establish authorization and operating procedures, including preoperative and postoperative checklists, for use by operating room personnel;
6. Ensure that authorized personnel are trained in the assessment and control of laser hazards;
7. Select signs, symbols, and labels as required by R9-7-1427;
8. Perform laser radiation protection surveys as required by R9-7-1421 and R9-7-1441;
9. Classify or verify the classification of lasers and laser systems used under the LSO's jurisdiction;
10. Evaluate the hazard of laser use areas, treatment areas, and controlled areas, as required by R9-7-1421(C).

R9-7-1435. Laser Protective Eyewear

A. A registrant shall require that protective eyewear, as specified by the LSO, be worn by an individual who has access to:
1. Class 4 laser radiation; or
2. Class 3b laser radiation.

B. A registrant shall, through the LSO, provide protective eyewear that is:
1. Marked with a label that indicates the optical density protection afforded for the relevant laser wavelength;
2. Maintained so that the protective properties of the eyewear are preserved;
3. Inspected at intervals that do not exceed six months to ensure integrity of the protective properties; and
4. Removed from service if the protective properties of the eyewear fall below the optical density on the label.

C. A registrant shall maintain records of protective eyewear maintenance, inspection, and removal from service for five years.

R9-7-1436. Reporting Laser Incidents

A. A registrant shall notify the Department by telephone within 24 hours of any incident that has caused or may have caused:

1. Permanent loss of sight in either eye; or
2. Third-degree burns of the skin involving more than 5 percent of the body surface as estimated by the rule of nines.

B. A registrant shall notify the Department by telephone within five working days of any incident that has or may have caused:

1. Any second-degree burn of the skin larger than one inch (2.54 centimeter) in greatest diameter; or
2. Any third-degree burn of the skin; or
3. An eye injury with any potential loss of sight.

C. Each registrant shall file a written report with the Department of any known exposure of an individual to laser radiation or collateral radiation within 30 days of its discovery, describing:

1. Each exposure of the individual to laser or collateral radiation that exceeds the applicable MPE; and
2. Any incident that triggered a notice requirement in subsections (A) or (B).

D. Each report required by subsection (C) shall describe the extent of exposure to each individual including:

1. An estimate of the individual's exposure;
2. The level of laser or collateral radiation involved;
3. The cause of the exposure; and
4. The corrective steps taken or planned to prevent a recurrence.

E. A registrant shall not operate or permit the operation of any laser product or system that does not meet the applicable requirements in this Article.

R9-7-1437. Special Lasers

A registrant operating a laser system with an unenclosed beam path shall:

1. Conduct an evaluation before operating the laser to determine the expected beam path and the potential hazards from reflective surfaces. Based on the evaluation the registrant shall exclude reflective surfaces from the beam path at all points

where the laser radiation exceeds an applicable MPE;

2. Evaluate the stability of the laser platform to determine the constraints placed upon the beam traverse and the extent of the range of control; and
3. Refrain from operating or making a laser ready for operation until the area along all points of the beam path, where the laser radiation will exceed the applicable MPE, is clear of individuals, unless the individuals are wearing the correct protective devices.

R9-7-1438. Hair Reduction and Other Cosmetic Procedures Using Laser and Intense Pulsed Light

A. Registration. A person who seeks to perform hair reduction or other cosmetic procedures shall apply for registration of any medical laser or IPL device that is a Class II surgical device, certified as complying with the labeling standards in 21 CFR 801.109, revised April 1, 2010, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments. The applicant shall provide all of the following information to the Department with the application for registration:

1. Documentation demonstrating that the health professional is qualified in accordance with A.R.S. § 32-516 or 32-3233, has 24 hours of didactic training on the subjects listed in Appendix C, and has passed an Department-approved exam on subjects covered with a minimum grade of 80%;
2. For any health professional in practice prior to October 1, 2010, proof of 24 hours of training on the subjects listed in Appendix C;
3. Documentation endorsed by the prescribing health professional, acknowledging responsibility for the minimum level of supervision required for hair reduction procedures as defined in R9-7-1402 under “indirect supervision”;
4. Procedures to ensure that the registrant has a written order from a prescribing health professional before the application of radiation;
5. If authorized, procedures to ensure that, in the absence of a prescribing health professional at the facility, the registrant has established a method for emergency medical care and assumed legal liability for the service rendered by an indirectly-supervised certified laser technician; and
6. Documentation that the indirectly-supervised certified laser technician has

participated in the supervised training required by A.R.S. § 32-516 or 32-3233.

B. Hair Reduction Procedures

1. If a registrant is using a medical laser or an IPL device that is a Class II surgical device, certified in accordance with the labeling standards in subsection (A), for hair reduction procedures, the registrant shall:
    a. Ensure that the device is only used by a health professional described in A.R.S. §§ 32-516(F)(3) and 32-3233(D)(1) or by a certified laser technician who is working under the indirect supervision of a health professional described in A.R.S. §§ 32-516(C)(1) and 32-3233(D) and (H)(1), and
    b. Ensure that a prescribing health professional purchases or orders the Class II surgical device that will be used for hair reduction procedures.
2. A registrant shall:
    a. Not permit an individual to use a medical laser or IPL device for hair reduction procedures unless the individual:
        i. Completes an approved laser technician didactic training program of at least 40 hours duration. To successfully complete the training program, the individual shall pass a test that consists of at least 50 multiple choice questions on subjects covered with a minimum grade of 80%. The training program shall be provided by an individual who is a health professional acting within the health professional's scope of practice, or a certified laser technician with a minimum of 100 hours of hands-on experience per procedure being taught;
        ii. Is present in the room for at least 24 hours of hands-on training, conducted by a health professional or a certified laser technician as described in subsection (B)(2)(a)(i);
        iii. Performs or assists in at least 10 hair reduction procedures; and
        iv. Has the qualified health professional or qualified supervising certified laser technician certify that the laser technician has completed the training and supervision as described in subsection (B)(2)(a).
    b. Ensure that the laser technician follows written procedure protocols

established by a prescribing health professional; and

c. Ensure that the laser technician follows any written order, issued by a prescribing health professional, which describes the specific site of hair reduction.

3. A registrant shall maintain a record of each hair reduction procedure protocol that is approved and signed by a prescribing health professional, and ensure that each protocol is reviewed by a prescribing health professional, at least annually.
4. A registrant shall:
   a. Maintain each procedure protocol onsite, and ensure that the protocol contains instructions for the patient concerning follow-up monitoring; and
   b. Design each protocol to promote the exercise of professional judgment by the laser technician commensurate with the individual's education, experience, and training. The protocol need not describe the exact steps that a qualified laser technician should take with respect to a hair reduction procedure.
5. A registrant shall require that a prescribing health professional observe the performance of each laser technician during procedures at intervals that do not exceed six months. The registrant shall maintain a record of the observation for three years from the date of the observation.
6. A registrant shall verify that a health professional is qualified to perform hair reduction procedures by obtaining evidence that the health professional has received relevant training specified in subsection (A)(1) and in physics, safety, surgical techniques, pre-operative and post-operative care and can perform these procedures within the relevant scope of practice, as defined by the health professional's licensing board.
7. A registrant shall provide radiation safety training to all personnel involved with hair reduction procedures, designing each training program so that it matches an individual's involvement in hair reduction procedures. The registrant shall maintain records of the training program and make them available to the Department for three years from the date of the program, during and after the individual's period of employment.

C. Other Cosmetic Procedures

1. If a registrant is using a medical laser or an IPL device that is a Class II surgical device, certified in accordance with the labeling standards in subsection (A), for other cosmetic procedures, the registrant shall.
    a. Ensure that the device is only used by a health professional described in A.R.S. §§ 32-516(F)(3) and 32-3233(D)(1) or by a certified laser technician who is directly supervised by a health professional as described in A.R.S. §§ 32-516(C)(2) and 32-3233(D) and (H)(2); and
    b. Ensure that a prescribing health professional purchases or orders the Class II surgical device that will be used for other cosmetic procedures.
2. A registrant shall not permit an individual to use a medical laser or IPL device for other cosmetic procedures unless the individual:
    a. Completes an approved laser technician didactic training program of at least 40 hours duration. To successfully complete the training program the individual shall pass a test that consists of at least 50 multiple choice questions on subjects covered with a minimum grade of 80%. The training program shall be provided by an individual who is a health professional acting within the health professional's scope of practice, or a certified laser technician with a minimum of 100 hours of hands-on experience per procedure being taught;
    b. Is present in the room for at least 24 hours of hands-on training, conducted by a health professional or a certified laser technician as described in subsection (C)(2)(a); and
    c. Performs or assists in at least 10 cosmetic procedures governed by subsection (C), for each type of procedure (for example: spider vein reduction, skin rejuvenation, non-ablative skin resurfacing); and
    d. Has the qualified health professional or qualified supervising certified laser technician certify that the laser technician has completed the training and supervision as described in subsection (C)(2).
3. A registrant shall maintain a record of each protocol for a cosmetic procedure governed by subsection (C) that is approved and signed by a prescribing health professional, and ensure that each protocol is reviewed by a prescribing health professional, at least annually. The registrant shall:
    a. Maintain each protocol onsite, and ensure that the protocol contains

instructions for the patient concerning follow-up monitoring; and

b. Design each protocol to promote the exercise of professional judgment by the laser technician commensurate with the individual's education, experience, and training. The protocol need not describe the exact steps that a qualified laser technician should take with respect to a cosmetic procedure governed by subsection (C).

4. A registrant shall verify that a health professional is qualified to perform laser, IPL, and related procedures, by obtaining evidence that the health professional has received relevant training specified in subsection (A)(1) and in physics, safety, surgical techniques, pre-operative and post-operative care and can perform these procedures within the relevant scope of practice, as defined by the health professional's licensing board.

5. A registrant shall provide radiation safety training to all personnel involved with cosmetic procedures governed by subsection (C), designing each training program so that it matches an individual's involvement in each procedure. The registrant shall maintain records of the training program and make them available to the Department for three years from the date of the program, during and after the individual's period of employment.

D. Persons governed by this Section shall also comply with other applicable licensing and safety laws.

E. A laser shall be secured so that the laser cannot be removed from the facility and the on/off switch is turned to the "off" position with the key removed when a certified laser technician or a health professional is not present in the room where the laser is located.

R9-7-1438.01. Certification and Revocation of Laser Technician Certificate

A. An applicant for a laser technician certificate shall submit a completed application and certification that the applicant has received the training specified in A.R.S. §§ 32-516(A) or 32-3233(E).

B. The applicant shall pay a nonrefundable fee of $30.00. A duplicate certificate may be requested at the time of initial application or renewal at a fee of $10.00 per certificate. To obtain a duplicate certificate at other times a laser technician shall pay $20.00 per certificate.

C. Initial certificates are issued for 12 months and expire on the last day of the month. A renewal

application shall be accompanied by a renewal fee of $30.00 each year in addition to $10.00 per duplicate certificate requested.

D. Under A.R.S. § 32-3233(I) and (J), the Department may take appropriate disciplinary action, including revocation of the certificate of a certified laser technician. The Department may discipline a certified laser technician who has had a relevant professional license suspended or revoked, or been otherwise disciplined by a health professional board or the Board of Cosmetology. The Department may also discipline the certified laser technician for falsifying documentation related to training, prescriptions, or other required documentation. As provided in Article 12 of this Chapter, the Department may assess civil penalties, suspend, revoke, deny, or put on probation a certified laser technician.

E. A laser technician who has been using laser and IPL devices prior to November 24, 2009 may continue to do so if the technician applies for and receives a certificate from the Department before October 1, 2010.

F. Certification may be issued for one or more of the following procedures:

1. Hair Reduction,
2. Skin Rejuvenation,
3. Non-Ablative Skin Resurfacing,
4. Spider Vein Reduction,
5. Skin Tightening,
6. Wrinkle Reduction,
7. Laser Peel,
8. Telangiectasia Reduction,
9. Acquired Adult Hemangioma Reduction,
10. Facial Erythema Reduction,
11. Solar Lentigo Reduction (Age Spots),
12. Ephelis Reduction (Freckles),
13. Acne Scar Reduction,
14. Photo Facial, or
15. Additional procedures as approved by the Department after consultation with other health professional boards as defined in A.R.S. § 32-516(F)(3) or 32-3233(D)(1).

G. For any application relating to the certification of laser technicians, as described in A.R.S. § 41-1072, there is an administrative completeness review time-frame of 30 days and a substantive review time-frame of 30 days with an overall time-frame of 60 days.

H. Certified laser technicians shall display a valid original certificate as issued by the Department in a location that is viewable by the public.

R9-7-1439. Laser and IPL Laser Technician and Laser Safety Training Programs

A. A person seeking to initiate a medical laser or IPL laser technician training program shall submit an application to the Department for certification that contains a description of the training program. In addition, the person shall submit a syllabus and a test that consists of at least 50 multiple choice questions on subjects covered. In the program materials, the person shall address the subjects in R9-7-1438 through this Section, and Appendix C.

B. The Department shall review the application and other documents required by subsections (A) and (E) in a timely manner, using an administrative completeness review time-frame of 40 days and a substantive review time-frame of 20 days with an overall time-frame of 60 days.

C. The Department shall maintain a list of certified laser or IPL training programs.

D. Applicants for approval as a certified laser or IPL training program shall pay a nonrefundable $100.00 fee.

E. Initial certification shall be issued for 12 months and shall expire on the last day of the month. A renewal application shall be accompanied by a renewal fee of $100.00 each year.

F. A person seeking to initiate a medical laser or IPL laser technician safety training program shall submit an application to the Department for certification that contains a description of the training program. In addition, the person shall submit a syllabus and a test that consists of at least 50 multiple choice questions on subjects covered. In the program materials, the person shall address the subjects in R9-7-1421 through R9-7-1444, Appendix C, and Appendix D, with emphasis on personal and public safety. The program shall also contain the training required by A.R.S. § 32-3233(E) or clearly state the portions of the training that are not provided or met if didactic certification is to take place in another program. The applicant shall conduct training in accordance with the program submitted to the Department and certified by the Department.

R9-7-1440. Medical Lasers

A. A registrant shall ensure that a Class 3 and Class 4 laser product used in the practice of medicine has a means for measuring the level of laser radiation with an error in

measurement of no greater than +20%, when calibrated in accordance with the laser product manufacturer's calibration procedure.

B. A registrant shall calibrate a laser used in the practice of medicine according to the manufacturer's specified calibration procedure, at intervals that do not exceed those specified by the manufacturer.

C. In a medical facility where several medical disciplines or a number of different practitioners use Class 3b and Class 4 lasers, a registrant shall form a Laser Safety Committee to govern laser activity, establish use criteria, and approve operating procedures, as follows:

1. With regard to membership of the committee the registrant shall include at least one representative of the Nursing staff, the LSO, one management representative, and one representative of each medical discipline that uses the lasers;
2. The committee shall review actions by the LSO related to hazard evaluation and the monitoring and control of laser hazards; and
3. The committee shall approve or deny requests by potential operators and ancillary personnel to operate or assist in the operation of a laser under the direction of a licensed practitioner.

D. A registrant shall use Class 3b and Class 4 Lasers that have a guard mechanism on the switch to control patient exposure and prevent inadvertent exposure.

E. A registrant shall establish a written laser safety training program that provides a thorough understanding of established procedures for each type of laser in use and the medical procedures associated with use of the laser. The registrant shall make program documentation available for Department review and, at minimum, address all of the following in the documentation:

1. Regulatory requirements and the laser classification system;
2. Fundamentals of laser operation and the significance of specular and diffuse reflections;
3. Biological effects of laser radiation on the eye and skin;
4. Non-beam hazards (for example: electrical, chemical, and reaction by-product hazards) and ionizing radiation hazards (for example: x-rays from power sources and target interactions, if applicable) of lasers; and
5. Responsibilities of management and employees regarding control measures.

R9-7-1441. Laser Light Shows and Demonstrations

A. Before a conducting laser light show or laser demonstration, a registrant shall provide documentation to the Department that a variance from 21 CFR 1040.10 has been obtained from the FDA.

B. A registrant shall notify the Department in writing, at least three working days in before a proposed laser light show or demonstration, and include all of the following information:

1. The location, time, and date of the light show or demonstration;
2. Sketches showing the locations of each laser, operator, performer, laser beam path, viewing screen, wall, mirror ball, or any other reflective or diffuse surface that could be hit by or reflect the laser beam;
3. Scanning beam patterns, scan velocity, and frequency in occupied areas; and
4. Physical surveys and calculations made to comply with this Article.

C. A registrant shall supply any additional information required by the Department for the safety evaluation of the proposed activity.

D. Before an outdoor laser light show, a registrant shall notify the Federal Aviation Administration of the proposed show.

E. If a light show or demonstration involves laser radiation emissions outside the spectral range of 400 to 700 nanometers, a registrant shall prevent the emissions from exceeding the applicable Class 1 accessible emission limit.

F. If it is likely that an audience member or any operator, performer, or employee will view laser or collateral radiation, a registrant shall prevent the radiation from exceeding the applicable Class 1 accessible emission limit.

G. Even if it is unlikely that an individual, including any operator, performer, or employee in the vicinity of a laser light show or demonstration will view or be exposed to laser or collateral radiation, a registrant shall prevent the radiation from exceeding the applicable Class 2 accessible emission limit.

H. A registrant shall identify any area where levels of laser radiation exceed the applicable Class 2 accessible emission limit by posting warning signs and using barriers or guards to prevent entry.

I. If a registrant uses a scanning device, the registrant shall not use a device which, as a result of scan failure or any other failure, can change its angular velocity or amplitude, permitting audience exposure to laser radiation that exceeds the applicable Class 1 accessible emission limit.

J. If a mirror ball is used with a scanning laser, a registrant shall meet the requirements of

subsections (F) and (G) when the mirror ball is stationary or during any failure mode that results in a change in the rotational speed of the mirror ball.

K. A registrant shall ensure that an operator is at all times directly and personally supervising a laser light show or demonstration, except in cases where the maximum laser power output level is less than 5 milliwatts (all spectral lines) and the laser beam path is located at all times at least 6 meters above any surface upon which an individual in the audience is permitted to stand, and at any point, more than 2.5 meters in lateral separation from any position where an individual in the audience is permitted during the performance.

L. A registrant shall prevent laser radiation levels from exceeding the applicable Class 2 accessible emission limit at any point less than three meters above any surface upon which an individual in the audience is permitted to stand and 2.5 meters in lateral separation from any position where an individual in the audience is permitted, unless physical barriers are present that prevent human access to the radiation.

M. A registrant shall limit the maximum power output of any laser to a level sufficient to produce the desired effect.

N. If a registrant is required to limit output power to a level less than the available power to meet the requirements of this Article, the registrant shall adjust, measure, and record the laser output power before the laser light show or demonstration.

O. A registrant shall functionally test and evaluate all safety devices and procedures necessary to comply with this Article after setup, and before a laser light show or demonstration.

P. A registrant shall secure a laser system, when not in use, against unauthorized operation or tampering.

Q. A registrant shall perform laser alignment procedures with the laser output power reduced to the lowest practicable level, and ensure that any operator, performer, or other employee wears protective eyewear as necessary to prevent exposure to radiation levels that exceed the applicable MPE. The registrant shall only allow individuals who are performing the alignment be present during alignment procedures.

R. A registrant shall not conduct a laser light show or demonstration unless the Department has specifically exempted the show or demonstration from the requirements of 21 CFR 1040.10, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments.

R9-7-1442. Measurements and Calculations to Determine MPE Limits for Lasers

A registrant shall take measurements to determine MPE values in a manner consistent with the procedures contained in ANSI Z136.1-2000, American National Standard for Safe Use of Lasers, 2000 edition, which is incorporated by reference, published by the Laser Institute of America, 13501 Ingenuity Drive, Suite 128, Orlando, FL 32826, and on file with the Department. This incorporation by reference contains no future editions or amendments.

R9-7-1443. Laser Compliance Measurement Instruments

A registrant shall ensure that the radiation output measurement is performed with an instrument that is calibrated and designed for use with the laser that is being evaluated for compliance. The registrant shall specify the date of calibration, accuracy of calibration, wavelength range, and power or energy of calibration on a legible, clearly visible label attached to the instrument.

R9-7-1444. Laser Classification Measurements

A. A registrant shall measure accessible emission for classification:

1. Under the operational conditions and procedures that maximize accessible emission levels, including startup, stabilized operation, and shutdown of the laser or laser facility;
2. With all controls and adjustments listed in the operating and service instructions adjusted for the maximum accessible emission level of laser radiation that is not expected to be detrimental to the functional integrity of the laser or enclosure;
3. At points in space to which human access is possible for a given laser configuration. If operations include the defeat of safety interlocks or removal of portions of the protective housing or enclosure, the registrant shall measure accessible emission at points accessible in that configuration;
4. With the measuring instrument detector positioned so that the maximum possible radiation is measured by the instrument; and
5. With the laser coupled to the type of laser energy source specified as compatible by the laser manufacturer and producing the maximum emission of accessible laser radiation.

B. A registrant shall perform measurements of accessible emission levels, used to classify laser and collateral radiation in accordance with 21 CFR 1040.10, April 1, 2004, which is

incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments.

Appendix A. Radio Frequency Devices (Include, but are not limited to, the following)

Dielectric heaters and sealers
Medical diathermy units
Radar
R.F. activated alarm systems
Sputter devices
R.F. activated lasers
Edge gluers
Industrial microwave ovens and dryers
Asher-etcher equipment
R.F. welding equipment
Medical surgical coagulators

Appendix B. Application Information

The Department shall issue a registration if an applicant provides the following information and fee as required in R9-7-1401(D). The Department shall provide an application form to the applicant with a guide and upon request, assist the applicant to ensure that correct information is provided on the application form.

Name and mailing address of applicant
Person responsible for radiation safety program
Type of facility
Legal structure and ownership
Radiation source information
Shielding information
Equipment operator instructions and restrictions
Classification of professional in charge
Type of request: amendment, new, or renewal
Protection survey results, if applicable
Radiation Safety Officer name, if applicable

Laser class and type, if applicable

Information required by Article 14 for the specific source

Use location

Telephone number

Facility subtype

Signature of certifying agent

Equipment identifiers

Scale drawing

Physicist name and training, if applicable

Contact person

Applicable fee listed in Article 13 schedule

Appendix C. Hair Removal and Other Cosmetic Laser or IPL Operator Training Program

1. General Considerations. An applicant shall ensure that:
    a. The training program is specific to the medical laser or IPL device in use and the clinical procedures to be performed;
    b. Program content is consistent with facility policy and procedure and applicable federal and state law; and
    c. The training program addresses hazards associated with laser or IPL device use.
2. Technical Considerations. The applicant's training program shall cover all of the following technical subjects:
    a. Laser and IPL device descriptions
    b. Definitions
    c. Laser and IPL device radiation fundamentals
    d. Laser mediums, types of lasers, and other light-emitting devices – solid, liquid, gas, and IPL devices
    e. Biological effects of laser or IPL device light
    f. Damage mechanisms
        i. Eye hazard
        ii. Skin hazard (includes information regarding skin type and skin anatomy)

iii. Absorption and wavelength effects
iv. Thermal effects

g. Photo chemistry
h. Criteria for setting the Maximum Permissible Exposure (MPE) for eye and skin associated hazards
i. Explosive, electrical, and chemical hazards
j. Photosensitive medications
k. Fire, ionizing radiation, cryogenic hazards, and other hazards, as applicable

3. Medical Considerations. The applicant's training program shall cover all of the following medical subjects:
   a. Local anesthesia techniques, including ice, EMLA cream, and other applicable topical treatments
   b. Typical laser and IPL device settings for hair removal and cosmetic procedures
   c. Expected patient response to treatment
   d. Potential adverse reactions to treatment
   e. Anatomy and physiology of skin areas to be treated
   f. Indications and contraindications for use of pigment and vascular-specific lasers for cutaneous procedures
4. General Laser or IPL device safety. The applicant's training program shall cover the following general safety subjects:
   a. Laser and IPL device classifications
   b. Control measures (includes information regarding protective equipment)
   c. Manager and operator responsibilities
   d. Medical surveillance practices
   e. Federal and state legal requirements
   f. Related safety issues
      i. Controlled access
      ii. Plume management
      iii. Equipment testing, aligning, and troubleshooting

Appendix D. Laser Operator and Laser Safety Officer Training

1. Operators and personnel that work around lasers:

a. Fundamentals of laser operation (for example: physical principles, construction, and other basic information)
b. Bioeffects of laser radiation on the eye and skin
c. Significance of specular and diffuse reflections
d. Non-beam hazards of lasers (for example: electrical, chemical, and reaction byproducts)
e. Ionizing radiation hazards (includes information regarding x-rays from power sources and target interactions, if applicable)
f. Laser and laser system classifications
g. Control measures
h. Responsibilities of managers and operators
i. Medical surveillance practices (if applicable)
j. CPR for personnel servicing lasers with exposed high voltages, the capability of producing potentially lethal electrical currents, or both.

2. The LSO or other individual responsible for the safety program, evaluation of hazards, and implementation of control measures, or any others, if directed by management to obtain a thorough knowledge of laser safety:
    a. The subjects covered in subsection (1)
    b. Laser terminology
    c. Laser types, wavelengths, pulse shapes, modes, power and energy
    d. Basic radiometric units and measurement devices
    e. MPE levels for eye and skin under all conditions
    f. Laser hazard evaluations, range equations, and other calculations
3. Technical Considerations
    a. Laser and IPL device descriptions
    b. Definitions
    c. Laser and IPL device radiation fundamentals
    d. Laser mediums, types of lasers, and other light-emitting devices (includes information regarding diodes and solid, liquid, gas, and IPL devices)
    e. Biological effects of laser or IPL device light
    f. Damage mechanisms
        i. Eye hazard
        ii. Skin hazard (includes information regarding skin type and skin

anatomy)

iii. Absorption and wavelength effects

iv. Thermal effects

g. Photo chemistry

h. Photosensitive medications

i. Criteria for setting the Maximum Permissible Exposure (MPE) levels for eye and skin associated hazards

j. Explosive, electrical, and chemical hazards

k. Fire, ionizing radiation, cryogenic hazards, and other hazards as applicable

Statutory Authority for Rules in 9 A.A.C. 7, Article 14

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, chiropodist 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.

32-516. Aestheticians; cosmetologists; cosmetic laser and IPL device use; certification; fees; definitions

A. An aesthetician or a cosmetologist who wishes to perform cosmetic laser procedures and procedures using IPL devices must:

1. Apply for and receive a certificate from the department.

2. Comply with the requirements of this section and department rules.

3. Successfully complete forty hours of didactic training as required by department rules at a department-certified training program. The program shall provide a provisional certificate to the applicant verifying the successful completion of the didactic training.

4. For hair removal, complete hands-on training that is supervised by a health professional who is acting within the health professional's scope of practice or by a laser technician who has a minimum of one hundred hours of hands-on experience per procedure. The health professional or laser technician must be present in the room during twenty-four hours of hands-on use of lasers or IPL devices. The supervising health professional or laser technician shall verify that the aesthetician or cosmetologist has completed the training and supervision as prescribed by this section.

5. For other cosmetic laser and IPL device procedures, complete a minimum of an additional twenty-four hours of hands-on training of at least ten cosmetic procedures for each type of specific procedure that is supervised by a health professional who is acting within the health professional's scope of practice or by a laser technician who has a minimum of one hundred hours of hands-on experience per procedure. The health professional or laser technician must be present in the room during twenty-four hours of hands-on use of lasers or IPL devices. The supervising health professional or laser technician shall verify that the aesthetician or cosmetologist has completed the training and supervision as prescribed by this section.

6. Submit to the department the provisional certificate from the training program and certification by the health professional or laser technician who directly supervised the applicant in the room during the hands-on training.

B. The department shall issue a laser technician certificate authorizing the aesthetician or cosmetologist to use lasers and IPL devices if the applicant has completed the training for hair removal or lasers and IPL devices for other cosmetic procedures, as applicable, and shall maintain a current register of those laser technicians in good standing and whether certification is for hair removal only or other cosmetic procedures as well. The department may establish a fee for the registration of aestheticians or cosmetologists as laser technicians and the issuance of certificates pursuant to this subsection. The department shall deposit monies collected pursuant to this subsection in the laser safety fund established by section 32-3234.

C. An aesthetician or a cosmetologist who has been certified as a laser technician by the department may use a laser or IPL device:

1. For hair removal under the indirect supervision of a health professional whose scope of practice permits the supervision.

2. For cosmetic purposes other than hair removal if the aesthetician or cosmetologist is directly supervised by a health professional whose scope of practice permits the supervision and the aesthetician or cosmetologist has been certified in those procedures.

D. The board shall investigate any complaint from the public or from another board or agency regarding a licensed aesthetician or cosmetologist who performs cosmetic laser procedures or procedures using IPL devices pursuant to this section. The board shall report to the department any complaint it receives about the training or performance of an aesthetician or a cosmetologist who is certified as a laser technician.

E. An aesthetician or a cosmetologist who used laser and IPL devices before November 24, 2009 may continue to do so if the aesthetician or cosmetologist received a certificate pursuant to this section before October 1, 2010.

F. For the purposes of this section:

1. "Department" means the department of health services.

2. "Directly supervised" means a health professional who is licensed in this state and whose scope of practice allows the supervision supervises the use of a laser or IPL device for cosmetic purposes while the health professional is present at the facility where and when the device is being used.

3. "Health professional" means a person who is licensed pursuant to either:

(a) Chapter 11, article 2 of this title and who specializes in oral and maxillofacial surgery.

(b) Chapter 13, 14, 15, 17 or 25 of this title.

4. "Indirect supervision" means supervision by a health professional who is licensed in this state, whose scope of practice allows the supervision and who is readily accessible by telecommunication.

5. "IPL device" means an intense pulse light class II surgical device certified in accordance with the standards of the department for cosmetic procedures.

6. "Laser" means any device that can produce or amplify electromagnetic radiation with wavelengths in the range of one hundred eighty nanometers to one millimeter primarily by the process of controlled stimulated emission and certified in accordance with the standards for the

department for cosmetic procedures.

7. "Laser technician" means a person who is or has been certified by the department pursuant to its rules and chapter 32, article 2 of this title.

32-3233. Lasers; IPL devices; authorized use; authorized supervision

A. A health professional may register, operate and use a laser or IPL device that is registered with the department or administer drugs or devices for cosmetic purposes to the extent the use is allowed by the health professional's scope of practice and the health professional has completed any training required by the health professional's regulatory board and the department.

B. A health professional may supervise another health professional in the use of a laser or IPL device for cosmetic purposes to the extent the supervision is allowed or required by the supervising health professional's scope of practice and the supervising health professional has completed any training required by the supervising health professional's regulatory board and the department.

C. The health professional's regulatory board shall investigate any complaint from the public or another board or agency involving the training, education, supervision or use of a laser or IPL device. A health professional shall report to the department any complaint received about the training or performance of a laser technician.

D. A health professional may supervise a laser technician in the use of a laser or IPL device for cosmetic purposes if:

1. The health professional is licensed pursuant to either:

(a) Chapter 11, article 2 of this title and specializes in oral and maxillofacial surgery.

(b) Chapter 13, 14, 15, 17 or 25 of this title and the supervision is within the health professional's scope of practice.

2. The supervision does not conflict with the requirements of this article.

3. The laser technician has been certified by the department to use a laser or IPL device for hair removal or other cosmetic procedures.

E. A laser technician who wishes to perform cosmetic laser procedures and procedures using IPL devices must:

1. Successfully complete forty hours of didactic training as required by department rules at a department-certified training program. The program shall provide a provisional certificate to the applicant verifying the successful completion of the didactic training.

2. For hair removal, complete hands-on training that is supervised by a health professional who is

acting within the health professional's scope of practice or by a laser technician who has a minimum of one hundred hours of hands-on experience per procedure. The health professional or laser technician must be present in the room during twenty-four hours of hands-on use of lasers or IPL devices. The supervising health professional or supervising laser technician shall verify that the laser technician has completed the training and supervision as prescribed by this section.

3. For other cosmetic laser and IPL device procedures, complete a minimum of an additional twenty-four hours of hands-on training of at least ten cosmetic procedures for each type of procedure that is supervised by a health professional who is acting within the health professional's scope of practice or by a laser technician who has a minimum of one hundred hours of hands-on experience per procedure. The health professional or laser technician must be present in the room during twenty-four hours of hands-on use of lasers or IPL devices. The supervising health professional or supervising laser technician shall verify that the laser technician has completed the training and supervision as prescribed by this section.

4. Submit to the department the provisional certificate from the training program and certification by the health professional or laser technician who directly supervised the applicant in the room during the hands-on training.

F. The department shall issue a laser technician certificate authorizing the use of lasers and IPL devices only for hair removal if the applicant meets the applicable requirements of subsection E of this section, or for hair removal and other cosmetic procedures if the applicant meets the applicable requirements of subsection E of this section. The department shall maintain a current register of those laser technicians in good standing and whether certification is only for hair removal or for hair removal and other cosmetic procedures. The department may establish a fee for the registration of laser technicians and the issuance of certificates pursuant to this subsection. The department shall deposit monies collected pursuant to this subsection in the laser safety fund established by section 32-3234.

G. A laser technician who has been using laser and IPL devices before November 24, 2009 may continue to do so if the laser technician applies for and receives a certificate pursuant to this section before October 1, 2010.

H. A laser technician may use a laser or IPL device in the following circumstances:

1. For hair removal under the indirect supervision of a health professional whose scope of practice permits the supervision.

2. For cosmetic purposes other than hair removal if the laser technician is directly supervised by a health professional whose scope of practice permits the supervision.

I. The supervising health professional, the employer of a laser technician and the registrant who owns or operates the laser or IPL device are subject to disciplinary action by the appropriate regulatory board for any errors made by a laser technician or for the use of a laser or IPL device that is not allowed by this article. A person who employs a person who operates a laser or IPL device must report any misuse of a laser or IPL device to the operator's regulatory board and to the department.

J. The department shall investigate any complaint from a member of the public or another board or agency involving the training, education, practice or complaint of harm resulting from a laser technician performing procedures for cosmetic purposes under this article and shall take appropriate disciplinary action as necessary, including revocation of the laser technician's certification or revocation of a registrant's or employer's license to own or operate a laser or IPL device.

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.

NOTE: ***This 5YRR was previously considered at the August 25, 2020 Study Session and September 1, 2020 Council Meeting. At the September 1, 2020 Council Meeting, the Council voted to table consideration of this rulemaking to the September 29, 2020 Study Session and October 6, 2020 Council Meeting to allow DES to revise its proposed course of action timeframe. The revised 5YRR with an updated proposed course of action timeframe is included in these final materials for your reference.***

DEPARTMENT OF ECONOMIC SECURITY (F20-0907)
Title 6, Chapter 6, All Articles, Department of Economic Security

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 6, 2020

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

FROM: Council Staff

DATE: September 22, 2020

SUBJECT: **DEPARTMENT OF ECONOMIC SECURITY**
Title 6, Chapter 6, All Articles, Department of Economic Security

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Summary

This Five-Year Review Report (5YRR) was previously considered at the August 25, 2020 Study Session and September 1, 2020 Council Meeting. At the September 1, 2020 Council Meeting, the Council voted to table consideration of this report to the September 29, 2020 Study Session and October 6, 2020 Council Meeting to allow the Department of Economic Security (Department) to revise its proposed course of action timeframe. The revised 5YRR with an updated proposed course of action timeframe is included for your reference.

This 5YRR from the Department relates to all Articles in Title 6, Chapter 6 regarding developmental disabilities. The Division of Developmental Disabilities (DDD) within the Department provides support and services for eligible people with autism, cerebral palsy, epilepsy, or intellectual disability. DDD provides, or contracts to provide, a variety of services, depending on available funding and eligibility, including: attendant care, day treatment and training, habilitation, home health assistance, home nursing, home modifications, housekeeping, services in intermediate care facilities, medical services, services in nursing facilities, respiratory therapy, respite, occupational therapy, physical therapy, speech therapy, and non-emergency transportation.

The Articles reviewed include the following:

- Article 1. General Provisions
- Article 3. Eligibility for Developmental Disabilities Services
- Article 4. Application
- Article 6. Program Services
- Article 8. Programmatic Standards and Contract Monitoring for Community Residential Settings
- Article 9. Managing Inappropriate Behaviors
- Article 10. Child Developmental Foster Home License
- Article 11. Adult Developmental Home License
- Article 12. Cost of Care Portion
- Article 13. Coordination of Benefits; Third-Party Payments
- Article 15. Standards for Certification of Home and Community-Based Service (HCBS) Providers
- Article 16. Abuse and Neglect
- Article 18. Administrative Review
- Article 20. Contracts
- Article 21. Division Procurement and Rate Setting - Qualified Vendors
- Article 22. Appeals and Hearings
- Article 23. Deemed Status

In the previous 5YRR for these rules , approved by the Council on December 15, 2015, the Department proposed changes to all Articles in Chapter 6. The Department amended Article 3 and repealed Article 5 effective August 24, 2018. The Department amended Article 18 effective January 27, 2018. The Department published a Notice of Proposed Rulemaking to amend Article 4 on January 3, 2020. The amendments to the remaining Articles have not been completed. The Department noted that progress on amendments to the Articles in Chapter 6 is balanced against competing priorities primarily related to Medicaid funding. Specifically, between 2015 and 2020, the Department indicates that implementing continuing changes in Medicaid requirements impacting the Department has a high priority in order to avoid jeopardizing federal funding.

Proposed Action

In the Department's 5YRR considered at the August 25, 2020 Study Session and September 1, 2020 Council Meeting, the Department indicated the following proposed course of action with regards to its rules:

- The Department indicated it planned to submit a rulemaking package to the Council for Article 4 by September 2020.

- The Department indicated it planned to submit a rulemaking package to the Council for Articles 9, 10, 11, 15, and 21 by August 2021.

- The Department indicated it planned to submit a rulemaking package to the Council for Articles 6, 8, 12, 13, 16, and 23 by December 2024.

- The Department identified proposed revisions to Sections in Articles 1, 20 and 22. However, the Department did not indicate a proposed course of action to address the issues identified in the report. After follow-up from Council staff, it was still unclear whether the Department intended to amend Articles 1, 20 and 22 to address the issues identified in the Department's report.

In the Department's revised report now before the Council for consideration, the Department has put forth the following amended proposed course of action:

- DES states that it plans to request an exemption to proceed with expedited rulemaking to resolve inconsistency in the rules identified in Item 4 of the 5YRR and to proceed with regular rulemakings to amend Articles 1, 6, 8, 12, 13, 16, 22, and 23 by December 2020.

- DES states it plans to submit the Notice of Final Expedited Rulemaking to the Council to resolve inconsistency in the rules identified in Item 4 of the 5YRR by August 2021.

- DES states it plans to submit the Notices of Final Rulemaking to the Council to amend Articles 9, 10, 11, 15, and 21 by December 2021.

- DES states it plans to submit the Notices of Final Rulemaking to the Council to amend Articles 1 and 13 by December 2022.

- DES states it plans to submit the Notices of Final Rulemaking to the Council to amend Articles 6, 8, 12, 16, 22, and 23 by December 2024.

Conclusion

Council staff encourages the Council to discuss with the Department their revised proposed course of action timeframe in response to the Council's prior concerns.

-Preface-

Department of Economic Security
Five – Year Review Reports

A.R.S. § 41-1056 requires that at least once every five years, each agency shall review its administrative rules and produce reports that assess the rules with respect to considerations including the rule's effectiveness, clarity, conciseness and understandability. The reports also describe the agency's proposed action to respond to any concerns identified during the review. The reports are submitted in compliance with the schedule provided by the Governor's Regulatory Review Council. A.R.S. § 18-305, enacted in 2016, requires that statutorily required reports be posted on the agency's website.

1. **Authorization of the rule by existing statutes:**

General Statutory Authority: A.R.S. §§ 41-1954(A)(3) and 46-134(10)

Specific Statutory Authority: A.R.S. §§ 36-554(A)(6), 36-554(A)(11), 36-554(C)(6), 36-557(O), 36-557(P), 36-560(A), 36-561(B), 36-562(C), 36-562(G), 36-562(M), 36-563(C), 36-565(D), 36-568, 36-592(B), 36-595(B), 36-596.01(G)

2. **The objective of each rule:**

Rule	Objective
R6-6-101	The objective of this rule is to define terms used in Chapter 6.
R6-6-102	The objective of this rule is to guarantee the rights of clients when services are being provided.
R6-6-103	The objective of this rule is to designate a confidentiality officer who administers and supervises the use and maintenance of all personally identifiable information.
R6-6-104	The objective of this rule is to identify individuals or titles authorized to access personally identifiable information and where it is kept.
R6-6-105	The objective of this rule is to ensure personally identifiable information is only released with the consent of the client or responsible person.
R6-6-106	The objective of this rule is to ensure an employee of the Division (DDD) who makes an unlawful disclosure of personally identifiable information is subject to disciplinary action or dismissal.
R6-6-107	The objective of this rule is to state the client's right to live in the least restrictive environment.
R6-6-108	The objective of this rule is to ensure a written plan for meeting potential emergencies and disasters is posted in non-licensed settings.
R6-6-301	The objective of this rule is to define terms used in Article 3.
R6-6-302	The objective of this rule is to establish general criteria regarding eligibility for DDD services.
R6-6-303	The objective of this rule is to identify the diagnoses used to determine eligibility for Division services.

R6-6-304	The objective of this rule is to explain the process for eligibility under Arizona Long-term Care System (ALTCS).
R6-6-305	The objective of this rule is to require the Support Coordinator, along with the Planning Team, to complete a Planning Document to document any necessary supports and services when the Department determines an individual is eligible and enrolls the individual in the program.
R6-6-306	The objective of this rule is to clarify that in an emergency, the Department may provide DDD services to an individual who has been enrolled in the program without a Planning Document.
R6-6-307	The objective of this rule is to outline when the Department may redetermine eligibility for the program.
R6-6-308	The objective of this rule is to enumerate the responsibilities of a member.
R6-6-309	The objective of this rule is to identify under what circumstances a member may be terminated from DDD services, and time-frames for notification of termination from DDD services.
R6-6-401	The objective of this rule is to define terms used in Article 4.
R6-6-402	The objective of this rule is to describe the application process for DDD services, the information required on the application, and what happens if an application is incomplete.
R6-6-403	The objective of this rule is to identify the required documents for lawful presence, residency, and health insurance coverage while applying for admission to services.
R6-6-404	The objectives of this rule are to require DDD to refer individuals with developmental disabilities who may be eligible for ALTCS to the Arizona Health Care Cost Containment System (AHCCCS) to determine eligibility under ALTCS.
R6-6-601	The objective of this rule is to clarify that an assigned case manager will assist the client and the client's family in all aspects of the service delivery system.
R6-6-602	The objective of this rule is to describe how appropriate services for the individual and family are determined and requires the Individual Service and Program Plan (ISPP) team to develop an ISPP for the client based on an evaluation.

R6-6-603	The objective of this rule is to describe the client's assignment to appropriate services and describes the circumstances in which the client may be assigned to a waiting list when appropriate services are not available.
R6-6-604	The objective of this rule is to clarify how often the case manager and the ISPP team will review the client's ISPP.
R6-6-605	The objective of this rule is to describe the right of responsible persons to request a transfer or change to services and the responsibility of DDD to review each request.
R6-6-606	The objective of this rule is to explain that admission or assignment of any client to a program, service, or facility requires consent of the responsible person and, if not obtained, those services shall be terminated.
R6-6-801	The objective of this rule is to describe the applicability of Article 8 to community residential settings with the exception to developmental homes.
R6-6-802	The objective of this rule is to describe the roles of the licensee and DDD in complying with and determining compliance with A.R.S. Title 36, Chapter 5.
R6-6-803	The objective of this rule is to explain the types of incidents that must be reported to DDD immediately; the requirement for the licensee to cooperate in investigations; and the requirement for the licensee to maintain staff-to-client ratios that conform to the contract.
R6-6-804	The objective of this rule is to describe the rights of clients who live in community residential settings.
R6-6-805	The objective of this rule is to describe the requirements for developing and amending an ISPP.
R6-6-806	The objective of this rule is to explain the requirements for obtaining consent for emergency medical care, documentation of health status, medical records, medications, medication administration, use of protective restraints, nutrition, storage of toxins, and fencing of bodies of water for community residential settings.
R6-6-807	The objective of this rule is to describe what programmatic records a licensee shall maintain in a client's place of residence and the requirement to ensure that the records are legible, typed or written in ink, dated, and properly corrected, as

	necessary.
R6-6-808	The objective of this rule is to describe the qualifications, training, and responsibilities of staff, and to explain the documentation that a licensee shall maintain.
R6-6-809	The objective of this rule is to describe the policies and procedures that the licensee must develop and implement to address incidents that occur in the operation of the setting.
R6-6-810	The objective of this rule is to explain that a licensee shall obtain consent from the responsible person before releasing personally identifiable information for a client residing in a community residential setting.
R6-6-811	The objective of this rule is to explain that a licensee may request an exemption from a rule in Article 8 and provide how the licensee otherwise intends to meet the requirements of that rule.
R6-6-901	The objective of this rule is to describe the applicability of Article 9 to all programs operated, licensed, certified, supervised or financially supported by DDD, as well as to all habilitation programs.
R6-6-902	The objective of this rule is to establish limits on the use of certain behavioral intervention techniques.
R6-6-903	The objective of this rule is to describe the responsibilities and composition of the Program Review Committee.
R6-6-904	The objective of this rule is to describe the role of the ISPP team.
R6-6-905	The objective of this rule is to establish the standards for monitoring behavior treatment plans.
R6-6-906	The objective of this rule is to describe the minimum training requirements for any person involved in the use of a behavior treatment plan.
R6-6-907	The objective of this rule is to describe the sanctions for non-compliance with Article 9.
R6-6-908	The objective of this rule is to describe both the limits and requirements for physical management of a client in an emergency situation.

R6-6-909	The objective of this rule is to describe the requirements for how behavior–modifying medications shall be prescribed and administered.
R6-6-1001	The objective of this rule is to describe the requirements for a person applying for a child developmental foster home license.
R6-6-1002	The objective of this rule is to describe the criteria for issuing an initial license and the length of time a license is effective.
R6-6-1003	The objective of this rule is to establish the requirements and criteria to renew a child developmental foster home license.
R6-6-1004	The objective of this rule is to establish the criteria for a provisional license for a child developmental foster home and the length of time a provisional license is effective.
R6-6-1004.01	The objective of this rule is to establish the time-frame for granting or denying a child developmental foster home license.
R6-6-1004.02	The objective of this rule is to describe the administrative completeness and substantive review process.
R6-6-1004.03	The objective of this rule is to explain the contents of a complete application package for an initial child developmental foster home license.
R6-6-1004.04	The objective of this rule is to explain the contents of a complete child developmental foster home license renewal application package.
R6-6-1004.05	The objective of this rule is to explain the contents of a complete request for an amended child developmental foster home license.
R6-6-1005	The objective of this rule is to describe training requirements for a child developmental foster home licensee and applicant.
R6-6-1006	The objective of this rule is to describe the responsibilities of a licensee in a child developmental foster home.
R6-6-1007	The objective of this rule is to require a licensee to comply with behavior management, as specified in Article 9 of this Chapter, establish rules for behavior, provide appropriate discipline, and identify and report behavioral issues to DDD.

R6-6-1008	The objective of this rule is to describe the requirement of a licensee to provide appropriate, comfortable, and safe sleeping arrangements for children in a child developmental foster home.
R6-6-1009	The objective of this rule is to describe the types of events a licensee shall report to DDD or placing agency.
R6-6-1010	The objective of this rule is to describe a licensee's recordkeeping requirements in a child developmental foster home.
R6-6-1011	The objective of this rule is to prescribe the health and safety standards with which a child developmental foster home shall comply.
R6-6-1012	The objective of this rule is to establish standards for a licensee who provides transportation to foster children.
R6-6-1013	The objective of this rule is to establish dual licensure or certification requirements for foster parents residing off-reservation and licensed by a tribal jurisdiction.
R6-6-1014	The objective of this rule is to establish the rights of clients in a child developmental foster home.
R6-6-1015	The objective of this rule is to explain that a licensee may request an exemption from a rule in Article 10 and explain how the licensee otherwise intends to meet the requirements of that rule.
R6-6-1016	The objective of this rule is to describe the requirement for a licensee to cooperate in home inspections and monitoring of a child developmental foster home and to specify the minimum frequency of inspections and monitoring.
R6-6-1017	The objective of this rule is to describe the process for receiving and investigating complaints about a child developmental foster home.
R6-6-1018	The objective of this rule is to describe under what conditions a child developmental foster home license may be denied, suspended, or revoked.
R6-6-1019	The objective of this rule is to describe the appeal rights of a licensee or applicant when a license for a child developmental foster home is denied, suspended, or revoked.
R6-6-1101	The objective of this rule is to list the requirements for a person applying for an

	adult developmental home license.
R6-6-1102	The objective of this rule is to describe the criteria for issuing an initial license and to set the length of time a license is effective.
R6-6-1103	The objective of this rule is to establish the requirements and criteria to renew an adult developmental home license.
R6-6-1104	The objective of this rule is to establish the criteria for a provisional license for an adult developmental home license and the length of time a provisional license is effective.
R6-6-1104.01	The objective of this rule is to establish the time frame for granting or denying an adult developmental home license.
R6-6-1104.02	The objective of this rule is to describe the administrative completeness and substantive review process.
R6-6-1104.03	The objective of this rule is to explain the contents of a complete application package for an initial adult developmental home license.
R6-6-1104.04	The objective of this rule is to list the required contents of a complete adult developmental home license renewal application package.
R6-6-1104.05	The objective of this rule is to list the required contents of a complete request for an amended adult developmental home license.
R6-6-1105	The objective of this rule is to describe the training requirements for an adult developmental home licensee and applicant.
R6-6-1106	The objective of this rule is to describe the responsibilities of a licensee in an adult developmental home.
R6-6-1107	The objective of this rule is to require a licensee to comply with behavior management, as specified in Article 9 of this Chapter, establish rules for behavior, provide appropriate discipline, and identify and report behavioral issues to DDD.
R6-6-1108	The objective of this rule is to describe the requirement of a licensee to provide appropriate, comfortable, private, and safe sleeping arrangements for adult clients in an adult developmental home.
R6-6-1109	The objective of this rule is to describe the types of events and incidents in an adult

	developmental home a licensee shall report to DDD.
R6-6-1110	The objective of this rule is to describe the records for each adult a licensee shall maintain in an adult developmental home.
R6-6-1111	The objective of this rule is to prescribe the health and safety standards with which an adult developmental home shall comply.
R6-6-1112	The objective of this rule is to define the standards for adult developmental home providers who supply transportation.
R6-6-1113	The objective of this rule is to establish dual licensure or certification requirements for an adult developmental home provider licensed by another jurisdiction.
R6-6-1114	The objective of this rule is to establish the rights of clients in an adult developmental home.
R6-6-1115	The objective of this rule is to explain that an adult developmental home licensee or applicant may request an exemption from a rule in Article 11 and how the licensee or applicant otherwise intends to meet the requirements of that rule.
R6-6-1116	The objective of this rule is to describe the requirement for a licensee to cooperate in home inspections and monitoring of an adult developmental home and to specify the minimum frequency of inspections and monitoring.
R6-6-1117	The objective of this rule is to describe the process for receiving and investigating complaints about an adult developmental home.
R6-6-1118	The objective of this rule is to describe under what conditions an adult developmental home license may be denied, suspended, or revoked.
R6-6-1119	The objective of this rule is to describe the appeal rights of a licensee or applicant when a license for an adult developmental home is denied, suspended, or revoked.
R6-6-1201	The objective of this rule is to prescribe the cost of care contribution requirements for clients, parents of minor clients, and trusts, estates, and annuities of which a client is a beneficiary.
R6-6-1202	The objective of this rule is to describe how DDD determines a client’s cost of care portion for services.

R6-6-1203	The objective of this rule is to describe how DDD determines the client's cost for services based on the client's income from an estate, trust, or annuity.
R6-6-1204	The objective of this rule is to describe how DDD determines the cost of care portion for clients receiving residential services.
R6-6-1205	The objective of this rule is to describe the method DDD uses for collecting financial information, billing, and referrals for collections regarding non-payment.
R6-6-1206	The objective of this rule is to explain the review and appeal process for the cost of care portion.
Article 12, Appendix A	The objective of Article 12, Appendix A is to establish the cost of care portion for which a responsible person is liable based on the cost of services, monthly family income, and family size.
R6-6-1301	The objective of this rule is to describe the health insurance information required to complete an initial application or an application for redetermination for eligibility.
R6-6-1302	The objective of this rule is to describe the requirements for the assignment of rights to benefits.
R6-6-1303	The objective of this rule is to describe the process for collecting third party insurance reimbursements.
R6-6-1304	The objective of this rule is to describe the process for monitoring service providers for compliance with Article 13.
R6-6-1305	The objective of this rule is to describe the process a service provider shall use to notify DDD of the need for a lien.
R6-6-1501	The objective of this rule is to define terms used in Article 15.
R6-6-1502	The objective of this rule is to clarify that the rules in Article 15 apply to Home and Community-based Service (HCBS) providers.
R6-6-1503	The objective of this rule is to describe the requirements for a HCBS certificate.
R6-6-1504	The objective of this rule is to explain how to become certified as a HCBS provider and establish the documentation required for application to become HCBS certified.
R6-6-1504.01	The objective of this rule is to establish the time-frames for granting or denying a

	HCBS certificate.
R6-6-1504.02	The objective of this rule is to describe the administrative completeness and substantive review process.
R6-6-1504.03	The objective of this rule is to explain the contents of a complete application package for an initial HCBS certificate.
R6-6-1504.04	The objective of this rule is to explain the contents of a complete application package for a HCBS renewal certificate.
R6-6-1504.05	The objective of this rule is to explain the contents of a complete request for an amended HCBS certificate.
R6-6-1505	The objective of this rule is to establish health and safety standards a HCBS provider shall provide in a residence or facility where HCBS services are to be provided.
R6-6-1506	The objective of this rule is to establish fingerprint requirements for HCBS applicants.
R6-6-1507	The objective of this rule is to establish the requirements to renew a HCBS certificate.
R6-6-1508	The objective of this rule is to describe DDD's requirements when issuing an initial or renewal HCBS certificate.
R6-6-1509	The objective of this rule is to identify how long a HCBS certificate is valid.
R6-6-1510	The objective of this rule is to describe the requirements for amending a HCBS certificate.
R6-6-1511	The objective of this rule is to explain the requirements a service provider shall maintain during the term of a HCBS certificate.
R6-6-1512	The objective of this rule is to describe the audit process to review provider records and to ensure compliance with HCBS rules.
R6-6-1513	The objective of this rule is to describe how complaints against a HCBS service provider are registered and the subsequent action that may be taken.
R6-6-1514	The objective of this rule is to describe under what conditions a HCBS certificate

	may be denied, suspended, or revoked.
R6-6-1515	The objective of this rule is to establish the conditions under which a corrective action plan may be required to enforce compliance with these rules.
R6-6-1516	The objective of this rule is to explain an applicant's or service provider's right to an administrative review and appeal rights when a HCBS certificate is denied, revoked, or suspended.
R6-6-1517	The objective of this rule is to identify the types of incidents that a HCBS provider shall report to DDD while a client is in the direct care of a HCBS provider.
R6-6-1518	The objective of this rule is to explain that HCBS providers shall observe the rights of clients listed in A.R.S. § 36-551.01 and A.A.C. R6-6-102.
R6-6-1519	The objective of this rule is to describe records a provider shall maintain for compliance with HCBS rules.
R6-6-1520	The objective of this rule is to describe the basic qualifications, training, and responsibilities of HCBS providers.
R6-6-1521	The objective of this rule is to describe additional qualifications for attendant care services.
R6-6-1522	The objective of this rule is to describe additional qualifications for day treatment and training services.
R6-6-1523	The objective of this rule is to describe additional qualifications for habilitation services.
R6-6-1524	The objective of this rule is to describe additional qualifications for home health aide services.
R6-6-1525	The objective of this rule is to describe additional qualifications for home health nurse services.
R6-6-1526	The objective of this rule is to describe additional qualifications for hospice services.
R6-6-1527	The objective of this rule is to describe additional qualifications for housekeeping services.

R6-6-1528	The objective of this rule is to describe additional qualifications for occupational therapy services.
R6-6-1529	The objective of this rule is to describe additional qualifications for personal care services.
R6-6-1530	The objective of this rule is to describe additional qualifications for physical therapy services.
R6-6-1531	The objective of this rule is to describe additional qualifications for respiratory therapy services.
R6-6-1532	The objective of this rule is to describe additional qualifications for respite services.
R6-6-1533	The objective of this rule is to describe additional qualifications for speech/hearing therapy services.
R6-6-1601	The objective of this rule is to establish reporting procedures for an employee of a service provider regarding allegations of abuse and neglect.
R6-6-1602	The objective of this rule is to describe how reports of abuse and neglect are investigated.
R6-6-1603	The objective of this rule is to describe requirements for service providers to refer a client for a medical evaluation when there is suspected abuse or neglect.
R6-6-1801	The objective of this rule is to define terms used in Article 18.
R6-6-1802	The objective of this rule is to describe the applicability of Article 18.
R6-6-1803	The objective of this rule is to explain to whom DDD needs to give written notice when taking action and to specify the contents of the notice.
R6-6-1804	The objective of this rule is to describe who may file a request for an Administrative Review.
R6-6-1805	The objective of this rule is to explain the process for filing a request for an Administrative Review.
R6-6-1806	The objective of this rule is to describe contents that shall be included in a request for an Administrative Review.
R6-6-1807	The objective of this rule is to explain when DDD shall deny a request for an

	Administrative Review.
R6-6-1808	The objective of this rule is to describe the time-frame for completing an Administrative Review.
R6-6-1809	The objective of this rule is to explain the content of an Administrative Decision.
R6-6-1810	The objective of this rule is to explain that DDD shall not authorize services until a final administrative or judicial decision of an Administrative Review establishes eligibility.
R6-6-1811	The objective of this rule is to describe conditions under which DDD shall continue authorizing a Member's service during an Administrative Review.
R6-6-1812	The objective of this rule is to explain when HCBS Certificates shall be continued during an Administrative Review Process.
R6-6-1813	The objective of this rule is to explain a Requestor's appeal rights under Article 22 of this Chapter.
R6-6-2001	The objective of this rule is to define terms used in Article 20.
R6-6-2002	The objective of this rule is to describe DDD's contracting process for procuring goods and services.
R6-6-2003	The objective of this rule is to describe DDD's process when there is an insufficient response to a competitive solicitation.
R6-6-2004	The objective of this rule is to describe the process DDD shall use when DDD identifies an immediate or emergency need for service and current providers cannot meet the service needed.
R6-6-2005	The objective of this rule is to describe the Acute Care solicitation process and the information that providers shall include in a request for proposal.
R6-6-2006	The objective of this rule is to describe the process for evaluating Acute Care proposals, and the circumstances under which a proposal may be cancelled or rejected.
R6-6-2007	The objective of this rule is to describe the circumstances under which DDD shall award an Acute Care contract.

R6-6-2008	The objective of this rule is to describe the circumstances under which a protest regarding an Acute Care contract proposal or award may be filed and how a protest is resolved.
R6-6-2009	The objective of this rule is to describe how DDD recruits individual providers for Acute Care services in a geographic area without a health plan.
R6-6-2010	The objective of this rule is to describe the process DDD shall follow when statute, regulation, rules, or program changes occur.
R6-6-2011	The objective of this rule is to describe record retention for Acute Care services procurement.
R6-6-2101	The objective of this rule is to define terms used in Article 21.
R6-6-2102	The objective of this rule is to describe the applicability of Article 21.
R6-6-2103	The objective of this rule is to describe the Qualified Vendor application process.
R6-6-2104	The objective of this rule is to describe the criteria required for Qualified Vendor Agreements.
R6-6-2105	The objective of this rule is to describe the circumstances under which DDD shall enter a Qualified Vendor Agreement with an applicant.
R6-6-2106	The objective of this rule is to explain that DDD shall maintain a list of services as a means of providing information to service providers and interested parties.
R6-6-2107	The objective of this rule is to explain how a consumer or a consumer's representative shall select a service provider from the Qualified Vendor Directory, Individual Independent Provider list, or by requesting DDD post a Vendor Call for Services on the DDD website.
R6-6-2108	The objective of this rule is to describe DDD's emergency procurement procedures.
R6-6-2109	The objective of this rule is to describe consumer choice and the process for selecting and changing vendors.
R6-6-2110	The objective of this rule is to describe procedures for DDD service authorization, payment rates, reimbursement, non-reimbursement, and Qualified Vendor notification requirements for necessary emergency services.

R6-6-2111	The objective of this rule is to describe the basis for terminating a Qualified Vendor Agreement and the criteria for removing providers from the Qualified Vendor List.
R6-6-2112	The objective of this rule is to grant the DDD Assistant Director authority to totally or partially cancel a Request for Qualified Vendor Applications or a Vendor Call for Services, and to give the rationale for such action if it is deemed to be in the state's best interest.
R6-6-2114	The objectives of this rule are to establish a rate structure for reimbursing providers of community developmental disability services; describe the process to annually review the adequacy of rates; describe the process to phase in new rates; and describe the process for negotiating rates.
R6-6-2115	The objective of this rule is to describe the problem solving and appeal process for protests by applicants and Qualified Vendors regarding posting of requests for services and denials of applications in whole or in part.
R6-6-2116	The objectives of this rule are to: describe the process for resolving payment disputes by mutual agreement; grant the Department procurement officer the authority to settle claims; provide timelines for decisions; and explain the appeal process and procedures for unresolved claims regarding Qualified Vendors.
R6-6-2117	The objective of this rule is to define the process for handling controversies involving state claims against a Qualified Vendor.
R6-6-2118	The objective of this rule is to explain how hearings on appeals of claims decisions shall be conducted as contested cases under A.R.S. Title 41, Chapter 6, Article 1.
R6-6-2119	The objective of this rule is to explain a protester's right to seek relief through the Superior Court after receiving a decision from the Department's Office of Appeals.
R6-6-2201	The objective of this rule is to describe who may file an appeal and to specify the timelines for filing an appeal.
R6-6-2202	The objectives of this rule are to explain the process and requirements for filing an appeal.
R6-6-2203	The objective of this rule is to explain how service on a party is accomplished.
R6-6-2204	The objective of this rule is to explain the method for calculating days as referenced

	in Article 22.
R6-6-2205	The objective of this rule is to explain who may represent an appellant at a hearing.
R6-6-2206	The objective of this rule is to explain that reduction or termination of services may be done prior to a hearing only as provided by federal and state law, regulations, or rules.
R6-6-2207	The objective of this rule is to describe hearing locations, scheduling responsibilities, and timelines for providing a notice of hearing.
R6-6-2208	The objective of this rule is to describe the process and specify a timeline for changing hearing officers.
R6-6-2209	The objective of this rule is to explain what occurs if a party fails to appear for a hearing and to allow rescheduling under certain circumstances.
R6-6-2210	The objective of this rule is to require the Division to prepare a prehearing summary and to provide timelines for submission.
R6-6-2211	The objective of this rule is to grant authority to the hearing officer to subpoena witnesses or documents.
R6-6-2212	The objectives of this rule are to: describe the way a hearing shall be conducted; allow for a closed hearing if in the best interest of the parties; and specify the duties of the hearing officer regarding the proceeding.
R6-6-2213	The objective of this rule is to explain the method for making a hearing decision, the impact of a decision, and further appeal rights.
R6-6-2214	The objective of this rule is to establish the criteria for terminating an appeal.
R6-6-2215	The objective of this rule is to describe how an appeal of a hearing officer's decision is filed and to allow the Department to request a review by the Appeals Board before a decision is made final.
R6-6-2216	The objective of this rule is to explain how an appeal of an AHCCCS hearing officer's decisions are filed and to provide a timeline for filing.
R6-6-2301	The objective of this rule is to define terms used in Article 23.
R6-6-2302	The objective of this rule is to establish the criteria for deemed status eligibility.

R6-6-2303	The objective of this rule is to establish the Department's time frames for reviewing an application for deemed status.
R6-6-2304	The objective of this rule is to describe the responsibilities of a provider with deemed status and how deemed status may be renewed.
R6-6-2305	The objective of this rule is to describe the expiration date of deemed status and how deemed status may be renewed.
R6-6-2306	The objective of this rule is to describe the responsibility of a provider with deemed status to report changes in the provider's accreditation.
R6-6-2307	The objective of this rule is to explain that deemed status is not assignable or transferable.
R6-6-2308	The objective of this rule is to describe the programmatic and contractual monitoring requirements of a provider with deemed status.
R6-6-2309	The objective of this rule is to explain when the Department shall revoke deemed status of a provider.
R6-6-2310	The objective of this rule is to describe the process and time-frames for a provider seeking administrative review of the Department's decision to revoke a provider's deemed status.
R6-6-2311	The objective of this rule is to explain judicial review rights for any person adversely affected by an Appeals Board decision.

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
R6-6-101	R6-6-101 is ineffective because it is missing definitions that apply across all Articles, including "member" and "support coordinator".
R6-6-105	R6-6-105 is ineffective because it does not conform to relevant requirements of Health Insurance Portability and Accountability Act of 1996 (HIPAA) as specified in (Public Law 107-191 Statutes 1936), 45 CFR parts 160 and 164.

R6-6-106	R6-6-106 is ineffective because it does not conform to relevant requirements of HIPAA as specified in (Public Law 107-191 Statutes 1936), 45 CFR parts 160 and 164.
R6-6-801	R6-6-801 is ineffective because applicability does not include group home settings.
R6-6-802	R6-6-802 is ineffective because the Department does not have the authority to enforce corrective action for group homes through licensing. The licensing authority for Division group homes is the Arizona Department of Health Services (ADHS). The Department uses the rules in Article 8 for contract monitoring, pursuant to A.R.S. § 36-595.
R6-6-803	R6-6-803 is ineffective because reporting of incidents does not include reporting of incidents by email.
R6-6-808	R6-6-808 is ineffective because it references expired Article 7 requirements for meeting potential emergencies and disasters.
R6-6-809	R6-6-809 is ineffective because it does not address the requirement in A.R.S. § 36-554(A)(7) to inform parents or guardians in writing of the complaint handling procedure; A.R.S. § 36-554(A)(6) requires a rule outlining a procedure for handling complaints about community residential settings.
R6-6-810	R6-6-810 is ineffective because it does not conform to relevant requirements of HIPAA as specified in (Public Law 107-191 Statutes 1936), 45 CFR parts 160 and 164.
R6-6-903	R6-6-903 is ineffective because it contains an outdated reference to Article 17, which expired effective August 30, 2005.
R6-6-1001	R6-6-1001(B) is ineffective because the wording pertaining to fingerprinting is obsolete. The rule makes no mention of fingerprint clearance cards. R6-6-1001(C) is ineffective because the wording pertaining to Department of Child Safety (DCS) and Adult Protective Service (APS) checks is obsolete. The rule requires checks of CPS and APS "referral files" with no mention of the registries.
R6-6-1002	R6-6-1002 is ineffective because there is no mention of what criteria may be

	considered when determining the bed capacity of a home.
R6-6-1003	R6-6-1003(B)(3) is ineffective because it requires a criminal check every three years, rather than every six years per the fingerprint clearance card system.
R6-6-1004	R6-6-1004 is not effective due to a conflict with A.R.S. § 36-593. While the rule states that a provisional license is valid for six months, statute sets the length of a provisional license at three months.
R6-6-1004.02	R6-6-1004.02 is ineffective because it mentions an address and a process that is obsolete.
R6-6- 1004.03	R6-6-1004.03 is ineffective because it does not account for the vendor supported model of licensing employed for 98 percent of the developmental homes. In addition to information supplied by the applicant, a licensing agency completes a detailed home/social study and submits the home study to DDD on the applicant's behalf.
R6-6-1011	R6-6-1011(D) and R6-6-1011(K) are ineffective because they refer to an inspection by the Department of Health Services which is not reflective of current practice.
R6-6-1013	R6-6-1013 is not effective because it does not reflect the Child Developmental Certified home provisions outlined in A.R.S. § 36-593.01.
R6-6-1101	R6-6-1101(B) is ineffective because the wording pertaining to fingerprinting is obsolete. The rule makes no mention of fingerprint clearance cards. R6-6-1101(C) is ineffective because the wording pertaining to DCS and APS checks is obsolete. The rule requires checks of CPS and APS "referral files" with no mention of the registries.
R6-6-1102	R6-6-1102 is ineffective because there is no mention of what criteria may be considered when determining the bed capacity of a home.
R6-6-1103	R6-6-1103(B)(3) is ineffective because it requires a criminal check every three years, rather than every six years per the fingerprint clearance card system.
R6-6-1104	R6-6-1104 is not effective due to a conflict with A.R.S. § 36-593. While the rule states that a provisional license is valid for six months, statute sets the length of a

	provisional license at three months.
R6-6-1104.02	R6-6-1104.02 is ineffective because it mentions an address and a process that is obsolete.
R6-6-1104.03	R6-6-1104.03 is ineffective because it does not account for the vendor supported model of licensing employed for 98 percent of the developmental homes. In addition to information supplied by the applicant, a licensing agency completes a detailed home/social study and submits to the Division on the applicant's behalf.
R6-6-1111	R6-6-1111(D) and R6-6-1111(K) are ineffective because they refer to an inspection by ADHS, which is not reflective of current practice.
R6-6-1204	R6-6-1204 is ineffective because it allows a client to retain a minimum of twelve percent of the client's income or benefits for personal use whereas A.R.S. § 36-562(M) allows the client to retain a minimum of thirty percent.
Article 12, Appendix A	Article 12, Appendix A is not effective because it does not conform to the new federal poverty guidelines.
R6-6-1305	R6-6-1305 is ineffective because the requirement to disclose a SSN is prohibited by the Federal Privacy Act of 1974, 5 U.S.C. 552a.
R6-6-1501	R6-6-1501 is ineffective because an applicant may be an individual or an agency. In practice, certifying an individual requires a different process than certifying an agency.
R6-6-1503	R6-6-1503 will become obsolete and ineffective when AHCCCS launches the provider enrollment portal later this year.
R6-6-1504	R6-6-1504 is ineffective because it requires DCS and APS background checks, "only when the application indicates a past history of child or elder abuse." It is unclear how or if this rule applies when the "applicant" is an agency. Some of the requirements include self-declaration of criminal history, description of work experience, description of educational background, and three references.
R6-6-1504.02	R6-6-1504.02(F) is ineffective because the address is outdated.
R6-6-1505	R6-6-1505(A) is ineffective because it does not provide an adequate inspection cycle. Per the current rule, a setting only needs to be inspected one time. Current practice is that sites are inspected every two years. R6-6-1505(B) is ineffective because it is not reflective of current practice. Current

	practice is that HCBS settings are inspected for general safety and fire safety by DDD every two years.
R6-6-1506	R6-6-1506 is ineffective because it details a fingerprinting process that is in conflict with A.R.S. § 36-594.01. The rule does not reflect our current statute § 36-594.01 and lists current specific crimes that may preclude someone from passing a fingerprint background check. Furthermore, it does not mention the process by which a card can be suspended by the Department of Public Safety (DPS) based on a recent arrest by virtue of a file stop which suspends the clearance card and therefore stops the person from providing direct care. The time-frames mentioned in the rule are not applicable based on current statutes and contract compliance requirements. The rule states an individual shall have a background check every three years. The current clearance cards are good for six years and are renewed on expiration. Clearance cards are portable and can be used at any DES program as long as they are valid. The current rule mentions a clearance letter, which is not portable. The Office of Special Investigation is no longer involved with the background check process. Current notifications of denied, suspended, and driving restricted statuses are sent to contracted agencies and Individual Independent Provider applicants. The contracted agency must respond within 10 business days that the employee is no longer providing direct care. If a contracted agency hires someone with a Level I fingerprint clearance card the agency must update the DPS database during the hiring and employment process using the form supplied by DPS.
R6-6-1508	R6-6-1508 is ineffective because it fails to account for the current practice of "certifying" group homes. Currently, DDD issues a certificate to each individual group home upon verification that the group home is licensed by ADHS and operated by an HCBS certified qualified vendor (agency).
R6-6-1512	R6-6-1512(1)(d) is ineffective because it only requires a "review" of Article 9. However, DDD has a well-established training and certification structure for Article 9.
R6-6-1601	R6-6-1601 is ineffective because it needs to include “exploitation” to be consistent with A.R.S. § 46-454. Additionally, the rule needs to be amended to reflect the requirement of reporting to appropriate agencies (for example, law enforcement, DCS, or APS.)

R6-6-1602	R6-6-1602 is ineffective because it needs to include “exploitation” to be consistent with A.R.S. § 46-454. Additionally, the rule needs to be amended to reflect the requirement of reporting to appropriate agencies (for example, law enforcement, DCS, Safety, or APS.)
R6-6-1603	R6-6-1603 is ineffective because it needs to include “exploitation” to be consistent with A.R.S. § 46-454. Additionally, the rule needs to be amended to reflect the requirement of reporting to appropriate agencies (for example, law enforcement, DCS, or APS.)
R6-6-2111	R6-6-2111 is ineffective because it requires DDD to terminate a Qualified Vendor Agreement (QVA) for any of the following reasons: (3) when a vendor no longer meets the criteria defined in the Request for Qualified Vendor Application, (4) for non-compliance with the QVA requirements, and (6) as determined by DDD after the Qualified Vendor (QV) has been given notice and the opportunity to be heard. This rule appears to indicate that a QVA must be terminated immediately when a QV is non-compliant or no longer meets the criteria (not taking into account contract actions that can be taken prior to termination (for example, demand for assurances, enrollment suspense, etc.). Also, subsection (6) seems to contradict subsections (3) and (4).
R6-6-2115	R6-6-2115 is confusing as written and therefore ineffective. For example, during recent appeals involving DDD action in terminating QVAs, the providers' attorneys, DDD Contracts Unit and their attorneys, and DES Procurement and their attorney could not determine whether this rule or what other rule's procedure applied.
R6-6-2116	R6-6-2116 is confusing as written and therefore ineffective. For example, during recent appeals involving DDD action in terminating QVAs, the providers' attorneys, DDD Contracts Unit and their attorneys, and DES Procurement and their attorney could not determine whether this rule or what other rule's procedure applied. Also, R6-6-2116(D) does not create a deadline by which a party must submit a written request for a final decision. This makes the process ineffective because a provider can potentially request a final decision five years after the problem-

	solving meeting.
R6-6-2117	R6-6-2117 is confusing as written and therefore ineffective. For example, during recent appeals involving DDD action in terminating QVAs, the providers' attorneys, DDD Contracts Unit and their attorneys, and DES Procurement and their attorney could not determine whether this rule or what other rule's procedure applied.
R6-6-2201	R6-6-2201 refers to a different process for grievances involving DDD/ALTCS clients; however, the trigger for the different appeals process (R9-34-201 et seq. and R9-34-401 et seq.) is that the dispute is over a Medicaid-funded service. The Department needs to amend these rules to memorialize current practice. R6-6-2201(B) should be repealed because the appeal process for disputes with ALTCS members and ALTCS providers involving Medicaid-funded services is governed by AHCCCS. The process is fully outlined in AHCCCS' rules (Title 9, Chapter 34, Articles 2 and 4).
R6-6-2205	R6-6-2205 is ineffective because it uses gender specific language. Additionally, language should be added that the person assisting a member designated by the member should do so free of charge (unless an attorney). Otherwise, that is an unauthorized practice of law.
R6-6-2206	R6-6-2206 is ineffective. A.R.S. § 41-1001 defines a rule as “an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency.” However, R6-6-2206 is ineffective because it does not provide specific citation of federal statute, regulation, state statute, or rules when benefits may be reduced or terminated prior to a hearing decision.
R6-6-2212	R6-6-2212 is ineffective because it does not indicate who has the burden of proof at the different types of administrative hearings held under this Article.
R6-6-2213	R6-6-2213 is ineffective because it contains inaccurate references to AHCCCS/ALTCS rules, “R9-28-802 and R9-28-804.” The correct citation for AHCCCS rules for grievances and appeals is Title 9, Chapter 34.
R6-6-2215	R6-6-2215 refers to a different process for grievances involving DDD/ALTCS clients; however, the trigger for the different appeals process (R9-34-201 et seq.

	and R9-34-401 et seq.) is that the dispute is over a Medicaid-funded service. The Department needs to amend these rules to memorialize current practice.
R6-6-2216	R6-6-2216 refers to a different process for grievances involving DDD/ALTCS clients; however, the trigger for the different appeals process (R9-34-201 et seq. and R9-34-401 et seq.) is that the dispute is over a Medicaid-funded service. The Department needs to amend these rules to memorialize current practice.
R6-6-2308	R6-6-2308 is ineffective because it does not address day programs and employment services in monitoring requirements as specified in A.R.S. § 36-557.

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
R6-6-105	R6-6-105 is inconsistent with federal law and needs to be amended to conform to relevant requirements of HIPAA, Pub. L. 104-19, also known as the Kennedy-Kassebaum Act, signed August 21, 1996 as amended and as reflected in the implementing regulations at 45 CFR Parts 160, 162, and 164. For example, R6-6-105 reads "consents for release of information obtained during intake shall expire within 90 days;" however, per HIPAA, authorizations can last until the expiration dates memorialized on the authorization as long as it is a definite end date (i.e., 30 days, one year, 10 years, end of 2015 school year, death of individual). Per HIPAA, if no expiration date is provided on the authorization, it is valid for one year from the effective (signed) date.
R6-6-106	R6-6-106 is inconsistent with federal law and needs to be amended to conform to relevant requirements of HIPAA as amended, and as reflected in the implementing regulations at 45 CFR Parts 160, 162, and 164.
R6-6-802	R6-6-802 is inconsistent because the licensing authority for Division group homes is ADHS. The Department uses the rules in Article 8 for contract monitoring, pursuant to A.R.S. § 36-595.
R6-6-809	R6-6-809 is inconsistent with A.R.S. § 36-554(A)(7) regarding the requirement to

	notify parents or guardians of the complaint handling procedure in the community residential setting program.
R6-6-810	R6-6-810 is inconsistent with federal law and needs to be amended to conform to relevant requirements in HIPAA, as amended, and as reflected in the implementing regulations at 45 CFR Parts 160, 162, and 164. For example, the rule does not identify language required to be included in the authorization by HIPAA (i.e., individual's right to revoke the authorization; the ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization; and the potential of information disclosed pursuant to the authorization to be subject to redisclosure by the recipient).
R6-6-903	R6-6-903 contains an outdated reference to Article 17, which expired effective August 30, 2005.
R6-6-1204	R6-6-1204, which allows a client to retain a minimum of 12 percent of the client's income or benefits for personal use, is inconsistent with A.R.S. § 36-562(M), which allows a minimum of thirty percent.
Article 12, Appendix A	Article 12, Appendix A, Cost of Care Portion Table does not conform to the new federal poverty guidelines.
R6-6-1305	In R6-6-1305, the requirement to provide a SSN is inconsistent with the Federal Privacy Act of 1974, 5 § U.S.C. 552a.
R6-6-1601	R6-6-1601 needs to be updated to include "exploitation" to be consistent with A.R.S. § 46-454.
R6-6-1602	R6-6-1602 needs to be updated to include "exploitation" to be consistent with A.R.S. § 46-454.
R6-6-1603	R6-6-1603 needs to be updated to include "exploitation" to be consistent with A.R.S. § 46-454.
R6-6-2213	R6-6-2213 contains an inaccurate reference to the AHCCCS Office of Administrative Legal Services.
R6-6-2308	R6-6-2308 needs to be amended to conform to A.R.S. § 36-557 by adding day programs and employment services to the monitoring requirements.

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
NA	NA

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
Article 1	The Department proposes some outdated definitions be removed or amended to reflect current health care law and practice. For example, the following definitions in R6-6-101 are outdated: "Behavior management," "Case management," "Community residential setting resident" or "resident," "Cost of care," "Cost of care portion," "Direct care staff," "Family support voucher," "Individual service and program plan" or "ISPP," "Individual service and program plan team" or "ISPP team," "Least intrusive" or "least obtrusive," "Lives independently," "Main provider record," "Medication error," "Overcorrection," "Physical restraint," "Protective device," "Residential service," "Responsible party," "Seclusion" or "locked time-out room," "Service provider," "Third-party liability," "Third-party payor," and "Time-out procedure." Additionally, the term "Division" needs to be defined for clarity.
Article 6	The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements. R6-6-601 should be amended to reflect the current language of "Support Coordination" instead of "Case Management." In addition, the Department proposes to update language and remove the provisions in R6-6-606 that are duplicative of A.R.S. § 36-560.
Article 8	The Department proposes to amend the rules in this Article to improve clarity and

	conciseness by providing more comprehensive information relevant to current requirements. The Department proposes to update the rules in this Article to reflect new terminology. The use of the term “licensee” is not the most appropriate term to describe the relationship between the Division and the party being monitored.
Article 9	The Department proposes to update the rules in this Article to reflect the most current evidenced based practices. The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements.
Articles 10 and 11	The Department proposes to consolidate the rules in Articles 10 and 11 into Article 10. The Department proposes to amend the rules within Articles 10 and 11 to enhance clarity and conciseness by providing more comprehensive information relevant to current requirements.
Article 12	The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements. Appendix A: Cost of Care Portion Table is outdated due to changes in federal poverty guidelines.
Article 13	The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements.
Article 15	The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements. For example, the use of the term “licensee” is not the most appropriate term to describe the relationship between the Division and the party being monitored. The current rule does not mention the current practice that an employee or Individual Independent Provider may apply for a Good Cause Exception through the Arizona Board of Fingerprinting to be granted a Clearance Card under A.R.S. § 41-619(53).
Article 16	The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements.
Article 20	The Department proposes to amend the rules in this Article to improve clarity and

	conciseness by providing more comprehensive information relevant to current requirements.
Article 21	The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements.
Article 22	The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements.

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
NA	NA	NA

8. Economic, small business, and consumer impact comparison:

General

DDD provides high-quality supports and services for eligible people who have autism, cerebral palsy, epilepsy, or intellectual disability. DDD provides, or contracts to provide, a variety of services, depending on available funding and eligibility, including: attendant care, day treatment and training, habilitation, home health assistance, home nursing, home modifications, housekeeping, services in intermediate care facilities, medical services, services in nursing facilities, respiratory therapy, respite, occupational therapy, physical therapy, speech therapy, and non-emergency transportation.

Funding

DDD is funded through state appropriations, federal Medicaid monies from the ALTCS program through AHCCCS, charges for services, and other revenue. State Only Funds refers to funding for the state's program for persons with developmental disabilities who are not Medicaid-eligible. "Operating" refers to the money spent to operate or administer each program at the agency level, while

"direct" refers to funding that is used directly for client services. The current funding breakdown is as follows:

Arizona Long Term Care System	**General Fund**	**Long Term Care System Fund**	**Total**
Total ALTCS Appropriation	$597,559,600	$1,396,988,900	$1,994,548,500
ALTCS Operating	$39,767,100	$98,252,600	$138,019,700
ALTCS Direct Services	$557,380,400	$1,298,736,300	$1,856,116,700
State Only			
Total State-Only Appropriation	$36,513,400	$26,559,600	$63,073,000
State-Only Operating	$2,400,000	$0	$2,400,000
State-Only Direct Services	$34,113,400	$26,559,600	$60,673,000
Total FY 2020 FTE Allocation	2,299.00		

1. Members

As of June 1, 2019, DDD was serving 42,504 clients, with the program breakdown as follows:

Family Home	37,774
Group Home	3,041
Adult Developmental Foster Home	1,301
Child Developmental Foster Home	186
Institutional	96
Coolidge	75

State-Operated Group Home	25
Assisted-Living Centers/Facilities	6
Total	**42,504**

2. Contractors

As of June 2019, DDD contracted with 566 HCBS Agencies and currently there are 1,209 Individual Providers. Currently there are 721 licensed Adult Developmental Foster Homes, and 306 licensed Child Developmental Foster Homes.

3. Employees

The total FY20 FTE allocation for DDD is 2,299.00.

4. Advocacy Organizations

Advocacy organizations that work on behalf of DDD members include The Arc of Arizona, Arizona Bridge to Independent Living, Arizona Center for Disability Law, Arizona Consortium for Children with Chronic Illness, Autism Society, Epilepsy Foundation of Arizona, Governor's Council on Developmental Disabilities, Pilot Parents of Southern Arizona, People First of Arizona, and Raising Special Kids. The Division also has member advocates on staff and publishes direct contact information for those employees on its website.

Previous Economic Impact Statements

DDD has previously prepared economic impact statements for Articles 3 (Article 5 was repealed), 18, and 23. Economic Impact Statements were not completed on Articles 1, 4, 6, 8, 9, 10 (except R6-6-1004.01 through R6-6-1004.05), 11 (except R6-6-1104.01 through R6-6-1104.05), 12, 13, 16, 20, 21, and 22 because the rulemakings were exempt from the formal rulemaking process. Economic impact statements were not completed on R6-6-1004.01 through R6-6-1004.05 and R6-6-1104.01 through R6-6-1104.05 (adopted effective February 1, 1998); and Article 15 (adopted effective February 1, 1996) because the rulemakings were conducted prior to the requirement for an economic impact

statement or were appropriately purged under public record requirements then in effect. The Department does not anticipate an economic impact for these rules as the rulemaking has been completed for some time.

Additional Economic Impact

Overall, the rules in Chapter 6 have a positive economic impact because they explain to the public the requirements and procedures for accessing DDD services, interacting with DDD as a contractor, and serving as a licensed provider. The rules that are outdated or unclear create a negative economic impact, which the Department intends to rectify by amending these rules, as outlined in this report. To mitigate the negative economic impact, DDD provides supplemental information to its clients through its website, public meetings, workgroups, publications, and other forms of communication.

Articles 1, 3, 4, 6, 8, 9, 12, 13, 16, 18, and 22

Articles 1, 3, 4, 6, 8, 9, 12, 13, 16, 18, and 22 directly impact DDD's 33,925 clients, their families, and advocates.

- Article 1 contains definitions, and addresses the rights of individuals with developmental disabilities, confidentiality, and appropriate environment guidelines for placements and programs. These rules impact all current and prospective clients and contracted providers of DDD.
- Article 3 provides eligibility criteria and contains guidelines for making developmental disability determinations.
- Article 4 describes the process for applying for services.
- Article 6 explains how developmental disabilities services are provided.
- Article 8 describes programmatic standards and contract monitoring for community residential settings.
- Article 9 addresses the Department's requirements for managing inappropriate behaviors.
- Article 12 provides guidelines for the cost of care portion for services for minor client's parents, cost of care portion from a client's estate or trust, special provisions for clients

receiving residential services, billing and the review and appeal process for cost of care portion.

- Article 13 describes how coordination of benefits and third-party payments are handled by the Department.
- Article 16 explains how the Department handles allegations of abuse and neglect.
- Article 18 provides a method for review of Department decisions.
- Article 22 describes the process for appeals and hearings.

Articles 10, 11, 15, 20, and 21

Articles 10, 11, 15, 20, and 21 directly impact DDD's 2,496 contractors, and indirectly impact clients, families, and advocates.

- Article 10 describes the process for obtaining a child developmental foster home license.
- Article 11 describes the process for obtaining an adult developmental home license.
- Article 15 describes the requirements for HCBS certification.
- Article 20 explains the Department's contracting process.
- Article 21 describes the procurement process and rate setting for Qualified Vendors.

Although most of the rules in this Chapter are out of date and require revision, the Department communicates regularly with all of its stakeholders and provides comprehensive information to supplement these rules on its website. Because the rules contain outdated terms, references, and procedures, they may be confusing to stakeholders when read in conjunction with current policy and procedure, but the Department communicates regularly with its stakeholders and provides ample documentation to ensure stakeholders are adequately informed of current activities.

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 previous Five-Year Review Report approved by the Council on December 15, 2015, the Department recommended changes to all Articles in Chapter 6. On July 16, 2014, the Department received an exemption to draft Article 23. On May 16, 2016, the Department received an exemption to proceed with rulemakings on eight Articles (Articles 3, 5, 9, 10, 11, 15, 18. and 21). On November 6, 2017, the Department received an exemption to proceed with rulemakings on Article 4. On May 31, 2018, the Department received an exemption to proceed with rulemakings on Article 20. The Department amended Article 3 and repealed Article 5 effective August 24, 2018. The Department amended Article 18 effective January 27, 2018. Amendments to Article 4 were approved by the Governor's Regulatory Review Council on August 4, 2020. The Department has not yet made any decision regarding the amendment of Article 20. The draft Notices of Proposed Rulemaking on remaining Articles 9, 10, 11, 15, and 21 are in various stages of development. However, revisions to Article 10, 11, 15, and 21 have been delayed until the end of 2020 in an effort to prioritize DDD efforts to complete the transition of the integrated behavioral health contract and emergency preparedness regarding COVID-19. The Department did not take any action to revise Article 23 due to other competing priorities. The Department plans to request an exemption to proceed with Expediated rulemaking to resolve inconsistency in the rules identified in item 4 (Consistency with other rules and statutes) of this Report and to proceed with regular rulemakings to amend Articles 1, 6, 8, 12, 13, 16, 22, and 23 by December 2020.

Progress on these Articles has been accomplished while balancing resource assignments and competing priorities primarily related to Medicaid funding. The Department is the AHCCCS program contractor responsible for the delivery of Medicaid services to individuals with developmental disabilities in Arizona. Between 2015 and 2020, implementing continuing changes in Medicaid requirements impacting the Department was a high priority in order not to

jeopardize federal funding. Rulemaking was assigned to the same program unit that is responsible for updating program policy, which is an AHCCCS contract requirement. DDD has designated one position that is responsible to coordinate rule development along with other duties in the Policy Unit. DDD has recognized the lack of resources issues. Nevertheless, DDD is committed to timely implementation of the commitments made in this report.

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:

Through analysis provided by the Department's program subject matter experts and Financial Services Administration, the Department believes that the rules impose the least burden and cost to persons regulated by these rules, including paperwork and other compliance costs, necessary to achieve the underlying regulator objectives. The amendment seeks to align the rule with statute and to make the rule more clear, concise, and understandable to the public. Program subject matter experts indicate that the amendment to the rule, as proposed in this report, is the most cost-effective way to bring the Department into compliance with state requirements and ensure that the rules reflect current program practice.

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 the federal law(s)?

The Department has determined that R6-6-401 and R6-6-1305 are more burdensome than, and in conflict with, corresponding federal statutes and regulations, including federal Privacy Act of 1974, 5 U.S.C. § 552a, because the federal law does not permit the use of members' SSNs by service providers when notifying DDD of third party liens or by applicants for DDD services.

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 Department has determined that, because the licenses under Articles 8, 10, and 11 are issued under A.R.S. §§ 36-592, 36-594.01, 36-595, and 36-595.03, the exception in A.R.S. § 41-1037(A)(5) applies.

14. Proposed course of action

If possible, identify a month and year by which the agency plans to complete the course of action.

The Department plans to request an exemption to proceed with Expediated Rulemaking to resolve inconsistency in the rules identified in item 4 (Consistency with other rules and statutes) of this Report and to proceed with Regular Rulemakings to amend Articles 1, 6, 8, 12, 13, 16, 22, and 23 by December 2020. The Department plans to submit the Notice of Final Expedited Rulemaking to the Governor's Regulatory Council to resolve inconsistency in the rules identified in item 4 (Consistency with other rules and statutes) of this Report by August 2021. The Department plans to submit the Notices of Final Rulemaking to the Governor's Regulatory Council to amend Articles 9, 10, 11, 15, and 21 by December 2021. The Department plans to submit the Notices of Final Rulemaking to the Governor's Regulatory Council to amend Articles 1 and 13 by December 2022. The Department plans to submit the Notices of Final Rulemaking to the Governor's Regulatory Council to amend Articles 6, 8, 12, 16, 22, and 23 by December 2024.

Apart from the rules reviewed in this Report, the Department received a Moratorium exception from the Governor's Office on September 17, 2019 to promulgate new rules to implement A.R.S. § 36-568 (Group homes; intermediate care facilities; electronic monitoring; definition). The Department is drafting the Notice of Proposed Rulemaking for the new rules.

F.

CONSIDERATION AND DISCUSSION OF A REQUEST TO RESCHEDULE A FIVE YEAR REVIEW REPORT ON A.A.C. TITLE 4, CHAPTER 19, ARTICLE 5 FROM THE BOARD OF NURSING

Doug Ducey
Governor

Joey Ridenour
Executive Director

Arizona State Board of Nursing

1740 West Adams Street, Suite 2000
Phoenix, AZ 85007-2607
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Homepage: http://www.azbn.gov

September 17, 2020

Nicole Sornsin, Council Chair
Arizona Department of Administration
Governor's Regulatory Review Council
100 North Fifteenth Avenue • Suite 305
Phoenix, AZ 85007

RE: Reschedule Request;
Five-Year-Review Report for A.A.C Title 4, Chapter 19, Article 5

Dear Ms. Sornsin:

I am the rule writer for the Arizona State Board of Nursing ("Board"), and I write to request that the Board's Five Year Review Report for the above-listed Article 5, currently due on September 30, 2020, be rescheduled, pursuant to A.R.S. § 41-1056(H), and A.A.C. R1-6-302.

The Board amended Article 5, specifically A.A.C. R4-19-511 in emergency rulemaking in 2018 pursuant to the Governor's Opioid Act. This emergency rulemaking was effective May 23, 2018, at 24 A.A.R. 1678; and was renewed with amendments at 24 A.A.R. 3335, effective November 9, 2018, and finally amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019.

The Board also reviewed all sections of Title 5, and amended R4-19-505, 506, and 507, with regard to A.R.S. references, effective June 3, 2019.

Most importantly, the Board currently has a rulemaking package in progress that amends all but one section of Article 5. The Notice of Proposed Rulemaking was published in the July, 2020, Secretary of State's Register, the Oral Proceeding was on August 19, 2020, and the Notice of Final Rulemaking was submitted to GRRC for review on September 1, 2020. We are currently awaiting a date for a Council meeting.

The new rules are primarily in response to new legislation, specifically – A.R.S. §§ 32-3226 (address of record), 32-1601(5) and 32-1636(D) (nurse midwife changes), 32-1651 (clinical nurse specialist prescribing ability, etc.), 32-1634.04 (nurse anesthetist prescribing ability). The other changes are intended to reduce regulatory burdens by providing increased processing times for temporary nurse licenses and provisional approvals for nursing programs (schools), reducing requirements for paper filings, and technical corrections. (A copy of the Notice of Final Rulemaking is attached to this letter.)

These rules were reviewed and approved by the Board and the Governor's Office (regarding the Rulemaking Moratorium), and were published by the Secretary of State's Office on July 17, 2020.

Discussion of this and other, new rule revisions, were posted on the Board's public agenda and discussed at the Board's public meetings in May, 2019, July, 2019, and November, 2019, among other times.

Because Article 5 has already been substantially revised within the past 2 years, either in a completed rulemaking, or in the process of rulemaking, we are requesting the rescheduling of the Article 5 Five Year Rules Review.

I am happy to provide any additional information that may be helpful to you.

Thank you for your time and attention with this matter.

Sincerely,

Joey Ridenour RN MN FAAN

Joey Ridenour
Executive Director
Arizona State Board of Nursing

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 19. BOARD OF NURSING

PREAMBLE

1. Articles, Parts and Sections Affected	**Rulemaking Action**
R4-19-101	Amend
R4-19-102	Amend
R4-19-207	Amend
R4-19-208	Amend
R4-19-209	Amend
R4-19-210	Amend
R4-19-216	Amend
R4-19-301	Amend
R4-19-304	Amend
R4-19-305	Amend
R4-19-308	Amend
R4-19-501	Amend, renumber
R4-19-502	Amend
R4-19-503	Amend, renumber
R4-19-504	Amend
R4-19-505	Amend
R4-19-506	Amend
R4-19-507	Amend
R4-19-508	Amend

R4-19-511	Amend
R4-19-512	Amend
R4-19-513	Amend
R4-19-514	Amend
R4-19-604	Amend
R4-19-804	Amend
R4-19-806	Amend
R4-19-809	Amend
R4-19-815	Amend

2. Citations to the agency's statutory rulemaking authority to include the authorizing statutes (general) and the implementing statutes (specific):

Authorizing statutes: A.R.S. §§; 32-1606 (A)(1).

Implementing statutes: A. R. S. §§ 32-1601 (3), (5), (6), (7), (8), (9), (10), (12), (14), (15), (16), (21), (22), (23), (26); 32-1605.01(B)(1), (3), (4), (5), (8); 32-1606(B)(1), (2), (3), (5), (8), (10), (12), (13), (16), 18), (21), (22), (27); 32-1609; 32-1634(A)(28); 32-1634.04; 32-1635; 32-1635.01; 32-1636(D); 32-1640; 32-1644; 32-1651; 32-1660; 32-1663(G); 32-1663.01(A)(2); 32-1921(A)(1); and 32-3226.

3. The effective date of the rule:

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 Board seeks an immediate effective date related to protecting the public health, by providing nurses with earlier access to temporary licenses so that they will be available to care for patients after they have submitted their fingerprints for background checks, but not requiring that the results be received prior to receiving a temporary license. (R4-19-304.) This amendment will provide a public health benefit, there is no penalty associated with the amendment, and this is less stringent that current rule requirements.

Similarly, the provisional advanced nursing program approval by Executive Director process, delineated in the proposed amendments to R4-19-503, will also provide for a public benefit by providing nursing education more efficiently, without a penalty, and in a less stringent manner than current rule.

The other proposed amendments are also intended to create public benefits without penalties, including expanding the scope of the clinical nurse specialist ("CNS") to include prescribing, issuing prescribing permits to certified registered nurse anesthetists pursuant to statutory authority, eliminating regulated parties' requirements to submit paper documents, implementing statutory

changes to licensee address submission requirements and categorization of CNS and certified nurse midwives, and some other, technical changes. None of the proposed changes add any penalties, or increase any costs.

Regarding public notice, the Secretary of State published the proposed rules in the register (see below), and the Board posted the proposed rules on its website and held an oral proceeding on August 18, 2020. No persons attended the oral proceeding, and no public comments have been submitted to the Board.

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):

N/A.

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:

Volume 26, Issue 29, beginning on page 1399, published July 17, 2020.

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

Name: Joey Ridenour RN, MS, FAAN

Executive Director

Address: 1740 West Adams Avenue, Suite 2000

Phoenix, AZ 85007

Telephone: 602-771-7801

Fax: 602-771-7888

E-mail: jridenour@azbn.gov

Website: www.azbn.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:

R4-19-101. Definitions

The Board approved amending this Section to include a definition of "advance practice registered nurse" for clarity throughout Arizona Administrative Code, Title 4, Chapter 19.

R4-19-102. Time-frames for Licensure, Certification, or Approval

The Board seeks to amend this section to align the references to address from the current "mailing address" to the new "address of record", which is defined in and consistent with new legislation, codified in A.R.S. § 32-3226.

R4-19-207. New Programs, Proposal Approval; Provisional Approval

The Board seeks to amend this section to reduce burdens on regulated parties by eliminating the requirement for submission to the Board of paper copies of documents.

R4-19-208. Full Approval of a New Nursing Program

The Board seeks to amend this section to reduce burdens on regulated parties by eliminating the requirement for submission to the Board of paper copies of documents.

R4-19-209. Nursing Program Change

The Board seeks to amend this section to reduce burdens on regulated parties by eliminating the requirement for submission to the Board of paper copies of documents.

R4-19-210. Renewal of Approval of Nursing Programs Not Accredited by a National Nursing Accrediting Agency

The Board seeks to amend this section to reduce burdens on regulated parties by eliminating the requirement for submission to the Board of paper copies of documents.

R4-19-216. Approval of a Refresher Program

The Board seeks to amend this section to reduce burdens on regulated parties by eliminating the requirement for submission to the Board of paper copies of documents.

R4-19-301. Licensure by Examination

The Board seeks to amend this section to align the references to address from the current "mailing address" to the new "address of record", which is defined in and consistent with new legislation, codified in A.R.S. § 32-3226.

R4-19-304. Temporary License

The Board seeks to amend this section to expedite processing temporary license applications to reduce regulatory burdens on stakeholders. By maintaining the applicant's requirement to submit fingerprints, but reducing the requirement to receive the report back from law enforcement, which can sometimes cause delays, the Board maintains a balance of public protection and efficiency to stakeholders, so that they may begin work earlier.

R4-19-305. License Renewal

The Board seeks to amend this section to align the references to address from the current "mailing address" to the new "address of record", which is defined in and consistent with A.R.S. §

32-3226.

R4-19-308. Change of Name or Address

The Board seeks to amend this section to align the references to address from the current "mailing address" to the new "address of record", which is defined in and consistent with A.R.S. § 32-3226. The Board is requiring licensees and applicants to submit a residential address due to nurse licensure compact requirements for "primary state of residence", and because most licensees and applicants already submit residential addresses. The Board does not anticipate this will be an increased burden on its regulated parties.

R4-19-501. Roles and Population Foci of Advanced Practice Registered Nursing (APRN); Certification Programs

Adding certified nurse midwife (CNM) as a separate APRN category, rather than as a subcategory under registered nurse practitioner (RNP). Consistent with legislative changes to A.R.S. §§ 32-1601(5) and 32-1636(D).

R4-19-502. Requirements for APRN Programs

Adding certified nurse midwife (CNM) as a separate APRN category, rather than as a subcategory under registered nurse practitioner (RNP). Consistent with changes to A.R.S. §§ 32-1601(5) and 32-1636(D).

R4-19-503. Application for Approval of an Advanced Practice Registered Nursing Program; Approval by Board<u>; Provisional Approval by Executive Director</u>

Adding certified nurse midwife (CNM) as a separate APRN category, rather than as a subcategory under registered nurse practitioner (RNP). Consistent with changes to A.R.S. §§ 32-1601(5) and 32-1636(D).

Also, section (F) will permit the Executive Director to issue a provisional approval to APRN nursing programs, which is intended to reduce regulatory burdens by allowing APRN nursing programs that have submitted complete applications and appear to meet criteria to begin to operate in Arizona between Board meetings, rather than to necessarily wait for full Board approval.

R4-19-504. Notice of Deficiency; Unprofessional <u>APRN</u> Program Conduct

Amendment limited to title, clarification that programs included in this rules are "APRN" programs.

R4-19-505. Requirements for Initial APRN Certification

These proposed amendments include the "address of record" language update to match A.R.S. §

32-3226, adding CNM as a separate APRN category, and some technical edits that are non-substantive.

R4-19-506. Expiration of APRN Certificate; Practice Requirement; Renewal

Proposed amendments include adding CNM as a separate APRN category, and consistency in use of "APRN" acronym.

R4-19-507. Temporary Advanced Practice Certificate; Temporary Prescribing and Dispensing Authority

Proposed amendments include adding CNM as a separate APRN category, consistency in use of "APRN" acronym, and adding clinical nurse specialists (CNS) as eligible to obtain temporary prescribing and dispensing authority, pursuant to A.R.S. § 32-1651, *inter alia*.

R4-19-508. Standards Related to ~~Registered Nurse Practitioner~~ RNP, CNM, and CNS Scope of Practice

Proposed amendments include adding CNM and CNS as APRN categories authorized to perform other functions as APRNs, including prescribing.

R4-19-511. Prescribing and Dispensing Authority; Prohibited Acts

Proposed amendments to this section, similar to sections 507 and 508, including adding CNM and CNS as separate categories; authorizing CNM and CNS to perform functions previously limited to RNPs; specifically adding CNS prescribing limitations referencing A.R.S. § 32-1651; and authorizing CRNAs to obtain prescribing-only certificates, consistent with A.R.S. § 32-1634.04, and other applicable laws.

R4-19-512. Prescribing Drugs and Devices

Proposed amendments add CNM and CNS to RNP as authorized APRNs eligible to be authorized to prescribe drugs and devices, with applicable limitations for CNS.

R4-19-513. Dispensing Drugs and Devices

Proposed amendments add CNM and CNS to RNP as authorized APRNs eligible to be authorized to dispense drugs and devices, with applicable limitations for CNS.

R4-19-514. Standards Related to Clinical Nurse Specialist Scope of Practice

Proposed technical amendment, and clarification of expanded eligibility of CNS to prescribe, order, administer and dispense therapeutic measures, pursuant to A.R.S. § 32-1651, *inter alia*.

R4-19-604. Notice of Hearing; Response

The Board seeks to amend this section to align the references to address from the current

"mailing address" to the new "address of record", which is defined in and consistent with A.R.S. § 32-3226.

R4-19-804. Initial Approval and Re-Approval <u>of</u> Training Programs

Proposed technical amendment to title; elimination of requirement to submit paper documents to ease regulatory burden on regulated parties.

R4-19-806. Initial Nursing Assistant Licensure (LNA) and Medication Assistant Certification

The Board seeks to amend this section to align the references to address from the current "mailing address" to the new "address of record", which is defined in and consistent with A.R.S. § 32-3226.

R4-19-809. Nursing Assistant Licensure and Medication Assistant Certificate Renewal

The Board seeks to amend this section to align the references to address from the current "mailing address" to the new "address of record", which is defined in and consistent with A.R.S. § 32-3226.

R4-19-815. Reissuance or Subsequent Issuance of a Nursing Assistant License or Medication Assistant Certificate

Proposed technical amendment to add term "licensure" to current "certification". "Certification" refers to medication assistants and "licensure" is applicable to licensed nursing assistants, consistent with licensed nursing assistant existing title.

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

There are no studies that Board either relied on or did not rely on in its evaluation or justification for the rules.

<u>8.</u> <u>A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:</u>

Not applicable.

<u>9.</u> <u>A summary of the economic, small business, and consumer impact:</u>

The Board does not anticipate a substantial economic impact from the majority of the amendments in this rulemaking. The Board regulates approximately 97,500 Registered Nurses ("RNs"), 9,533 Registered Nurse Practitioners, 10,713 Licensed Practical Nurses ("LPNs"), 9,218 Licensed Nursing Assistants ("LNAs"), 19,516 Certified Nursing Assistants ("CNAs"), 169 Clinical Nurse Specialists, 290 Certified Nurse Midwives, 1004 Certified Registered Nurse Anesthetists, and 23 Certified Medical Assistants ("CMAs"). The Board regulates approximately five LPN programs, 31 RN programs, 101 CNA programs, 2 CMA programs and 13 refresher programs.

The Board, regulated parties and the public are all expected to benefit from increased speed in processing applications, additional prescribing certificates and authority to the CNSs, and the clarity and reduced regulatory burden of this rulemaking.

The following amendments are not expected to have a substantial economic impact on the Board, regulated parties, or the general public.

- R4-19-101 was amended to provide a definition of "APRN" and is not expected to have any economic impact.
- R4-19-102 was amended to conform address terminology with new statutory language (A.R.S. § 32-3226) and is not expected to have any economic impact.
- R4-19-207 amendments may produce a minimal economic benefit for programs by decreasing costs associated with producing paper copies of documents for the Board.
- R4-19-208 amendments may produce a minimal economic benefit for programs by decreasing costs associated with producing paper copies of documents for the Board.
- R4-19-209 amendments may produce a minimal economic benefit for programs by decreasing costs associated with producing paper copies of documents for the Board.
- R4-19-210 amendments may produce a minimal economic benefit for programs by decreasing costs associated with producing paper copies of documents for the Board.
- R4-19-216 amendments may produce a minimal economic benefit for programs by decreasing costs associated with producing paper copies of documents for the Board.
- R4-19-301 – was amended to conform address terminology with new statutory language

(A.R.S. § 32-3226) and is not expected to have any economic impact.

- R4-19-304 – is expected to have a positive economic impact by allowing applicants to being to work sooner on a temporary license, which may also benefit Arizona employers including small businesses.
- R4-19-305 – was amended to conform address terminology with new statutory language (A.R.S. § 32-3226) and is not expected to have any economic impact.
- R4-19-308 - was amended to conform address terminology with new statutory language (A.R.S. § 32-3226), clarify that licensees and applicants still need to submit residential addresses, and is not expected to have any economic impact.
- R4-19-501 – amendments include adding CNM as a separate APRN category, consistent with statute, and CNMs were already practicing as APRNs. This is a clarification but is not anticipated to have any economic impact.
- R4-19-502 – again, clarifying that CNM is a separate APRN category, and not expected to have any economic input.
- R4-19-503 – adding CNM as a separate APRN category, which is not expected to have any economic input. Proposed amendments would also permit the Executive Director to issue provisional approval pending application review by the Board, which is expected to have a minimal economic benefit by permitting programs to operate earlier in Arizona.
- R4-19-504 – title change only, which is not expected to create any economic impact.
- R4-19-505 – proposed changes to "address of record" language and technical edits that are not expected to create any economic impact.
- R4-19-506 – no economic impact anticipate with clarification of CNM as a separate APRN category and technical change regarding use of acronyms in the rules.
- R4-19-507 – again clarifying that CNM is a separate APRN category, and use of acronyms, that are not expected to have any economic impact. The proposed addition of CNS as being eligible to obtain temporary prescribing and dispensing authority is expected to create a modest economic benefit to the CNS certificate holders and their businesses or employers.
- R4-19-508 – same as above, section 507.

- R4-19-511 – same as above, section 507 and 508, and adding clarifications related to CRNA prescribing. This is expected to have a positive economic impact for the APRN categories that will now be eligible and/or have clarity with their prescribing authority.
- R4-19-512 and 513 – these proposed amendments are anticipated to have a positive economic impact, as described above, in section 507.
- R4-19-514 – anticipated positive economic benefit, as described above, in section 507. Technical amendment not anticipated to cause any economic impact.
- R4-19-604 – proposed change of wording related to "address of record" not anticipated to create any economic impact.
- R4-19-804 - amendments may produce a minimal economic benefit for applicants by decreasing costs associated with producing paper copies of documents for the Board.
- R4-19-806 - proposed change of wording related to "address of record" not anticipated to create any economic impact.
- R4-19-809 – proposed change of wording related to "address of record" not anticipated to create any economic impact.
- R4-19-815 – the proposed technical amendment is not anticipated to create any economic impact.

10. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: Joey Ridenour RN, MS, FAAN

Executive Director

Address: 1740 West Adams Avenue, Suite 2000

Phoenix, AZ 85007

Telephone: 602-771-7801

Fax: 602-771-7888

E-mail: jridenour@azbn.gov

Website: azbn.gov

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

A technical correction was made to R4-19-508 to add references to the CNM and CNS to all times the RNP is mentioned, rather than just the first time. This was the original intent of the amendment in the proposed rulemaking, and is simply a logical, technical correction.

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

The Board did not receive any comments regarding the rulemaking.

13. 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:

There are no other matters prescribed by statute applicable to the Board or this specific class of rules.

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:

This rulemaking does not require a permit however the rules in Articles 2, 3, 5, and 8 relate to issuing licenses, certificates and approvals all of which can be considered a general permit under § 41-1001(10).

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

Federal laws (42 CFR 483.150, 42 CFR 483.151, 42 CFR 483.152, 42 CFR 483.154, 42 CFR 483.156, 42 CFR 483.158) contain the federal minimum requirements for nursing assistant programs and inclusion on the nursing assistant register. Except for proof of legal presence, as required under A.R.S. §41-1080, the requirements to be listed on the nursing assistant registry are no more stringent than minimal federal requirements.

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

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

There is no material incorporated by reference.

15. 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 included in this Final Rulemaking were amended pursuant to emergency rulemaking.

16. The full text of the rules follows:

ARTICLE 1. DEFINITIONS AND TIME-FRAMES

R4-19-101. Definitions

"Abuse" means a misuse of power or betrayal of trust, respect, or intimacy by a nurse, nursing assistant, or applicant that causes or is likely to cause physical, mental, emotional, or financial harm to a client.

"Administer" means the direct application of a medication to the body of a patient by a nurse, whether by injection, inhalation, ingestion, or any other means.

"Admission cohort" means a group of students admitted at the same time to the same curriculum in a regulated nursing, nursing assistant, or advanced practice nursing program or entering the first clinical course in a regulated program at the same time. "Same time" means on the same date or within a narrow range of dates pre-defined by the program.

"Advance practice registered nurse (APRN)" means either a registered nurse practitioner (RNP), certified nurse midwife (CNM), certified registered nurse anesthetist (CRNA), or clinical nurse specialist (CNS), certified by the Board.

"Applicant" means a person seeking licensure, certification, prescribing, or prescribing and dispensing privileges, or an entity seeking approval or re-approval, if applicable, of a:

CNS or RNP nursing program,
Credential evaluation service,
Nursing assistant training program,
Nursing program,
Nursing program change, or
Refresher program.

"Approved national nursing accrediting agency" means an organization recognized by the United States Department of Education as an accrediting agency for a nursing program.

"Assign" means a nurse designates nursing activities to be performed by another nurse that are consistent with the other nurse's scope of practice.

"Certificate or diploma in practical nursing" means the document awarded to a graduate of an educational program in practical nursing.

"Certified medication assistant" means a certified nursing assistant who meets Board qualifications and is additionally certified by the Board to administer medications under A.R.S. § 32-1650 et. seq.

"CES" means credential evaluation service.

"Client" means a recipient of care and may be an individual, family, group, or community.

"Clinical instruction" means the guidance and supervision provided by a nursing, nursing assistant or medication assistant program faculty member while a student is providing client care.

"CMA" means certified medication assistant.

"CNA" means a certified nursing assistant, as defined in A.R.S § 32-1601(4).

"CNS" means clinical nurse specialist, as defined in A.R.S. § 32-1601(7).

"Collaborate" means to establish a relationship for consultation or referral with one or more licensed physicians on an as-needed basis. Supervision of the activities of a registered nurse practitioner by the collaborating physician is not required.

"Contact hour" means a unit of organized learning, which may be either clinical or didactic and is either 60 minutes in length or is otherwise defined by an accrediting agency recognized by the Board.

"Continuing education activity" means a course of study related to nursing practice that is awarded contact hours by an accrediting agency recognized by the Board, or academic credits in nursing or medicine by a regionally or nationally accredited college or university.

"CRNA" means a certified registered nurse anesthetist as defined in A.R.S. § 32-1601(5).

"DEA" means the federal Drug Enforcement Administration.

"Dispense" means to deliver a controlled substance or legend drug to an ultimate user.

"Dual relationship" means a nurse or CNA simultaneously engages in both a professional and nonprofessional relationship with a patient or resident or a patient's or resident's family that is avoidable, non-incidental, and results in the patient or resident or the patient's or resident's family being exploited financially, emotionally, or sexually.

"Eligibility for graduation" means that the applicant has successfully completed all program and institutional requirements for receiving a degree or diploma but is delayed in receiving the degree or diploma due to the graduation schedule of the institution.

"Endorsement" means the procedure for granting an Arizona nursing license to an applicant who is already licensed as a nurse in another state or territory of the United States and has passed an exam as required by A.R.S. §§ 32-1633 or 32-1638 or an Arizona nursing assistant or medication assistant certificate to an applicant who is already listed on a nurse aide register or certified as a medication assistant in another state or territory of the United States.

"Episodic nursing care" means nursing care at nonspecific intervals that is focused on the current needs of the individual.

"Failure to maintain professional boundaries" means any conduct or behavior of a nurse or CNA that, regardless of the nurse's or CNA's intention, is likely to lessen the benefit of care to a patient or resident or a patient's or resident's family or places the patient, resident or the patient's or resident's family at risk of being exploited financially, emotionally, or sexually.

"Family," as applied to R4-19-511, means individuals who are related by blood, marriage, adoption, legal guardianship, or domestic partnership, or who are cohabitating or romantically involved.

"Full approval" means the status granted by the Board when a nursing program, after graduation of its first class, demonstrates the ability to provide and maintain a program in accordance with the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter.

"Good standing" means the license of a nurse, or the certificate of a nursing assistant, is current, and the nurse or nursing assistant is not presently subject to any disciplinary action, consent order, or settlement agreement.

"Independent nursing activities" means nursing care within an RN's scope of practice that does not require authorization from another health professional.

"Initial approval" means the permission, granted by the Board, to an entity to establish a nursing assistant training program, after the Board determines that the program meets the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter.

"Licensure by examination" means the granting of permission to practice nursing based on an individual's passing of a prescribed examination and meeting all other licensure requirements.

"LPN" means licensed practical nurse.

"NCLEX" means the National Council Licensure Examination.

"Nurse" means a licensed practical or registered nurse.

"Nursing diagnosis" means a clinical judgment, based on analysis of comprehensive assessment data, about a client's response to actual and potential health problems or life processes. Nursing diagnosis statements include the actual or potential problem, etiology or risk factors, and defining characteristics, if any.

"Nursing process" means applying problem-solving techniques that require technical and scientific knowledge, good judgment, and decision-making skills to assess, plan, implement, and evaluate a plan of care.

"Nursing program" means a formal course of instruction designed to prepare its graduates for licensure as registered or practical nurses.

"Nursing program administrator" means a nurse educator who meets the requirements of A.R.S. Title 32, Chapter 15 and this Chapter and has the administrative responsibility and authority for the direction of a nursing program.

"Nursing program faculty member" means an individual working full or part time within a nursing program who is responsible for either developing, implementing, teaching, evaluating, or updating nursing knowledge, clinical skills, or curricula.

"Nursing-related activities or duties" means client care tasks for which education is provided by a basic nursing assistant training program.

"P & D" means prescribing and dispensing.

"Parent institution" means the educational institution in which a nursing program, nursing assistant training program or medication assistant program is conducted.

"Patient" means an individual recipient of care.

"Pharmacology" means the science that deals with the study of drugs.

"Physician" means a person licensed under A.R.S. Title 32, Chapters 7, 8, 11, 13, 14, 17, or 29, or by a state medical board in the United States.

"Preceptor" means a licensed nurse or other health professional who meets the requirements of A.R.S. Title 32, Chapter 15 and this Chapter who instructs, supervises and evaluates a licensee, clinical nurse specialist, nurse practitioner or pre-licensure nursing student, for a defined period.

"Preceptorship" means a clinical learning experience by which a learner enrolled in a nursing program, nurse refresher program, clinical nurse specialist, or registered nurse practitioner program or as part of a Board order provides nursing care while assigned to a health professional who holds a license or certificate equivalent to or higher than the level of the learner's program or in the case of a nurse under Board order, meets the qualifications in the Board order.

"Prescribe" means to order a medication, medical device, or appliance for use by a patient.

"Private business" means any individual or sole proprietorship, partnership, limited liability partnership, limited liability company, corporation or other legal business entity.

"Proposal approval" means that an institution has met the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter to proceed with an application for provisional approval to establish a pre-licensure nursing program in Arizona.

"Provisional approval" means that an institution has met the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter to implement a pre-licensure nursing program in Arizona.

"Refresher program" means a formal course of instruction designed to provide a review and update of nursing theory and practice.

"Register" means a listing of Arizona certified nursing assistants maintained by the Board that includes the following about each nursing assistant:

Identifying demographic information;
Date placed on the register;
Date of initial and most recent certification, if applicable; and
Status of the nursing assistant certificate, including findings of abuse, neglect, or misappropriation of property made by the Arizona Department of Health Services, sanctions imposed by the United States Department of Health and Human Services, and disciplinary actions by the Board.

"Resident" means a patient who receives care in a long-term care facility or other residential setting.

"RN" means registered nurse.

"RNP" means a registered nurse practitioner as defined in A.R.S. § 32-1601(20).

"SBTPE" means the State Board Test Pool Examination.

"School nurse" means a registered nurse who is certified under R4-19-309.

"Secure examination" means a written test given to an examinee that:

Is administered under conditions designed to prevent cheating;

Is taken by an individual examinee without access to aides, textbooks, other students or any other material that could influence the examinee's score; and,

After opportunity for examinee review, is either never used again or stored such that only designated employees of the educational institution are permitted to access the test.

"Self-study" means a written self-evaluation conducted by a nursing program to assess the compliance of the program with the standards listed in Article 2.

"Standards related to scope of practice" means the expected actions of any nurse who holds the identified level of licensure.

"Substance use disorder" means misuse, dependence or addiction to alcohol, illegal drugs or other substances.

"Supervision" means the direction and periodic consultation provided to an individual to whom a nursing task or patient care activity is delegated.

"Unlicensed assistive personnel" or "UAP" means a CNA or any other unlicensed person, regardless of title, to whom nursing tasks are delegated.

"Verified application" means an affidavit signed by the applicant attesting to the truthfulness and completeness of the application and includes an oath that applicant will conform to ethical professional standards and obey the laws and rules of the Board.

R4-19-102. Time-frames for Licensure, Certification, or Approval

A. In this Section:

1. "Administrative completeness" or "administratively complete" means Board receipt of all application components required by statute or rule and necessary to begin the substantive review time-frame.
2. "Application packet" means an application form provided by the Board and the documentation necessary to establish an applicant's qualifications for licensure, certification, or approval.
3. "Comprehensive written request for additional information" means written communication after the administrative completeness time-frame by the Board to an applicant in person or at the ~~mailing~~ address of record or electronic address identified on the application notifying the applicant that additional information, including missing documents is needed before the Board can grant the license. The written communication shall:
   a. Contain a list of information required by statute or rule and necessary to complete the application or grant the license, and
   b. Inform the applicant that the request suspends the running of days within the time-frame, and
   c. Be effective on the date of issuance which is:
      i. The date of its postmark, if mailed;
      ii. The date of delivery, if delivered in person by a Board employee or agent; or
      iii. The date of delivery to the electronic address if delivered electronically.
4. "Deficiency notice" means written communication by the Board to an applicant in person or at the ~~mailing~~ address of record or electronic address identified on the application notifying the applicant that additional information, including missing documents, is needed to complete the application. The written communication shall:
   a. Contain a list of information required by statute or rule and necessary to complete the application or grant the license;
   b. Inform the applicant that the request suspends the running of days within the time-frame; and
   c. Be effective on the date of issuance which is:
      i. The date of its postmark, if mailed;
      ii. The date of delivery, if delivered in person by a Board employee or agent; or
      iii. The date of delivery to the electronic address if delivered electronically.
5. "Notice of administrative completeness" means written communication by the Board to an applicant in person or at the ~~mailing~~ address of record or electronic address identified on the application notifying the applicant the application contains all information required by statute or rule to complete the application.
6. "Overall time-frame" has the same meaning as A.R.S. § 41-1072(2).
7. "Substantive review time-frame" has the same meaning as A.R.S. § 41-1072(3).

B. In computing the time-frames in this Section, the day of the act or event from which the designated period begins to run is not included. The last day of the period is included unless it is a Saturday, Sunday, or official state holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or official state holiday.

C. For each type of licensure, certification, or approval issued by the Board, the overall time-frame described in A.R.S. § 41-1072(2) is listed in Table 1. An applicant may submit a written request to the Board for an extension of time in which to provide a complete application. The request for an extension of time shall be submitted to the Board office before the deadline for submission of a complete application and shall state the reason that the applicant is unable to comply with the time-frame requirements in Table 1 and the amount of additional time requested. The Board may grant an extension of time based on whether the Executive Director of the Board finds that the applicant is unable to comply within the time-frame due to circumstances beyond the applicant's control and that the additional information can reasonably be supplied during the extension of time.

D. For each type of licensure, certification, or approval issued by the Board, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is listed in Table 1 and begins to run when the Board receives an application packet.

1. If the application packet is not administratively complete, the Board shall send a deficiency notice to the applicant. The time for the applicant to respond to a deficiency notice begins to run on the date the deficiency notice is issued.
   a. The deficiency notice shall list each deficiency.
   b. The applicant shall submit to the Board the missing information listed in the deficiency notice within the period specified in Table 1 for responding to a deficiency notice. The time-frame for the Board to complete the administrative review is suspended until the Board receives the missing information.
   c. If an applicant fails to provide the missing information listed in the deficiency notice within the period specified in Table 1, the Board shall close the applicant's file and send a notice to the applicant by U.S. mail and electronically, if an electronic address is included in the application.
   d. If the applicant is the subject of an investigation, the Board may continue to process the application. Failure of the applicant to supply the requested information may result in denial of the license or certificate based on information gathered during the investigation.
2. If the application packet is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
3. If the Board issues a license, certificate, or approval during the administrative completeness review time-frame, the Board shall not send a separate written notice of administrative completeness.

E. For each type of licensure, certification, or approval issued by the Board, the substantive review time-frame described in A.R.S. § 41-1072(3) is listed in Table 1 and begins to run on the date the notice of administrative completeness is issued.

1. During the substantive review time-frame, an applicant may make a request to withdraw an application packet. The Board may deny the request to withdraw an application packet if the applicant is the subject of an investigation, based on information gathered during the investigation.
2. If an applicant discloses or the Board receives allegations of unprofessional conduct as described in A.R.S. § 32-1601 or this Chapter, the Board shall review the allegations and may investigate the applicant. The Board may require the applicant to provide additional information as prescribed in subsection (E)(3) based on its assessment of whether the conduct is or might be harmful or dangerous to the health of a client or the public.
3. During the substantive review time-frame, the Board may make one comprehensive written request for additional information. The applicant shall submit the additional information within the period specified in Table 1. The time-frame for the Board to complete the substantive review of the application packet is suspended from the date the comprehensive written request for additional information is issued until the Board receives the additional information.
4. If the applicant fails to provide the additional information identified in the comprehensive written request for additional information within the time specified in Table 1, the Board shall close the applicant's file and send a notice to the applicant by U.S. mail and electronically, if an electronic address is included in the application. The Board may continue to process the application if the applicant is the subject of an investigation. Failure of the applicant to supply the requested information may result in denial of the license or certificate based on information gathered during the investigation.
5. The Board shall grant licensure, conditional licensure, limited licensure, certification, or approval to an applicant:
   a. Who meets the substantive criteria for licensure, certification, or approval required by A.R.S. Title 32, Chapter 15 and this Chapter; and
   b. Whose licensure, certification, or approval is in the best interest of the public.
6. The Board shall deny licensure, certification, or approval to an applicant:
   a. Who fails to meet the substantive criteria for licensure, certification, or approval required by A.R.S. Title 32, Chapter 15 and this Chapter; or
   b. Who has engaged in unprofessional conduct as described in A.R.S. § 32-1601 or this Chapter; and
   c. Whose licensure, certification, or approval is not in the best interest of the public.
7. The Board's written order of denial shall meet the requirements of A.R.S. § 41-1076. The applicant may request a hearing by filing a written request with the Board within 30 days of receipt of the Board's order of denial. The Board shall conduct hearings in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

ARTICLE 2. ARIZONA REGISTERED AND PRACTICAL NURSING PROGRAMS; REFRESHER PROGRAMS

R4-19-207. New Programs; Proposal Approval; Provisional Approval

A. At a minimum of one year before establishing a nursing program, a parent institution shall submit to the Board ~~one~~ an electronic copy ~~and one paper copy~~ of an application for proposal approval. The parent institution shall ensure that the proposal application was written by or under the direction of a registered nurse who meets the nursing program administrator requirements of R4-19-203(A) and includes the following information and documentation:
1. Name and address of the parent institution;
2. Statement of intent to establish a nursing program, including the academic and licensure level of the program; and:
   a. Organizational structure of the educational institution documenting the relationship of the nursing program within the institution and the role of the nursing program administrator consistent with R4-19-201 and R4-19-203;
   b. Evidence of institutional accreditation consistent with R4-19-201 and post-secondary approval, if applicable. The institution shall provide the most recent full reports including findings and recommendations of the applicable accrediting organization or approval agency. The Board may request additional accreditation or approval evidence.
   c. Curriculum development documentation to include:
      i. Student-centered outcomes for the program;
      ii. A plan that identifies the prescribed course sequencing and time required; and
      iii. Identification of established professional standards, guidelines or competencies upon which the curriculum will be based;
   d. Name, qualifications, and job description of a nursing program administrator who meets the requirements of R4-19-203 and availability and job description of faculty who meet qualifications of R4-19-204;
   e. Number of budgeted clinical and didactic faculty positions from the time of the first admission to graduation of the first class;
   f. Evidence that the program has secured clinical sites for its projected enrollment that meet the requirements of R4-19-206;
   g. Anticipated student enrollment per session and annually;
   h. Documentation of planning for adequate academic facilities and secretarial and support staff to support the nursing program consistent with the requirements of R4-19-202;
   i. Evidence of adequate program financial resources;
   j. Tentative time schedule for planning and initiating the nursing program including faculty hiring, entry date and size of student cohorts, and obtaining and utilizing clinical placements from the expected date of proposal approval to graduation of the first cohort.
   k. For a parent institution or owner corporation that has multiple nursing programs in one or more U.S. jurisdictions including Arizona, evidence for each of its nursing programs that includes:
      i. Program approval in good standing with no conditions, restrictions, ongoing investigations or deficiencies;
      ii. An NCLEX pass rate of at least 80% for the past two years or since inception; and
      iii. An on-time graduation rate consistent with the requirements of R4-19-206.

B. The Board shall grant proposal approval to any parent institution that meets the requirements of subsection (A) if the Board deems that such approval is in the best interests of the public. Proposal approval expires one year from the date of Board issuance.

C. A parent institution that is denied proposal approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for proposal approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

D. At a minimum of 180 days before planned enrollment of students, a parent institution that received proposal approval within the previous year may submit to the Board ~~one~~ an electronic copy ~~and one paper copy~~ of an application for provisional approval. The parent institution shall ensure that the provisional approval application was written by or under the direction of a registered nurse who meets the program administrator requirements of R4-19-203(A) and includes the following information and documentation:
1. Name and address of parent institution;
2. A self-study that provides evidence supporting compliance with R4-19-201 through R4-19-206, and
3. Names and qualifications of:

a. The nursing program administrator;
b. Didactic nursing faculty or one or more nurse consultants who are responsible for developing the curriculum and determining nursing program admission, progression and graduation criteria;

4. Plan for recruiting and hiring additional didactic faculty for the first semester or session of operation at least 60 days before classes begin;
5. Plan for recruiting and hiring additional clinical nursing faculty at least 30 days before the clinical rotation begins;
6. Final program implementation plan including dates and number of planned student admissions, recruitment and hire dates for didactic and clinical faculty for the period of provisional approval;
7. Descriptions of available and proposed physical facilities with dates of availability; and
8. Detailed written plan for clinical placements for all planned enrollments until graduation of the first class that is:
   a. Based on current clinical availability and curriculum needs;
   b. Confirms availability and commitment from proposed clinical agencies for the times and units specified.

E. Following an onsite evaluation conducted according to A.R.S. § 41-1009, the Board shall grant a two year provisional approval to a parent institution that meets the requirements of R4-19-201 through R4-19-206 if approval is in the best interest of the public. A parent institution that is denied provisional approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for provisional approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

F. The provisional approval of a nursing program expires 12 months from the date of the grant of provisional approval if a class of nursing students is not admitted by the nursing program within that time.

G. One year after admission of the first nursing class into nursing courses, the program shall provide a report to the Board containing information on:

1. Implementation of the program including any differences from the plans submitted in the applications for proposal and provisional approval and an explanation of those differences; and
2. The outcomes of the evaluation of the program according to the program's systematic evaluation plan under R4-19-201;

H. Following receipt of the report described in subsection (G), a representative of the Board shall conduct a site survey visit in accordance with A.R.S. § 41-1009 to determine compliance with this Article. A report of the site visit shall be provided to the Board.

I. If a nursing program with provisional approval fails to comply with requirements of A.R.S. Title 32, Chapter 15, or 4 A.A.C. 19, Article 4, the Board may initiate a disciplinary action. Prior to imposition of discipline against a provisional approval, the nursing program is entitled to a hearing conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

R4-19-208. Full Approval of a New Nursing Program

A. A nursing program seeking full approval shall submit an electronic ~~and one paper copy of an~~ application that includes the following information and documentation:

1. Name and address of the parent institution,
2. Date the nursing program graduated its first class of students, and
3. A self-study report that contains evidence the program is in compliance with R4-19-201 through R4-19-206.

B. Following an onsite evaluation conducted according to A.R.S § 41-1009, the Board shall grant full approval for a maximum of five years or the accreditation period for nationally accredited programs governed by R4-19-213, to a nursing program that meets the requirements of this Article and if approval is in the best interest of the public. A nursing program that is denied full approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for full approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

R4-19-209. Nursing Program Change

A. A nursing program administrator shall receive approval from the Board before implementing any of the following nursing program changes:

1. Curriculum or program delivery method;
2. Increasing or decreasing the academic credits or units of the program excluding pre-requisite credits;
3. Adding a geographical location of the program;
4. Changing the level of educational preparation provided;
5. Transferring the nursing program from one parent institution to another; or
6. Establishing different admission, progression or graduation requirements for specific cohorts of the program.

B. The administrator shall submit ~~one~~ an electronic ~~and one paper~~ copy of the following materials with the request for nursing program changes:

1. The rationale for the proposed change and the anticipated effect on the program administrator, faculty, students, resources, and facilities;
2. A summary of the differences between the current practice and proposed change;
3. A timetable for implementation of the change; and
4. The methods of evaluation to be used to determine the effect of the change.

C. The Board shall approve a request for a nursing program change if the program meets the requirements of this Section and R4-19-201 through R4-19-206. A nursing program that is denied approval of program changes may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for program change. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

R4-19-210. Renewal of Approval of Nursing Programs Not Accredited by a National Nursing Accrediting Agency

A. An approved nursing program that is not accredited by an approved national nursing accrediting agency shall submit an application packet to the Board at least four months before the expiration of the current approval that includes the following:

1. Name and address of the parent institution,
2. Evidence of current institutional accreditation status under R4-19-201,
3. Evidence that the program has secured clinical sites for its projected enrollment that meet the requirements of R4-19-206,
4. Copy or on-line access to:
   a. A current catalog of the parent institution,
   b. Current nursing program and institutional student and academic policies, and
   c. Institutional and nursing program faculty policies and job descriptions for nursing program faculty, and
5. ~~One~~ An electronic copy ~~and one paper copy~~ of a self-study report that contains evidence of compliance with R4-19-201

through R4-19-206.

B. Following an onsite evaluation conducted according to A.R.S. § 41-1009, the Board shall renew program approval for a maximum of five years if the nursing program meets the criteria in R4-19-201 through R4-19-206 and if renewal is in the best interest of the public. The Board shall determine the term of approval that is in the best interest of the public.

C. If the Board denies renewal of approval, the nursing program may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for renewal of approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

R4-19-216. Approval of a Refresher Program

A. An applicant for approval of a refresher program for nurses whose licenses have been inactive or expired for five or more years, nurses under Board order to enroll in a refresher program, or nurses who have not met the nursing practice requirements of R4-19-312 shall submit ~~one~~ an electronic ~~and one paper copy~~ of a completed application that provides all of the following information and documentation:

1. Applicant's name, address, e-mail address, telephone number, web site address, if applicable, and fax number;
2. Proposed starting date for the program;
3. Name and qualifications of all instructors that meet the requirements of subsection (C);
4. Statement describing the facilities, staff, and resources that the applicant will use to conduct the refresher program;
5. A program and participant evaluation plan that includes student evaluation of the course, instructor, and clinical experience;
6. Evidence of a curriculum that meets the requirements of subsection (B);

B. A refresher program for registered and practice nurses shall provide:

1. Didactic instruction sufficient to ensure competent and safe practice to the applicable level of the nursing license, including the following subjects, at a minimum:
   a. Nursing process and patient centered care;
   b. Pharmacology, medication calculation, and medication administration;
   c. Communication and working with inter-professional teams;
   d. Critical thinking, clinical decision making and evidence-based practice;
   e. Delegation, management, and leadership;
   f. Meeting psychosocial and physiological needs of adult clients with medical-surgical conditions. Other populations of care may be added to the content at the program's discretion;
   g. Ethics; and
   h. Informatics, to include electronic health record documentation.
2. The program shall provide clinical experiences that, at a minimum:
   a. Ensure that each qualified student has a verified clinical placement within six months of course enrollment;
   b. Provide program policies for clinical placement in advance of enrollment that specify both the obligations of the school and the student regarding placement;
   c. Validate that a student has the necessary didactic and theoretical knowledge to function safely in the specific clinical setting before starting a clinical experience;
   d. Ensure that clinical experiences are of the type and duration to meet the course objectives.
3. Laboratory practice hours, at the program's discretion, including simulation experiences in accordance with the clinical objectives of the course, but may not replace clinical experiences.
4. Curriculum and other materials to students and prospective students that, include:
   a. An overall program description including student learning objectives;
   b. Objectives, content outline, and hours for didactic and clinical experience;
   c. Course policies that include but are not limited to admission requirements, passing criteria, cause for dismissal, clinical requirements, grievance process and student responsibilities, cost, and length of the program.

C. Refresher program personnel qualifications and responsibilities:

1. An administrator of a refresher program shall:
   a. Hold a graduate degree in nursing or a bachelor of science in nursing degree and a graduate degree in either education or a health-related field, and
   b. Be responsible for administering and evaluating the program.
2. A faculty member of a refresher program shall:
   a. Hold a minimum of a bachelor of science in nursing degree,
   b. Be responsible for implementing the curriculum and supervising clinical experiences either directly or indirectly through the use of clinical preceptors.
3. Licensure requirements for program administrator and faculty:

The administrator and faculty members shall hold a current Arizona RN license in good standing or a multi-state privilege under A.R.S., Title 32, Chapter 15.

4. If preceptors are used for clinical experiences, the program shall adhere to the preceptorship requirements of R4-19-206(E).
5. Licensed health care professionals not regulated by the Board may participate in course instruction consistent with their licensure and scope of practice, under the direction of the program administrator or faculty.

D. Program types; bonding:

1. A refresher program may be offered by:
   a. An educational institution licensed by the State Board for Private Postsecondary Education;
   b. A public post-secondary educational institution;
   c. A health care institution licensed by the Arizona Department of Health Services or a health care institution authorized by the Centers for Medicare & Medicaid Services; or
   d. A private business that meets the requirements of this Section and all other legal requirements to operate a business in Arizona;
   e. A program funded by a local, state or federal governmental agency, such as a program within a technical school or school of nursing.
2. If the refresher program is offered by a private business not licensed by the State Board for Private Postsecondary Education, the program shall meet the following requirements:
   a. Hold a minimum of $15,000 of insurance covering any potential or future claims for damages resulting from any aspect of the program or a hold a surety bond from a surety company with a rating of "A minus" or better by either Best's Credit Ratings, Moody's Investor Service, or Standard and Poor's rating service.
   b. The program shall ensure that:
      i. Bond or insurance distributions are limited to students or former students with a valid claim for instructional or

program deficiencies;

ii. The amount of the bond or insurance coverage is sufficient to reimburse the full amount of collected tuition and fees for all students during all enrollment periods of the program; and

iii. The bond or insurance is maintained for an additional 24 months after program closure.

E. The Board shall approve a refresher program that meets the requirements of this Section, if approval is in the best interest of the public, for a maximum term of five years. An applicant who is denied refresher program approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and Article 6 of this Chapter.

F. The refresher program sponsor shall apply for renewal of approval in accordance with subsection (A) not later than 90 days before expiration of the current approval. The sponsor of a refresher program that is denied renewal of approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for renewal of approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6 of this Chapter.

G. The sponsor of an approved refresher program shall provide written notification to the Board within 15 days of a participant's completion of the program of the following:

1. Name of the participant and whether the participant successfully completed or failed the program,
2. Participant's license number, and
3. End date of participant's participation in the program.

H. The Board may approve a refresher program application from another U.S. jurisdiction for an individual applicant on a case-by-case basis if the applicant provides verifiable evidence that the refresher program substantially meets the requirements of this Section. The acceptance of the program for an individual applicant does not confer approval status upon the program.

I. Within 30 days, a refresher program shall report to the Board changes in:

1. Name, address, email address, web site address or phone number of the program; or
2. Ownership including adding or deleting an owner.

J. The Board may take disciplinary action against the approval of a refresher program after offering a hearing conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6 of this Chapter.

ARTICLE 3. LICENSURE

R4-19-301. Licensure by Examination

A. An applicant for licensure by examination shall:

1. Submit a verified application to the Board on a form furnished by the Board that provides the following information about the applicant:
   a. Full legal name and all former names used by the applicant;
   b. ~~Mailing address~~ Address of Record, including declared primary state of residence, e-mail address, and telephone number;
   c. Place and date of birth;
   d. Ethnic category and marital status, at the applicant's discretion;
   e. Social Security number for an applicant who lives or works in the United States;
   f. Post-secondary education, including the names and locations of all schools attended, graduation dates, and degrees received, if applicable;
   g. Current employer or practice setting, including address, position, and dates of service, if employed or practicing in nursing or health care;
   h. Information regarding the applicant's compliance with the practice or education requirements in R4-19-312;
   i. Any state, territory, or country in which the applicant holds or has held a registered or practical nursing license and the license number and status of the license, including original state of licensure, if applicable;
   j. The date the applicant previously filed an application for licensure in Arizona, if applicable;
   k. Responses to questions regarding the applicant's background on the following subjects:
      i. Current investigation or pending disciplinary action by a nursing regulatory agency in the United States or its territories;
      ii. Action taken on a nursing license by any other state;
      iii. Undesignated offenses, felony charges, convictions and plea agreements, including deferred prosecution;
      iv. Misdemeanor charges, convictions and plea agreements, including deferred prosecution, that are required to be reported under A.R. S. § 32-3208;
      v. Unprofessional conduct as defined in A.R.S. § 32-1601;
      vi. Substance use disorder within the last 5 years;
      vii. Current participation in an alternative to discipline program in any other state;
   l. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background; and.
   m. Certification in nursing including category, specialty, name of certifying body, date of certification, and expiration date.
2. Submit proof of United States citizenship or alien status as specified in A.R.S. § 41-1080;
3. Submit a completed fingerprint card on a form provided by the Board or prints for the purpose of obtaining a criminal history report under A.R.S. § 32-1606 if the applicant has not submitted a fingerprint card or prints to the Board within the last two years; and
4. Pay the applicable fees.

B. If an applicant is a graduate of a pre-licensure nursing program in the United States that has been assigned a program code by the National Council of State Boards of Nursing during the period of the applicant's attendance, the applicant shall submit one of the following:

1. If the program is an Arizona-approved program, the transcript required in subsection (B)(2) or a statement signed by a nursing program administrator or designee verifying that:
   a. The applicant graduated from or is eligible to graduate from a registered nursing program for a registered nurse applicant; or
   b. The applicant graduated from or is eligible to graduate from a practical nursing program or graduated from a registered nursing program and completed Board-prescribed role delineation education for a practical nurse applicant; or
2. If the program is located either in Arizona or in another state or territory and meets educational standards that are substantially comparable to Board standards for educational programs under Article 2 when the applicant completed the program, an official transcript sent directly from one of the following as:
   a. Evidence of graduation or eligibility for graduation from a diploma registered nursing program, associate degree registered nursing program, or baccalaureate or higher degree registered nursing program for a registered nurse applicant.

b. Evidence of graduation or eligibility for graduation of a practical nursing program, associate degree registered nursing program, or baccalaureate or higher degree registered nursing program for a practical nurse applicant.

C. If an applicant is a graduate of a pre-licensure international nursing program and lacks items required in subsection (B), the applicant shall comply with subsection (A), submit a self report on the status of any international nursing license, and submit the following:

1. To demonstrate nursing program equivalency, one of the following:
   a. If the applicant graduated from a Canadian nursing program, evidence of a passing score on the English language version of either the Canadian Nurses' Association Testing Service, the Canadian Registered Nurse Examination, NCLEX or an equivalent examination;
   b. A Certificate or Visa Screen Certificate issued by the Commission on Graduates of Foreign Nursing Schools (CGFNS), or a report from CGFNS that indicates an applicant's program is substantially comparable to a U.S. program; or
   c. A report from any other credential evaluation service (CES) approved by the Board.
2. If a graduate of an international pre-licensure nursing program subsequently obtains a degree in nursing from an accredited U.S. nursing program, the requirement for a CES equivalency report may be waived by the Board, however the applicant is not eligible for a multi-state compact license.
3. If an applicant's pre-licensure nursing program provided classroom instruction, textbooks, or clinical experiences in a language other than English, a test of written, oral, and spoken English is required. Clinical experiences are deemed to have been provided in a language other than English if the principal or official language of the country or region where the clinical experience occurred is a language other than English, according to the United States Department of State.
4. An applicant who is required to demonstrate English language proficiency shall ensure that one of the following is submitted to the Board directly from the testing or certifying agency:
   a. Evidence of a minimum score of 84 with a minimum speaking score of 26 on the Internet-based Test of English as a Foreign Language (TOEFL),
   b. Evidence of a minimum score of 6.5 overall with minimum of 6.0 on each module of the Academic Exam of the International English Language Test Service (IELTS) Examination,
   c. Evidence of a minimum score of 55 overall with a minimum score of 50 on each section of the Pearson Test of English Academic exam.
   d. A Visa Screen Certificate from CGFNS,
   e. A CGFNS Certificate,
   f. Evidence of a similar minimum score on another written and spoken English proficiency exam determined by the Board to be equivalent to the other exams in this subsection, or
   g. Evidence of employment for a minimum of 960 hours within the past five years as a nurse in a country or territory where the principal language is English, according to the United States Department of State.

D. An applicant for a registered nurse license shall attain one of the following:

1. A passing score on the NCLEX-RN;
2. A score of 1600 on the NCLEX-RN, if the examination was taken before July 1988; or
3. A score of not less than 350 on each part of the SBTPE for registered nurses.

E. An applicant for a practical nurse license shall attain:

1. A passing score on the NCLEX-PN;
2. A score of not less than 350 on the NCLEX-PN, if the examination was taken before October 1988; or
3. A score of not less than 350 on the SBTPE for practical nurses.

F. The Board shall grant a license to practice as a registered or practical nurse to any applicant who meets the criteria established in statute and this Article. An applicant who is denied a license by examination may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the license. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

G. If the Board receives an application from a graduate of a nursing program and the program's approval was rescinded under R4-19-212 at any time during the applicant's nursing education, the Board shall ensure that the applicant has completed a basic curriculum that is equivalent to that of a Board-approved nursing program and may do any of the following:

1. Grant licensure, if the program's approval was reinstated during the applicant's period of enrollment and the program provides evidence that the applicant completed a curriculum equivalent to that of a Board-approved nursing program;
2. By order, require successful completion of remedial education while enrolled in a Board approved nursing program which may include clinical experiences, before granting licensure; or
3. Return or deny the application if the education was not equivalent and no remediation is possible.

R4-19-304. Temporary License

A. Subject to subsection (B), the Board shall issue a temporary license if:

1. An applicant:
   a. Is qualified under:
      i. A.R.S. § 32-1635 and applies for a temporary registered nursing license, or is qualified under A.R.S. § 32-1640 and applies for a temporary practical nursing license; and
      ii. R4-19-301 for applicants for licensure by examination, or is qualified under R4-19-302 for applicants for licensure by endorsement; and
   b. Submits an application for a temporary license with the applicable fee required under A.R.S. § 32-1643(A)(9); and
   c. Submits an application for a license by endorsement or examination with the applicable fee required under A.R.S. § 32-1643(A).
2. An applicant is seeking a license by examination, meets the requirements of R4-19-312(D), and the Board receives ~~a report from the Arizona Department of Public Safety (DPS), verifying that DPS has no criminal history record information, as defined in A.R.S. § 41-1701, relating to the applicant or that any criminal history reported has been reviewed by the executive director or the director's designee and determined not to pose a threat to public health, safety, or welfare~~ the applicant's fingerprint card or fingerprints; or
3. An applicant is seeking a license by endorsement, meets the requirements in R4-19-312(B), and the applicant submits evidence that the applicant has a current license in good standing in another state or territory of the United States or, if no current license, a previous license in good standing that was not the subject of an investigation or pending discipline; or
4. An applicant who does not meet the practice requirements in R4-19-312(B) or (D), but provides evidence that the applicant has applied for enrollment in a refresher or other competency program approved by the Board, may practice nursing under a temporary license during the clinical portion of the program only.

B. An applicant who has a criminal history, a history of disciplinary action by a regulatory agency, a pending complaint before the Board, or answers affirmatively to any criminal background or disciplinary question in the application is not eligible for a temporary

license or extension of a temporary license without Board approval.

C. A temporary license is valid for a maximum of 12 months unless extended for good cause under subsection (D) of this Section.

D. An applicant with a temporary license may apply for and the Board, the Executive Director or the Executive Director's designee may grant an extension of the temporary license period for good cause. Good cause means reasons beyond the control of the temporary licensee, such as unavoidable delays in obtaining information required for licensure.

E. An applicant who receives a temporary license but does not meet the criteria for a regular license within the established period under subsections (C) and (D) is no longer eligible for a temporary license except for the purpose of completing a refresher or other competency program under subsection (A)(4) of this Section.

R4-19-305. License Renewal

A. An applicant for renewal of a registered or practical nursing license shall:

1. Submit a verified application to the Board on a form furnished by the Board that provides all of the following information about the applicant:
   a. Full legal name, ~~mailing~~ address of record, e-mail address, telephone number and declared primary state of residence;
   b. A listing of all states in which the applicant is currently licensed, or, since the last renewal, was previously licensed or has been denied licensure;
   c. Marital status and ethnic category, at the applicant's discretion;
   d. Information regarding qualifications, including:
      i. Educational background;
      ii. Employment status;
      iii. Practice setting; and
      iv. Other information related to the nurse's practice for the purpose of collecting nursing workforce data.
   e. Responses to questions regarding the applicant's background on the following subjects:
      i. Criminal convictions for offenses involving drugs or alcohol since the time of last renewal;
      ii. Undesignated offenses and felony charges, convictions and plea agreements including deferred prosecution;
      iii. Misdemeanor charges, convictions and plea agreements, including deferred prosecution, that are required to be reported under A.R.S. § 32-3208;
      iv. Unprofessional conduct as defined in A.R.S. § 32-1601 since the time of last renewal;
      v. Substance use disorder within the last five years;
      vi. Current participation in an alternative to discipline program in any other state; and
      vii. Disciplinary action or investigation related to the applicant's nursing license by any other state nursing regulatory agency since the last renewal.
   f. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
   g. Information related to the applicant's current or most recent nursing practice setting, including position, address, telephone number, and dates of practice;
   h. Information regarding the applicant's compliance with the practice or education requirements in R4-19-312;
   i. National certification in nursing including specialty, name of certifying body, date of certification, certification number, and expiration date, if applicable; and for an applicant certified as a registered nurse practitioner or clinical nurse specialist the patient population of the certification; and
2. Pay fees for renewal authorized by A.R.S. § 32-1643 (A)(6); and
3. Pay an additional fee for late renewal authorized by A.R.S. § 32-1643(A)(7) if the application for renewal is submitted after May 1 of the year of renewal.

B. A license expires on August 1 of the year of renewal indicated on the license.

C. A licensee who fails to submit a renewal application before expiration of a license shall not practice nursing until the Board issues a renewal license.

D. If the applicant holds a license or certificate that has been or is currently revoked, surrendered, denied, suspended or placed on probation in another jurisdiction, the applicant is not eligible to renew or reactivate a license until a review or investigation has been completed and a decision regarding eligibility for renewal or reactivation is made by the Board.

E. The Board shall renew the license of any registered or practical nurse applicant who meets the criteria established in statute and this Article. An applicant who is denied renewal of a license may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying renewal of the license. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

R4-19-308. Change of Name or Address

A. A licensee or applicant shall notify the Board, in writing or electronically through the Board website, of any legal change in name within 30 days of the change, and submit a copy of the official document verifying the name change.

B. A licensee or applicant shall notify the Board in writing or electronically through the Board website of any change in ~~mailing~~ address of record, and residential address, if different, within 30 days.

ARTICLE 5. ADVANCED PRACTICE REGISTERED NURSING

R4-19-501. Roles and Population Foci of Advanced Practice Registered Nursing (APRN); Certification Programs

A. The Board recognizes the following APRN roles;

1. Registered nurse practitioner (RNP) in a population focus ~~including Certified Nurse Midwife as a population focus of RNP~~;
2. Clinical Nurse Specialist (CNS) in a population focus; ~~and~~
3. Certified Registered Nurse Anesthetist (CRNA)~~.~~ ;
4. Certified Nurse Midwife (CNM).

B. RNPs and CNSs shall practice within one or more population foci, consistent with their education and certification. Population foci include:

1. Family-individual across the life span;
2. Adult-gerontology primary or acute care;
3. Neonatal;
4. Pediatric primary or acute care;
5. Women's health-gender related;
6. Psychiatric-mental health;
7. ~~For Certified Nurse Midwives, women's health gender related including childbirth and neonatal care;~~

~~8~~7. Other foci that have been recognized by the Board previously and new foci that meet the following conditions:

a. There is an accredited educational program and a national certifying process that meets the requirements of subsection (C); and

b. The focus is broad enough for an educational program to be developed that prepares a registered nurse to function both within the scope of practice of the role and population focus.

C. Certified Nurse Midwives shall practice within a population focus consistent with their education, specifically women's health gender-related care, including childbirth and neonatal care.

~~C~~D. The Board shall accept advanced practice certifications from programs that meet the following qualifications:

1. The certification program:

a. Is accredited by the National Commission for Certifying Agencies, the Accreditation Board for Specialty Nursing Certification, or an equivalent organization as determined by the Board;

b. Establishes educational requirements for certification that are consistent with the requirements in R4-19-505;

c. Has an application process and credential review that requires an applicant to submit original source documentation of the applicant's education and clinical practice in the advanced practice role and population focus, if applicable, for which certification is granted; and

d. Is national in the scope of its credentialing.

2. The certification program uses an examination as a basis for certification in the advanced practice role and population focus, as applicable that meets all of the following criteria:

a. The examination is based upon job analysis studies conducted using standard methodologies acceptable to the testing community both initially and every five years;

b. The examination assesses entry-level practice in the advanced practice role and population focus, if applicable;

c. The examination assesses the knowledge, skills, and abilities essential for the delivery of safe and effective advanced nursing care to clients;

d. Examination items are reviewed for content validity, cultural sensitivity, and correct scoring using an established mechanism, both before first use and periodically; items are reviewed for currency at least every three years;

e. The examination is evaluated for psychometric performance and conforms to psychometric standards that are routinely utilized for other types of high-stakes testing;

f. The passing standard is established using accepted psychometric methods and is re-evaluated periodically;

g. Examination security is maintained through established procedures;

h. A re-take policy is in place; and

i. Conditions for taking the certification examination are consistent with standards of the testing community;

3. Certification is issued upon passing the examination and meeting all other certification requirements;

4. The certification program periodically provides for re-certification that includes review of qualifications and continued competence;

5. The certification program provides timely communication to the Board regarding licensee or applicant certification status, changes in an individual's certification status, exam results and changes in the certification program, including qualifications, test plan, and scope of practice; and

6. The certification program has an evaluation process to provide quality assurance in its certificate program.

~~D~~E. The Board shall determine whether a certification program meets the requirements of this Section. The following certification programs meet the requirements of this Section as of the effective date of this rulemaking:

1. For RNP, and CNM (consistent with R4-19-501(C and D)):

a. American Academy of Nurse Practitioner certification programs;

i. Adult nurse practitioner,

ii. Family nurse practitioner,

iii. Gerontologic nurse practitioner,

iv. Adult health-gerontological nurse practitioner.

b. American Nurses Credentialing Center certification programs:

i. Acute care nurse practitioner (adult/gerontology),

ii. Adult nurse practitioner,

iii. Family nurse practitioner,

iv. Gerontological nurse practitioner,

v. Pediatric nurse practitioner,

vi. Adult psychiatric and mental health nurse practitioner,

vii. Family psychiatric and mental health nurse practitioner,

viii. Adult health-gerontological nurse practitioner,

c. Pediatric Nursing Certification Board certification programs:

i. Pediatric nurse practitioner primary care,

ii. Pediatric nurse practitioner acute care,

d. National Certification Corporation for Obstetric, Gynecological, and Neonatal Nursing Specialties certification programs;

i. Women's health nurse practitioner,

ii. Neonatal nurse practitioner,

e. For a nurse-midwife, the American Midwifery Certification Board certification program in nurse midwifery,

f. AACN Certification Corporation certification programs:

i. Adult acute care nurse practitioner,

ii. Adult-gerontology acute care nurse practitioner,

2. For CNS:

a. AACN Certification Corporation certification programs:

i. Adult acute and critical care CNS,

ii. Pediatric acute and critical care CNS,

iii. Neonatal acute and critical care CNS,

b. American Nurses Credentialing Center certification:

i. Adult psychiatric-mental health CNS,

ii. Family psychiatric-mental health CNS,

iii. Gerontological CNS,

iv. Adult health CNS,

v. Pediatric CNS.

3. For CRNA, the National Board of Certification and Recertification for Nurse Anesthetists.

~~E~~**F.** The Board shall approve a certification program that meets the criteria established in this Section. An entity that seeks approval of a certification program and is denied approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

R4-19-502. Requirements for APRN Programs

A. An educational institution or other entity that offers an APRN program in this state for RNP, CNM, or CNS roles shall ensure that the program:

1. Is offered by or affiliated with a college or university that is accredited under A.R.S. § 32-1644;
2. For new programs, the college or university offering the program has at least one additional nationally accredited nursing program as defined in R4-19-101 or otherwise provides substantial evidence of the ability to attain national APRN program accreditation for all graduating cohorts;
3. Is a formal educational program, that is part of a masters or doctoral program or a post-masters program in nursing with a concentration in an advanced practice registered nursing role and population focus under R4-19-501;
4. Is nationally accredited, or has achieved candidacy status for national accreditation by an approved national nursing accrediting agency as defined in R4-19-101;
5. Offers a curriculum that covers the scope of practice for both the role of advanced practice as specified in A.R.S. § 32-1601 and the population focus including;
   a. Three separate graduate level courses in:
      i. Advanced physiology and pathophysiology, including general principles across the lifespan;
      ii. Advanced health assessment, which includes assessment of all human systems, advanced assessment techniques, concepts and approaches;
      iii. Advanced pharmacology, which includes pharmacodynamics, pharmacokinetics and pharmacotherapeutics of all broad category agents;
   b. Diagnosis and management of diseases across practice settings including diseases representative of all systems;
   c. Preparation that provides a basic understanding of the principles for decision making in the identified role;
   d. Preparation in the core competencies for the identified APRN role including legal, ethical and professional responsibilities; and
   e. Role preparation in an identified population focus under R4-19-501.
6. Verifies that each student has an unencumbered license to practice as an RN in the state of clinical practice;
7. Includes a minimum of 500 hours of faculty supervised clinical practice (programs that prepare students for more than one role or population focus shall have 500 hours of clinical practice in each role and population focus);
8. Notifies the Board of any changes in hours of clinical practice, accreditation status, denial or deferral of accreditation or program administrator and responds to Board requests for information;
9. Has financial resources sufficient to support accreditation standards and the educational goals of the program;
10. Establishes academic, professional, and conduct standards that determine admission to the program, progression in the program, and graduation from the program that are consistent with sound educational practices and recognized standards of professional conduct;
11. Establishes provisions for advanced placement for individuals holding a graduate degree in nursing who are seeking education in an APRN role and population focus, provided that advanced placement students master the same APRN competencies as students in the graduate-level APRN program; and
12. Provides the Board an application for approval under the provisions of R4-19-209(B) before making changes to the:
    a. Scope of the program, or
    b. Level of educational preparation provided.

B. A CNS, CNM, or RNP program shall appoint the following personnel:

1. An APRN program administrator who:
   a. Holds a current unencumbered RN license or multi-state privilege to practice in Arizona and a current unencumbered APRN certificate issued by the Board;
   b. Holds an earned doctorate in nursing or health-related field if appointed after the effective date of this Section;
   c. Has at least two years clinical experience as an APRN; and
   d. Holds current national certification as an APRN.
2. A lead faculty member who is educated and certified both nationally and by the Board in the same role and population focus to coordinate the educational component for the role and population focus in the advanced practice registered nursing program.
3. Nursing faculty to teach any APRN course that includes a clinical learning experience who have the following qualifications:
   a. A current unencumbered RN license or multi-state privilege to practice registered nursing in Arizona;
   b. A current unencumbered Arizona APRN certificate,
   c. A graduate degree in nursing or a health related field in the population focus,
   d. Two years of APRN clinical experience, and
   e. Current knowledge, competence and certification as an APRN in the role and population focus consistent with teaching responsibilities.
4. Adjunct or part-time clinical faculty employed solely to supervise clinical nursing experiences shall meet all of the faculty qualifications for the APRN program they are teaching.
5. Interdisciplinary faculty who teach non-clinical courses shall have advanced preparation in the areas of course content.
6. Clinical preceptors may be used to enhance faculty-directed clinical learning experiences, but not to replace faculty. A clinical preceptor shall be approved by program administration or faculty and:
   a. Hold a current unencumbered license or multistate privilege to practice as a registered nurse or physician in the state in which the preceptor practices or, if employed by the federal government, holds a current unencumbered RN or physician license in the United States;
   b. Have at least one year clinical experience as a physician or an advanced practice nurse
   c. Practice in a population focus comparable to that of the APRN program;
   d. For nurse preceptors, have at least one of the following:
      i. Current national certification in the advanced practice role and population focus of the course or program in which the student is enrolled;
      ii. Current Board certification in the advanced practice role and population focus of the course or program in which the student is enrolled; or
      iii. If an advanced practice preceptor cannot be found who meets the requirements of subsection (B)(6)(d)(i) or (ii),

educational and experiential qualifications that will enable the preceptor to precept students in the program, as determined by the nursing program and approved by the Board.

C. An entity that offers a CRNA program in Arizona shall maintain full national program accreditation with no limitations from the Council on Accreditation of Nurse Anesthesia Educational Programs or an equivalent agency approved by the Board. The program shall notify the Board of all program accreditation actions within 30 days of official notification by the accrediting agency.

R4-19-503. Application for Approval of an Advanced Practice Registered Nursing Program; Approval by Board; Provisional Approval by Executive Director

A. An administrator of an educational institution that proposes to offer a CNS, CNM, or RNP program shall submit an application that includes all of the following information to the Board:

1. Role, population focus that meets the criteria in R4-19-501 program administrator and lead faculty member as required in R4-19-502(B);
2. Name, address, and evidence verifying institutional accreditation status of the affiliated educational institution and program accreditation status of current nursing programs offered by the educational institution;
3. The mission, goals, and objectives of the program consistent with generally accepted standards for advanced practice education in the role and population focus of the program;
4. List of the required courses, and a description, measurable objectives, and content outline for each required course consistent with curricular requirements in R4-19-502;
5. A proposed time schedule for implementation of the program and attaining national accreditation;
6. The total hours allotted for both didactic instruction and supervised clinical practicum in the program;
7. A program proposal that provides evidence of sufficient financial resources, clinical opportunities and available faculty and preceptors for the proposed enrollment and planned expansion;
8. A self-study that provides evidence of compliance with R4-19-502;

B. An entity that wishes to offer a CRNA program shall submit evidence of current accreditation by the Council on Accreditation of Nurse Anesthesia Education Programs or an equivalent organization.

C. The Board shall approve an advanced practice registered nursing program if approval is in the best interest of the public and the program meets the requirements of this Article. The Board may grant approval for a period of two years or less to an advanced practice nursing program where the program meets all the requirements of this Article except for accreditation by a national nursing accrediting agency, based on the program's presentation of evidence that it has applied for accreditation and meets accreditation standards.

D. An educational institution or entity that is denied approval of an advanced practice registered nursing program may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying its application for approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

E. Approval of an advanced practice registered nursing program expires 12 months from the date of approval if a class of students is not admitted within that time.

F. An advanced practice registered nursing program that has submitted an application pursuant to this Section that meets the threshold requirements of the Nurse Practice Act, may receive a 90 day provisional approval from the Board, through Executive Director's delegated authority, prior to application review by the Board, as described in this Section. A program denied provisional approval may request a hearing, as described in subsection D of this Section.

R4-19-504. Notice of Deficiency; Unprofessional APRN Program Conduct

A. The Board may periodically survey an advanced practice registered nursing program under its jurisdiction to determine whether criteria for approval are being met.

B. The Board shall, upon determining that an advanced practice registered nursing program is not in compliance with this Article, provide to the program administrator a written notice of deficiencies that establishes a reasonable time, based upon the number and severity of deficiencies, to correct the deficiencies. The time for correction may not exceed 18 months.

1. The program administrator shall, within 30 days from the date of service of the notice of deficiencies, consult with the Board or designated Board representative and, after consultation, file a plan to correct each of the identified deficiencies.
2. The program administrator may, within 30 days from the date of service of the notice of deficiencies, submit a written request for a hearing before the Board to appeal the Board's determination of deficiencies. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
3. If the Board's determination is not appealed or is upheld upon appeal, the Board may conduct periodic evaluations of the program during the time of correction to determine whether the deficiencies have been corrected.

C. The Board shall, following a Board-conducted survey and report, rescind the approval or limit the ability of a program to admit students if the program fails to comply with R4-19-502 within the time set by the Board in the notice of deficiencies provided to the program administrator.

1. The Board shall serve the program administrator with a written notice of proposed rescission of approval or limitation of admission of students that states the grounds for the rescission or limitation. The program administrator has 30 days to submit a written request for a hearing to show cause why approval should not be rescinded or admissions limited. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
2. Upon the effective date of a decision to rescind program approval, the affected advanced practice registered nursing program shall immediately cease operation and be removed from the official approved-status listing. An advanced practice registered nursing program that is ordered to cease operations shall assist currently enrolled students to transfer to an approved nursing program.

D. A disciplinary action, denial of approval, or notice of deficiency may be issued against an RNP or CNS nursing program for any of the following acts of unprofessional conduct:

1. Failure to maintain minimum standards of acceptable and prevailing educational practice;
2. For a program that was served with a notice of deficiencies within the preceding three years and timely corrected the noticed deficiencies, subsequent noncompliance with the standards in this Article;
3. Utilization of students to meet staffing needs in health care facilities;
4. Non-compliance with the program or parent institution mission or goals, program design, objectives, or policies;
5. Failure to provide the variety and number of clinical learning opportunities necessary for students to achieve program outcomes or minimal competence;
6. Student enrollments without adequate faculty, facilities, or clinical experiences;
7. Ongoing or repetitive employment of unqualified faculty;
8. Failure to comply with Board requirements within designated time-frames;
9. Fraud or deceit in advertising, promoting or implementing a nursing program;

10. Material misrepresentation of fact by the program in any advertisement, application or information submitted to the Board;
11. Failure to allow Board staff to visit the program or conduct an investigation;
12. Any other evidence that gives the Board reasonable cause to believe the program's conduct may be a threat to the safety and well-being of students, faculty or potential patients.

R4-19-505. Requirements for Initial APRN Certification

A. An applicant for certification as an advanced practice registered nurse, shall:

1. Hold a current Arizona registered nurse (RN) license in good standing or an RN license in good standing from a compact party state with multistate privileges, and not be a participant in an alternative to discipline program in any jurisdiction; and
2. Submit a verified application to the Board on a form provided by the Board that provides all of the following:
   a. Full legal name and all former names used by the applicant;
   b. Current ~~mailing~~ address of record, including primary state of residence and telephone number;
   c. Place and date of birth:
   d. RN license number, application for RN license, or copy of a multistate compact RN license;
   e. Social security number for an applicant who lives or works in the United States;
   f. Current e-mail address;
   g. Educational background, including the name and location of basic nursing program, the institution that awarded the highest degree held and any and all advanced practice registered nursing education programs or schools attended including the number of years attended, the length of each program, the date of graduation or completion, and the type of degree or certificate awarded;
   h. Role and population focus, as applicable for which the applicant is applying;
   i. Current employer or practice setting, including address, position, and dates of service, if employed or practicing in nursing or health care;
   j. Evidence of national certification or recertification as an advanced practice registered nurse in the role and population focus, if applicable, of the application and by a certification program that meets the requirements of R4-19-501(C). The applicant shall include the name of the certifying organization, population focus, certification number, date of certification, and expiration date;
   k. For applicants holding a multistate compact RN license in a state other than Arizona:
      i. State of original licensure and license number;
      ii. State of current compact RN license, license number and expiration date;
      iii. Date of taking RN licensure exam and name of exam;
      iv. Whether the applicant ever submitted an application for and was granted an Arizona license and, if applicable, the date of Arizona licensure;
      v. Other information related to the nurse's practice for the purpose of collecting nursing workforce data; and
      vi. State of licensure and license number of all RN licenses held,
   l. Responses regarding the applicant's background on the following subjects:
      i. Current investigation or pending disciplinary action by a nursing regulatory agency in the United States or its territories;
      ii. Undesignated offense and felony charges, convictions and plea agreements including deferred prosecution;
      iii. Misdemeanor charges, convictions, and plea agreements, including deferred prosecution, that are required to be reported under A.R.S. § 32-3208;
      iv. Actions taken on a nursing license by any other state;
      v. Unprofessional conduct as defined in A.R.S. § 32-1601;
      vi. Substance use disorder within the last five years;
      vii. Current participation in an alternative to discipline program in any other state; and
   m. Information that the applicant meets the criteria in R4-19-506(A) or (C).
3. Submit a fingerprint card on a form provided by the Board or prints if the applicant has not submitted fingerprints to the Board within the last two years.
4. Submit an official transcript from an institution accredited under A.R.S. § 32-1644 either sent directly from the institution or obtained from a Board-approved database that provides evidence of:
   a. A graduate degree with a major in nursing for RNP, CNM, and CNS Applicants, or
   b. A graduate degree associated with a CRNA program for a CRNA applicant.
5. The applicant shall cause the program to provide the Board with evidence of completion of an APRN program in the role and population focus of the application through submission of an official letter or other official program document sent either directly from the program, or from a Board-approved data base. The APRN program shall meet one of the following criteria during the period of the applicant's attendance in the program:
   a. The program was part of a graduate degree, or post-masters program at an institution accredited under A.R.S. § 32-1644; or
   b. The program was approved or recognized in the U.S jurisdiction of program location for the purpose granting APRN licensure or certification.
6. For an applicant who completed an advanced practice or graduate program in a foreign jurisdiction, submit an evaluation from the Commission on Graduates of Foreign Nursing Schools or a Board-approved credential evaluation service that indicates the applicant's program is comparable to a U.S. graduate nursing or APRN program.
7. Submit the required fee.

B. If the applicant satisfies all other requirements, the Board shall continue to certify:

1. An RNP or CNM without a graduate degree with a major in nursing if the applicant:
   a. Meets all other requirements for certification; and
   b. Ensures that the U.S. jurisdiction of an applicant's previous RNP or CNM licensure or certification submits evidence of the applicant's certification or licensure in the nurse practitioner role and population focus that either is current or was current at least six months before the application was received by the Board, and was originally issued:
      i. Before January 1, 2001, if the RNP or CNM applicant lacks a graduate degree; or
      ii. Before November 13, 2005 if the RNP's or CNM's graduate degree is in a health-related area other than nursing.
2. An RNP, CNM, or CNS applicant without evidence of national certification who received initial advanced practice certification or licensure in another state not later than July 1, 2004 and provides evidence, directly from the jurisdiction, that the certification or licensure is current.
3. A CNS applicant without evidence of completion of a CNS program who received initial certification or advanced practice licensure in this or another state not later than November 13, 2005 and provides evidence, directly from the jurisdiction, that the certificate or license is current.
4. A CRNA who completed a CRNA program before the effective date of this Section without evidence of a graduate degree.

5. A CNS applicant who completed a women's health clinical nurse specialist program that was part of a graduate degree in nursing program under subsection (A), without evidence of national certification upon submission of the following:
   a. A description of the applicant's scope of practice that is consistent with A.R.S. § 32-1601(7);
   b. One of the following:
      i. A letter from a faculty member who supervised the applicant during the graduate program attesting to the applicant's competence to practice within the defined scope of practice;
      ii. A letter from a current supervisor verifying the applicant's competence in the defined scope of practice; or
      iii. A letter from a physician, RNP, CNM, or CNS who has worked with the applicant within the past two years attesting to the applicant's competence in the defined scope of practice; and
   c. A form verifying that the applicant has practiced a minimum of 500 hours in the population focus within the past two years, which may include clinical practice time in a CNS program.

C. The Board shall issue a certificate to practice as an RNP, CNM, or CNS in a population focus, ~~a CNS in a population focus,~~ or as a registered nurse anesthetist, to a registered nurse who meets the criteria in this Section. An applicant who is denied a certificate may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

R4-19-506. Expiration of APRN Certificate; Practice Requirement; Renewal

A. An advanced practice certificate issued after July 1, 2004, expires when the certificate holder's RN license expires, or when national certification expires, whichever occurs first. Certificates issued on or before July 1, 2004, or those issued without proof of national certification under R4-19-505(B)(5) and (B)(2) do not expire unless the RN license expires under A.R.S. § 32-1642 or the nurse has not practiced advanced practice nursing at the applicable level of certification for a minimum of 960 hours in the five years before the date the application is received. This requirement is satisfied if the applicant verifies that the applicant has:
1. Completed an advanced practice nursing education program within the past five years; or
2. Practiced for a minimum of 960 hours within the past five years where the nurse:
   a. Worked for compensation or as a volunteer, as an APRN and performed one or more acts under A.R.S. § 32-1601(7) for a CNS, A.R.S. § 32-1601(20) for an RNP, A.R.S. § 32-1601(5) for a CNM, or A.R.S. § 32-1634.04 for a CRNA; or
   b. Held a position for compensation or as a volunteer that required, preferred or recommended, in the job description, the level of advanced practice certification being sought or renewed.

B. A registered nurse requesting renewal of an ~~advanced practice certificate or an RNP~~ APRN certificate issued after July 1, 2004 shall provide evidence of current national certification or recertification under R4-19-505(A)(2)(j). This provision does not apply to a CNS granted a waiver of certification.

C. An ~~advanced practice nurse~~ APRN who does not satisfy the practice requirement of subsection (A) shall complete coursework or continuing education activities at the graduate or advanced practice level that include, at minimum, 45 contact hours of advanced pharmacology and 45 contact hours in a subject or subjects related to the role and population focus of certification. Upon completion of the coursework, the nurse shall engage in a period of precepted clinical practice as specified in this subsection;
1. Precepted clinical practice shall be directly supervised by an ~~advanced practice nurse~~ APRN in the same role and population focus as the certification being renewed or a physician who engages in practice with the same population focus as the certification being renewed.
2. Practice hours completed during the time-frame specified below may be applied to reduce the number of precepted clinical practice hours, except that in no case shall the hours be reduced by more than half the requirement. The nurse shall complete hours according to the following schedule:
   a. 300 hours if the applicant has practiced less than 960 hours in only the last five years;
   b. 600 hours if the applicant has not practiced 960 hours in the last five years, but has practiced at least 960 hours in the last six years;
   c. 1000 hours if the applicant has not practiced at least 960 hours in the last six years, but has practiced 960 hours in the last seven to 10 years; or
   d. If the nurse has not practiced 960 hours of advanced practice nursing in the role and population focus being renewed in more than 10 years, complete a program of study as recommended by an approved advanced practice nursing program that includes, at minimum, 500 hours of faculty supervised clinical practice in the role and population focus of certification. An applicant who qualifies for any option in subsection (C)(2)(a) through (c) may complete the requirements of this subsection to satisfy the practice requirement.

D. An applicant who, in addition to not meeting the requirements for continued APRN certification, does not meet the requirements for RN renewal, shall fulfill all RN renewal requirements before satisfying the requirements of this Section.

E. The Board shall renew a certificate to practice as a registered nurse practitioner in a population focus, a clinical nurse specialist in a population focus, or a registered nurse anesthetist for a registered nurse who meets the criteria in this Section. An applicant who is denied renewal of a certificate may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying renewal of certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

R4-19-507. Temporary Advanced Practice Certificate; Temporary Prescribing and Dispensing Authority

A. Based on the registered nurse's qualifications, the Board may issue a temporary certificate to practice as a ~~registered nurse practitioner~~ RNP, CNM, or a ~~clinical nurse specialist~~ CNS in a population focus or a registered nurse anesthetist. A registered nurse who is applying for a temporary certificate shall:
1. Apply for certification as an ~~advanced practice nurse~~ APRN;
2. Submit an application for a temporary certificate;
3. Demonstrate authorization to practice as a registered nurse in Arizona on either a permanent or temporary Arizona license in good standing or a multistate compact privilege;
4. Meet all requirements of R4-19-505 or meet the requirements of R4-19-505 with the exception of national certification for RNP, CNM, and CNS applicants unless exempt under R4-19-505(B); and
5. Submit evidence that the applicant:
   a. Has applied for and is eligible to take an approved national advanced practice certification exam in the role and population focus of the application;
   b. Has requested that the certification program transmit all exam results directly to the Board; or
   c. For a CRNA, holds national certification according to R4-19-501.

B. If an applicant fails to meet criteria for national advanced practice certification or has failed a certification exam, the applicant is not eligible for a temporary certificate.

C. The Board may issue temporary prescribing and dispensing authority for RNP, CNM, or CNS applicants, if the applicant:
1. Meets all application requirements for temporary certification in this Section,
2. Applies for and meets all requirements for prescribing and dispensing authority under R4-19-511,
3. Has been certified or licensed as ~~a nurse practitioner or nurse midwife~~ an RNP, CNM, or CNS with prescribing and dispensing authority in the same role and population focus in another state or territory of the United States,
4. Either holds current national certification as ~~a registered nurse practitioner or nurse midwife~~ an RNP, CNM, or CNS in the population focus of the application or is exempt from national certification under R4-19-505(B), and
5. Meets the practice requirement of R4-19-506(A)(2).

D. Temporary certification as an ~~advanced practice nurse~~ APRN and temporary prescribing and dispensing authority expire in six months and may be renewed for an additional six months for good cause. Good cause means reasons beyond the control of the temporary certificate holder such as unavoidable delays in obtaining information required for certification.

E. Notwithstanding subsection (D), the Board shall withdraw a temporary ~~advanced practice~~ APRN certificate and temporary prescribing and dispensing authority under any one of the following conditions. The temporary certificate holder:
1. Does not meet requirements for RN licensure in this state or the RN license is suspended or revoked,
2. Fails to renew the RN license upon expiration,
3. Loses the multistate compact privilege,
4. Fails the national certifying examination, fails to maintain current national certification, as required by R4-19-505, or
5. Violates a statute or rule of the Board.

F. An applicant who is denied a temporary certificate or temporary prescribing and dispensing authority may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the temporary certification or authority. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

R4-19-508. Standards Related to ~~Registered Nurse Practitioner~~ RNP, CNM, and CNS Scope of Practice

A. An RNP, CNM, or CNS shall refer a patient to a physician or another health care provider if the referral will protect the health and welfare of the patient and consult with a physician and other health care providers if a situation or condition occurs in a patient that is beyond the RNP's, CNM's, or CNS's knowledge and experience.

B. In addition to the scope of practice permitted a registered nurse, ~~a registered nurse practitioner~~ the additional certification of an RNP, CNM, and CNS, ~~under~~ pursuant to A.R.S. §§ 32-1601 (5), (9), and (20), as applicable, and 32-1606(B)(12), ~~may~~ permits the RNP, CNM, and CNS to perform the following acts within the limits of the population focus of certification:
1. Examine a patient and establish a medical diagnosis by client history, physical examination, and other criteria.
2. For a patient who requires the services of a health care facility:
   a. Admit the patient to the facility,
   b. Manage the care the patient receives in the facility, and
   c. Discharge the patient from the facility.
3. Order and interpret laboratory, radiographic, and other diagnostic tests, and perform those tests that the RNP, CNM, or CNS is qualified to perform.
4. Prescribe, order, administer and dispense therapeutic measures including pharmacologic agents and devices if authorized under R4-19-511, and non-pharmacological interventions including, but not limited to, durable medical equipment, nutrition, home health care, hospice, physical therapy and occupational therapy. (For the CNS, all prescribing is restricted pursuant to A.R.S. § 32-1651.)
5. Identify, develop, implement, and evaluate a plan of care for a patient to promote, maintain, and restore health.
6. Perform therapeutic procedures that the RNP, CNM, or CNS is qualified to perform.
7. Delegate therapeutic measures to qualified assistive personnel including medical assistants under R4-19-509.
8. Perform additional acts that the RNP, CNM, or CNS is qualified to perform and that are generally recognized as being within the role and population focus of certification.

C. An RNP, CNM, or CNS shall only provide health care services including prescribing and dispensing within the RNP's, CNM's, or CNS's population focus and role and for which the RNP, CNM, or CNS is educationally prepared and for which competency has been established and maintained. Educational preparation means academic coursework or continuing education activities that include both theory and supervised clinical practice.

R4-19-511. Prescribing and Dispensing Authority; Prohibited Acts

A. The Board shall authorize ~~a registered nurse practitioner (RNP)~~ an RNP, CNM, or CNS to prescribe and dispense (P&D) drugs and devices within the RNP's, CNM's, or CNS's population focus only if the RNP, CNM, or CNS does all of the following:
1. Obtains authorization by the Board to practice as an RNP, CNM, or CNS;
2. Applies for prescribing and dispensing privileges on the application for RNP, CNM, or CNS certification;
3. Submits a completed verified application on a form provided by the Board that contains all of the following information:
   a. Name, address, e-mail address and home telephone number;
   b. Arizona registered nurse license number, or copy of compact license;
   c. RNP, CNM, or CNS population focus;
   d. RNP, CNM, or CNS certification number issued by the Board; and
   e. Business address and telephone number;
4. Submits evidence of a minimum of 45 contact hours of education within the three years immediately preceding the application, covering one or both of the following topics consistent with the population focus of education and certification:
   a. Pharmacology, or
   b. Clinical management of drug therapy, and
5. Submits the required fee.

B. An applicant who is denied P & D authority may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the P & D authority. Board hearings shall comply with A.R.S. Title 41, Chapter 6, Article 10, and 4 A.A.C. 19, Article 6, of this Chapter.

C. An RNP, CNM, or CNS shall not prescribe or dispense drugs or devices without Board authority or in a manner inconsistent with law. The Board may impose an administrative or civil penalty for each violation, suspend the RNP's, CNM's, or CNS's P & D authority, or impose other sanctions under A.R.S. § 32-1606(C). In determining the appropriate sanction, the Board shall consider factors such as the number of violations, the severity of each violation, and the potential for or existence of patient harm.

D. In addition to acts listed under R4-19-403, for an RNP, CNM, or CNS who prescribes or dispenses a drug or device, a practice that is or might be harmful to the health of a patient or the public, includes one or more of the following:

1. Prescribing a controlled substance to oneself, a member of the RNP's, CNM's, or CNS's family or any other person with whom the RNP, CNM, or CNS has a relationship that may affect the RNP's, CNM's, or CNS's ability to use independent, objective and sound judgment when prescribing;
2. Providing any controlled substance or prescription-only drug or device for other than accepted therapeutic purposes;
3. Delegating the prescribing and dispensing of drugs or devices to any other person;
4. Prescribing for a patient that is not in the RNP's, CNM's, or CNS's population focus of education and certification except as authorized in subsection (D)(5)(d); and
5. Prescribing, dispensing, or furnishing a prescription drug or a prescription-only device to a person unless the RNP, CNM, or CNS has examined the person and established a professional relationship, except when ~~the RNP is~~ engaging in one or more of the following:
   a. Providing temporary patient care on behalf of the patient's regular treating and licensed health care professional;
   b. Providing care in an emergency medical situation where immediate medical care or hospitalization is required by a person for the preservation or health, life, or limb;
   c. Furnishing a prescription drug to prepare a patient for a medical examination; or
   d. Prescribing antimicrobials to a person who is believed to be at substantial risk as a contact of a patient who has been examined and diagnosed with a communicable disease by the prescribing RNP, CNM, or CNS even if the contact is not in the population focus of the RNP's, CNM's, or CNS's certification.
6. Prescribing or dispensing any controlled substance or prescription-only drug or device in a manner that is inconsistent with other state or federal requirements.

E. An RNP, CNM, or CNS shall not dispense a Schedule II Controlled Substance that is an opioid, except for an opioid that is for medication assisted treatment for substance use disorders.

F. A CNS's prescribing is additionally limited pursuant to A.R.S. § 32-1651.

G. A CRNA may apply for and obtain a prescribing-only certificate upon successful completion of all application requirements that are applicable to prescribing, as listed for other APRNs, and follow the same prescribing restrictions and administrative processes, as described in subsections A-D, above; and consistent with A.R.S. § 32-1634.04, and all other applicable laws.

R4-19-512. Prescribing Drugs and Devices

A. An RNP, CNM, or CNS granted P & D authority by the Board may, within restrictions provided by law and applicable to each certificate:
1. Prescribe drugs and devices;
2. Provide for refill of prescription-only drugs and devices for one year from the date of the prescription.

B. An RNP, CNM, or CNS with P & D authority who wishes to prescribe a controlled substance shall obtain a DEA registration number before prescribing a controlled substance~~.~~ ~~The RNP~~ and shall file the DEA registration number with the Board.

C. An RNP, CNM, or CNS with a DEA registration number may prescribe, but may not exceed the limitations of each certification:
1. A Schedule II controlled substance as defined in the federal Controlled Substances Act, 21 U.S.C. § 801 et seq., or Arizona's Uniform Controlled Substances Act, A.R.S. Title 36, Chapter 27, but shall not prescribe refills of the prescription, and shall follow all other restrictions provided by law;
2. A Schedule III or IV controlled substance, as defined in the federal Controlled Substances Act or Arizona's Uniform Controlled Substances Act, and may prescribe a maximum of five refills in six months; and
3. A Schedule V controlled substance, as defined in the federal Controlled Substances Act or Arizona's Uniform Controlled Substances Act, and may prescribe refills for a maximum of one year.

D. An RNP, CNM, or CNS whose DEA registration is revoked or expires shall not prescribe controlled substances. An RNP, CNM, or CNS whose DEA registration is revoked or limited shall report the action to the Board within 10 days of the revocation or limitation.

E. In all outpatient settings or at the time of hospital discharge, an RNP, CNM, or CNS with P & D authority, who prescribed medication to a patient, shall personally provide ~~a~~ the patient or the patient's representative with the name of the drug, directions for use, and any special instructions, precautions, or storage requirements necessary for safe and effective use of the drug if any of the following occurs:
1. A new drug is prescribed or there is a change in the dose, form, or direction for use in a previously prescribed drug;
2. In the RNP's, CNM's, or CNS's professional judgment, these instructions are warranted; or
3. The patient or patient's representative requests instruction.

F. An RNP, CNM, or CNS with P & D authority shall ensure that all prescription orders contain the following:
1. The RNP's, CNM's, or CNS's name, address, telephone number, and population focus;
2. The prescription date;
3. The name of the patient and either the address of the patient or a blank for the address if the prescription is not being dispensed by the RNP, CNM, or CNS;
4. The full name of the drug, strength, dosage form, and directions for use;
5. The letters "DAW", "dispense as written", "do not substitute", "medically necessary" or any similar statement on the face of the prescription form if intending to prevent substitution of the drug;
6. The RNP's, CNM's, or CNS's DEA registration number, if applicable; and
7. The RNP's, CNM's, or CNS's signature.

R4-19-513. Dispensing Drugs and Devices

A. ~~A registered nurse practitioner (RNP)~~ An RNP, CNM, or CNS granted prescribing and dispensing authority by the Board may, within restrictions provided by law and applicable to each certificate:
1. Dispense drugs and devices to patients;
2. Dispense samples of drugs packaged for individual use without a prescription order or additional labeling;
3. Only dispense drugs and devices obtained directly from a pharmacy, manufacturer, wholesaler, or distributor; and
4. Allow other personnel to assist in the delivery of medications provided that the RNP, CNM, or CNS retains responsibility and accountability for the dispensing process.

B. If dispensing a drug or device, an RNP, CNM, or CNS with dispensing authority shall:
1. Ensure that the patient has a written prescription that complies with R4-19-512(F) and contains the address of the patient and inform the patient that the prescription may be filled by the prescribing RNP, CNM, or CNS or by a pharmacy of the patient's choice;
2. Affix a prescription number to each prescription that is dispensed;
3. Ensure that all original prescriptions are preserved for a minimum of seven years and make the original prescriptions available at all times for inspection by the Board of Nursing, Board of Pharmacy, and law enforcement officers in performance of

their duties; and

4. Report the dispensing of controlled substances to the Board of Pharmacy's Controlled Substance Prescription Monitoring Program ~~as required in~~ pursuant to A.R.S. § 36-2608.

C. An RNP, CNM, or CNS practicing in a public health facility operated by this state or a county or in a qualifying community health center under A.R.S. § 32-1921(D) and (F) may dispense drugs or devices to patients without a written prescription if the public health facility or the qualifying community health center adheres to all storage, labeling, safety, and recordkeeping rules of the Board of Pharmacy.

D. An RNP, CNM, or CNS who dispenses a drug shall ensure that a label is affixed that contains all of the following information:

1. Dispensing RNP's, CNM's, or CNS's name and population focus;
2. Address and telephone number of the location from which the drug is dispensed;
3. Date dispensed;
4. Patient's name and address;
5. Name and strength of the drug, quantity in the container, directions for use, and any cautionary statements necessary for the safe and effective use of the drug;
6. Manufacturer and lot number; and
7. Prescription order number.

E. An RNP, CNM, or CNS who dispenses a drug or device shall ensure that the following information about the drug or device is entered into the patient's medical record:

1. Name of the drug, strength, quantity, directions for use, and number of refills;
2. Date dispensed;
3. Therapeutic reason;
4. Manufacturer and lot number; and
5. Prescription order number.

F. An RNP, CNM, or CNS with dispensing authority shall:

1. Keep all drugs in a locked cabinet or room in an area that is not accessible to patients;
2. If dispensing a controlled substance:
   a. Control access by a written policy that specifies:
      i. Those persons allowed access, and
      ii. Procedures to report immediately the discovery of a shortage or illegal removal of drugs to a local law enforcement agency and provide that agency and the DEA with a written report within seven days of the discovery.
   b. Maintain and make available to the Board upon request an ongoing inventory and record of:
      i. A Schedule II controlled substance, as defined in the federal Controlled Substances Act or Arizona's Uniform Controlled Substances Act, separately from all other records, and a prescription for a Schedule II controlled substance in a separate prescription file; and
      ii. A Schedule III, IV, or V controlled substance, as defined in the federal Controlled Substances Act or Arizona's Uniform Controlled Substances Act, in a form that is readily retrievable from other records.

G. If a prescription order is refilled, an RNP, CNM, or CNS with P & D authority shall record the following information on the back of the prescription order or in the patient's medical record:

1. Date refilled,
2. Quantity dispensed if different from the full amount of the original prescription,
3. RNP's, CNM's, or CNS's name or identifiable initials, and
4. Manufacturer and lot number.

H. Under the supervision of an RNP, CNM, or CNS with P & D authority, other personnel may:

1. Receive and record a prescription refill request from a patient or a patient's representative;
2. Receive and record a verbal refill authorization from the RNP including:
   a. The RNP's, CNM's, or CNS's name;
   b. Date of refill;
   c. Name, directions for use, and quantity of drug; and
   d. Manufacturer and lot number;
3. Prepare and affix a prescription label; and
4. Prepare a drug or device for delivery, provided that the dispensing RNP, CNM, or CNS:
   a. Inspects the drug or device and initials the label before issuing to the patient to ensure compliance with the prescription; and
   b. Ensures that the patient is informed of the name of the drug or device, directions for use, precautions, and storage requirements.

R4-19-514. Standards Related to Clinical Nurse Specialist Scope of Practice

In addition to the functions of a registered nurse, a CNS, ~~under~~ pursuant to A.R.S. § 32-1601(7), may perform one or more of the following for an individual, family, or group within the population focus of certification and for which competency has been maintained:

1. Conduct an advanced assessment, analysis, and evaluation of a patient's complex health needs;
2. Establish primary and differential health status diagnoses;
3. Direct health care as an advanced clinician;
4. Develop, implement, and evaluate a treatment plan according to a patient's need for specialized nursing care;
5. Establish nursing standing orders, algorithms, and practice guidelines related to interventions and specific plans of care;
6. Manage health care according to written protocols;
7. Facilitate system changes on a multidisciplinary level to assist a health care facility and improve patient outcomes cost-effectively;
8. Consult with the public and professionals in health care, business, and industry in the areas of research, case management, education, and administration;
9. Perform psychotherapy if certified as a clinical nurse specialist in psychiatric and mental health nursing;
10. ~~Prescribe and dispense durable medical equipment~~ Prescribe, order, administer, and dispense therapeutic measures including pharmacologic agents and devices if authorized under R4-19-511, and within the limitations of A.R.S. § 32-1651; ~~or~~ and
11. Perform additional acts that the clinical nurse specialist is qualified to perform.

ARTICLE 6. RULES OF PRACTICE AND PROCEDURE

R4-19-604. Notice of Hearing; Response

A. The Board, in consultation with the Office of Administrative Hearings, as necessary shall prepare and serve a written notice of hearing on all parties under A.R.S. § 41-1092.05.

B. In addition to the notice requirements in A.R.S. § 41-1092.05(D), the Board shall include the following in the notice:

1. The full name, address, and license number, if any, of the licensee, certificate holder, program, or applicant;
2. The name, ~~mailing~~ address of record, and telephone number of the Board's executive director or Board designee if the hearing is to be conducted by the Board;
3. A statement that a hearing will proceed without a party's presence if a party fails to attend or participate in the hearing;
4. The names and ~~mailing~~ addresses of record of persons to whom notice is being given, including the Attorney General representing the state at the hearing; and
5. Any other matters relevant to the proceedings.

C. The party named in the notice of hearing shall file a written response under A.R.S. § 32-1664 within 30 days after service of the notice of hearing. The response shall contain:

1. The party's name, address, and telephone number;
2. Whether the party has legal representation and, if so, the name and address of the attorney;
3. A response to the allegations contained in the notice of hearing; and
4. Any other matters relevant to the proceedings.

ARTICLE 8. CERTIFIED AND LICENSED NURSING ASSISTANTS AND CERTIFIED MEDICATION ASSISTANTS

R4-19-804. Initial Approval and Re-Approval of Training Programs

A. An applicant for initial training program approval shall submit an application packet to the Board at least 90 days before the expected starting date of the program. An applicant shall submit application documents ~~that are unbound, typed or word processed, single-sided, and on white, letter-size paper plus one electronic copy of the entire packet. The Board does not accept notebooks, spiral bound documents, manuals or books~~ in an electronic format.

B. The Board may impose disciplinary action including denial on any training program that has advertised, conducted classes, recruited or collected money from potential students before receiving Board approval or after expiration of approval except for completing instruction to students who enrolled before the expiration date.

C. A program applying for initial approval shall include all of the following in their application packet:

1. Name, address, web address, telephone number, e-mail address and fax number of the program;
2. Identity of all program owners or sponsoring institutions;
3. Name, license number, telephone number, e-mail address and qualifications of the program coordinator as required in R4-19-802;
4. Name, license number, telephone number, e-mail address and qualifications of each program instructor including clinical instructors as required in either R4-19-802 for NA programs or R4-19-803 for CMA programs;
5. Name, telephone number, e-mail address and qualifications any person with administrative oversight of the training program, such as an owner, supervisor or director;
6. Accreditation status of the training program, if any, including the name of the accrediting body and date of last review;
7. Name, address, telephone number and contact person, for all health care institutions which will be clinical sites for the program;
8. Medicare certification status of all clinical sites, if any;
9. Evidence of program compliance with this Article including all of the following:
   a. Program description that includes the length of the program, number of hours of clinical, laboratory and classroom instruction, and program goals consistent with federal, state, and if applicable, private postsecondary requirements;
   b. A list and description of classroom facilities, equipment, and instructional tools the program will provide;
   c. Written curriculum and course schedule according to the provisions of this Article;
   d. A copy of the documentation that the program will use to verify student attendance, instructor presence and skills;
   e. Copy of signed, current clinical contracts;
   f. The title, author, name, year of publication, and publisher of all textbooks the program will require students to use;
   g. A copy of course policies and any other materials that demonstrate compliance with this Article and the statutory requirements in Title 32, Chapter 15;
   h. A plan to evaluate the program that meets requirements in R4-19-801(A)(10);
   i. An implementation plan including start date and a description of how the program will provide oversight to ensure all requirements of this Article are met;
   j. A self-assessment checklist of the application contents and their location in the application, on a form provided by the Board; and
   k. Other requirements as requested consistent with R4-19-802 for nursing assistant programs and R4-19-803 for medication assistant programs.

D. Re-approval of Training Programs

1. A training program applying for re-approval shall submit ~~a paper and~~ an electronic application and accompanying materials to the Board before expiration of the current approval. ~~The applicant program shall ensure that all documents submitted are unbound, typed or word processed, single-sided, and on white, letter-size paper. The Board does not accept notebooks, spiral bound documents, manuals or books.~~ A program or site of a consolidated program that did not hold any classes in the previous approval period is not eligible for renewal of approval.
2. The program shall include the following with the renewal application:
   a. A program description and course goals;
   b. Name, license number, and qualifications of current program personnel
   c. A copy of the current curriculum which meets the applicable requirements in either R4-19-802 or R4-19-803;
   d. The dates of each program offering, number of students who have completed the program, and the results of the state-approved written and manual skills tests, including first-time pass rates since the last program review;
   e. A copy of current program policies, consistent with R4-19-801;
   f. Any change in resources, contracts, or clinical facilities since the previous approval or changes that were not previously reported to the Board;
   g. The program evaluation plan with findings regarding required evaluation elements under R4-19-801(A)(10);
   h. The title, author, year of publication, and publisher of the textbook used by the program;
   i. Copies of the redacted records of one program graduate;
   j. The total number of enrolled students and graduates for each year since the last approval;

k. The total number of persons taking the state-approved exam in the past two years; if the number is less than 10, a comprehensive plan to increase program enrollment;
l. A self-assessment checklist of the application contents and their location in the application, on a form provided by the Board; and
m. Other requirements as requested consistent with R4-19-802 for nursing assistant programs and R4-19-803 for medication assistant programs.

E. Upon determination of administrative completeness of either an initial or renewal application, the Board, through its authorized representative, shall schedule and conduct a site visit of a NA program, unless one year only approval is granted on an initial application. The Board may conduct a site visit of a CMA program. Site visits are for the purpose of verifying compliance with this Article. Site visits may be conducted in person or through the use of distance technology.

F. Following an evaluation of the program application and a site visit, if applicable, the Board may approve or renew the approval of the program for two years for a nursing assistant program and up to four years for a medication assistant program, if the program renewal application and site visit findings, as applicable, meet the requirements of this Article, and A.R.S. Title 32, Chapter 15 and renewal is in the best interest of the public. If the program does not meet these requirements, the Board may issue a notice of deficiency under R4-19-805 or take disciplinary action.

G. A program may request an administrative hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for program approval or renewal of approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

H. The owner, operator, administrator or coordinator of a program that is denied approval or renewal of approval shall not be eligible to conduct, own or operate a new or existing program for a period of two years from the date of denial.

R4-19-806. Initial Nursing Assistant Licensure (LNA) and Medication Assistant Certification

A. An applicant for initial licensed nursing assistant (LNA) licensure or CMA certification shall submit the following to the Board:
1. A verified application on a form furnished by the Board that provides the following information about the applicant:
   a. Full legal name and any and all former names used by the applicant;
   b. Current ~~mailing~~ address of record, including county of residence, e-mail address and telephone number;
   c. Place and date of birth;
   d. Social Security number;
   e. Ethnic category and marital status at the applicant's discretion;
   f. Educational background, including the name of the training program attended, and date of graduation and for medication assistant, proof of high school or equivalent education completion as required in A.R.S. § 32-1650-02(A)(4);
   g. Current employer, including address and telephone number, type of position, and dates of employment, if employed in health care;
   h. A list of all states in which the applicant is or has been included on a nursing assistant registry or been licensed or certified as a nursing or medication assistant and the license or certificate number, if any;
   i. For medication assistant, proof of LNA licensure and 960 hours or 6 months full time employment as a CNA or LNA in the past year, as required in A.R.S. § 32-1650.02;
   j. Responses to questions regarding the applicant's background on the following subjects:
      i. Current investigation or pending disciplinary action by a nursing, nursing assistant or medication assistant regulatory agency in the United States or its territories;
      ii. Action taken on a nursing assistant or medication assistant license, certification or registry designation in any other state;
      iii. Felony conviction or conviction of an undesignated or other similar offense and the date of absolute discharge of sentence;
      iv. Unprofessional conduct as defined in A.R.S. § 32-1601;
      v. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
2. Proof of satisfactory completion of a nursing assistant or medication assistant training program that meets the requirements of this Article;
3. Proof of United States citizenship or alien status as specified in A.R.S. § 41-1080;
4. For LNA applicants, one or more fingerprint cards or fingerprints;
5. For CMA applicants, one or more fingerprint cards or fingerprints, as required by A.R.S. § 32-1606(B)(15) if a fingerprint background report has not been received by the Board in the past two years; and
6. Applicable fees under A.R.S. § 32-1643 and R4-19-808.

B. An applicant for licensure as a nursing assistant shall submit a passing score on a Board-approved nursing assistant examination and provide one of the following criteria:
1. Proof that the applicant has completed a Board-approved nursing assistant training program within the past two years:
2. Proof that the applicant has completed a nursing assistant training program approved in another state or territory of the United States consisting of at least 120 hours within the past two years;
3. Proof that the applicant has completed a nursing assistant program approved in another state or territory of the United States of at least 75 hours of instruction in the past two years and proof of working as a nursing assistant for an additional number of hours in the past two years that together with the hours of instruction, equal at least 120 hours;
4. Proof that the applicant either holds a nursing license in good standing in the U.S. or territories, has graduated from an approved nursing program, or otherwise meets educational requirements for a registered or practical nursing license in Arizona;
5. Documentation sent directly from the program that the applicant successfully completed a nursing course or courses as part of an RN or LPN program approved in either this or another state in the last 2 years that included:
   a. Didactic content regarding long-term care clients; and
   b. Forty hours of instructor-supervised direct patient care in a long-term care or comparable facility; or
6. Documentation of a minimum of 100 hours of military health care training, as evidenced by military records, and proof of working in health care within the past 2 years.

C. An applicant for medication assistant shall meet the qualifications of A.R.S. §§ 32-1650.02 and 32-1650.03. An applicant who wishes to use part of a nursing program in lieu of completion of a Board approved medication assistant training program under A.R.S. § 32-1650.02 shall submit the following:
1. An official transcript from a Board approved nursing program showing a grade of C or higher in a 45 hour or 3 semester credit, or equivalent, pharmacology course; and
2. A document signed by both the applicant's clinical instructor and the nursing program administrator verifying that the applicant completed 40 hours of supervised medication administration in a long-term care facility.

D. Certifying Exam

1. A LNA applicant shall take and pass both portions of the certifying exam within 2 years:
   a. Of program completion for graduates of nursing assistant programs approved in Arizona or another state, or
   b. Of the date of the first test for all other applicants.
2. A CMA applicant shall take and pass both portions of the certifying exam within one year:
   a. Of program completion for graduates of Board-approved programs, or
   b. Of the date of the first test for all other applicants.
3. An applicant may re-take the failed portion or portions of a certifying exam, under conditions prescribed in written policy by the exam vendor, until a passing score is achieved or their time expires under subsections (D)(1) or (2).

E. An applicant who does not take or pass an examination within the time period specified in subsection (D) shall enroll in and successfully complete a Board approved training program in the certification category before being permitted to retake an examination.

F. The Board may license a nursing assistant or certify a medication assistant applicant who meets the applicable criteria in this Article and A.R.S. Title 32, Chapter 15 if licensure or certification is in the best interest of the public.

G. An applicant who is denied licensure or certification may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

H. Medication assistant certification expires when nursing assistant licensure expires.

R4-19-809. Nursing Assistant Licensure and Medication Assistant Certificate Renewal

A. An applicant for renewal of a LNA license or a CMA certificate shall:
1. Submit a verified application to the Board on a form furnished by the Board that provides all of the following information about the applicant:
   a. Full legal name, ~~mailing~~ address of record including county of residence, e-mail address and telephone number;
   b. Marital status and ethnicity at the applicant's discretion;
   c. Current health care employer including name, address, telephone number, dates of employment and type of setting;
   d. If the applicant fails to meet the practice requirements in subsections (A)(2) for nursing assistant or (A)(3) for medication assistant renewal, documentation that the applicant has completed a Board-approved training program for the licensure or certification sought and passed both the written and manual skills portions of the competency examination within the past two years;
   e. Responses to questions that address the applicant's background:
      i. Any investigation or disciplinary action by a nursing regulatory agency or nursing assistant regulatory agency in the United States or its territories not previously disclosed by the applicant to the Board;
      ii. Felony conviction or conviction of undesignated offense and date of absolute discharge of sentence since licensed, certified or last renewed, and
      iii. Unprofessional conduct committed by the applicant as defined in A.R.S. § 32-1601 since the time of last renewal and not previously disclosed by the applicant to the Board;
      iv. Any disciplinary action or investigation related to the applicant's nursing or nursing assistant license or medication assistant certificate, nursing assistant certificate or registry listing by any other state regulatory agency since issuance of the license or certificate, or since last renewal and not previously disclosed to the Board.
      v. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
   f. For LNA renewal, employment as a nursing assistant, performing nursing assistant tasks for an employer or the applicant's performance of nursing assistant activities as part of a nursing or allied health program for a minimum of 160 hours every two years since the last license or certificate was issued, or
   g. For CMA renewal, employment as a medication assistant for a minimum of 160 hours within the last 2 years, and
   h. Pay applicable fees pursuant to A.R.S. § 32-1643 and R4-19-808.

B. An applicant's license or certificate expires every two years on the last day of the applicant's birth month. If an applicant fails to timely renew the license or certificate, the applicant shall;
1. Not work or practice as an LNA or CMA until the Board issues a renewal license or certificate; and
2. Pay any late fee imposed by the Board.

C. If an applicant's license or certificate was, or is currently, revoked, surrendered, denied, suspended or placed on probation in another jurisdiction, the applicant is not eligible to renew or reactivate the applicant's Arizona license or certificate until a review or investigation has been completed and a decision made by the Board.

D. The Board may renew an LNA license and CMA certificate of an applicant who meets the criteria established in statute and this Article. An applicant who is denied renewal of a license or certificate may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying renewal of the license or certificate. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

R4-19-815. Reissuance or Subsequent Issuance of a Nursing Assistant License or Medication Assistant Certificate

A. A person whose LNA license or CMA certificate was denied, revoked, or voluntarily surrendered pursuant to A.R.S. § 32-1663 may apply to the Board to issue or re-issue the license or certificate:
1. Five years from the date of denial or revocation, or
2. In accordance with the terms of a voluntary surrender agreement.

B. A person who applies for issuance or re-issuance of a license or certificate under the conditions of subsection (A) is subject to the following terms and conditions:
1. The applicant shall submit a written application for issuance or re-issuance of the license or certificate that contains substantial evidence that the basis for surrendering, denying, or revoking the license or certificate has been removed and that the issuance or re-issuance of the license or certificate will not be a threat to public health or safety.
2. Safe practice:
   a. Pursuant to A.R.S. § 32-1664(F), the Board for reasonable cause may require a combination of mental, physical, nursing competency, psychological, or psychiatric evaluations, or any combination of evaluations, reports, and affidavits that the Board considers necessary to determine the person's competence and conduct to safely practice as an LNA or CMA.
   b. The Board may require the applicant to be tested for competency, or retake and successfully complete a Board approved training program and pass the required examination, all at the applicant's expense.

C. The Board shall consider the application, and may designate a time for the applicant to address the Board at a regularly scheduled meeting.

D. After considering the application, the Board may:
1. Grant certification or licensure, with or without conditions or limitations, or

2. Deny the application.

E. An applicant who is denied issuance or re-issuance of LNA licensure or CMA certification may request a hearing by filing a written request with the Board within 30 days of service of the Board's order. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6, of this Chapter.